



PROCUREMENT BULLETIN

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IG GREETINGS

*Omnibus ad quos praesentes literae
pervenerint, salutem*

In the last newsletter I announced a new certification program for public purchasing officials. I am pleased to report that the Office of the Inspector General will be offering a General Certification course for public purchasing officials on January 16 and 17, 1997. The same course will be repeated on February 26 and 27, 1997. Please see page four of this newsletter for details.

The course is not limited to procurement officials only. This Office encourages department heads, and other public officials involved with purchasing to take the course.

Please contact my Office if you have further questions about the program.

Sincerely,

Robert A. Cerasoli
Inspector General

Tips to Avoid School Bus Contract Pitfalls

1. When drafting school bus specifications, make sure that your requirements are reasonably related to your needs.

For example, one City required the bidder to have its principal place of business within a 60-mile radius of the City. This requirement had no rational relationship to the vendor's ability to perform the contract and severely limited competition. It is reasonable to require the vendor to have a service facility for its buses and to garage buses within a short distance of the City, but a company whose principal place of business is in another state could satisfy this requirement.

2. Make sure to specify the length of the contract.

Do not solicit prices for contracts of varying lengths--e.g., for two years, three years, and four years--and then se-

lect the contract length you want after you open the bids.

M.G.L. c.30B requires that you award the contract to the lowest responsive and responsible bidder. In the above example, there are potentially three low bidders: the low bidder on the two-year contract, the low bidder on the three-year contract, and the low bidder on the four-year contract. A procurement process that allows the awarding authority to decide, after opening the bids, which "low bidder" will receive the contract would be prejudicial to fair competition and would not comply with the requirements of M.G.L. c.30B.

3. Specify what you want in your specifications.

For example, you should determine, prior to drafting

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Tips to Avoid School Bus Contract Pitfalls, Cont.

your IFB, whether you want new or used buses. As in the previous tip, asking for prices for various types of buses could result in two low bidders-- one for used buses and one for new buses. You need to determine what you want prior to drafting your IFB, which may require market research.

4. Provide vendors with an estimate of the number of buses you need.

Massachusetts law requires that when you solicit unit prices, you provide vendors with an estimate of the number of units you expect to purchase.

If you solicit prices based on a per bus per day price, tell vendors how many buses you will need and how many days per year you will need bus service. If athletic and field trip buses will be part of the same contract, then you should provide vendors with estimates of athletic trips, field trips, late runs, and waiting time. You may use the previous year's bus service as a guide.

If you would like a sample school bus price form, please write this Office to request one or fax your request to (617) 723- 3540.

5. Structure your school bus contract price submission form in such a way that you will clearly and easily be able to identify the low bidder.

We suggest that you indicate what services must be provided and provide the estimated quantity as a multiplier on the bid form. Bidders will then only need to fill in the unit prices and the total price for each service.

6. The IFB and resulting contract for school bus transportation services should allow for increases or decreases in the number of buses, routes, and/or route-miles required over the term of the contract.

If you anticipate that these variables are likely to change over the term of the contract, the IFB should specify outer limits on anticipated increases in the scope of the contract. You would use the estimated or actual units of services stated in the IFB to calculate and compare bids prices (by multiplying the bid unit prices by the estimated or actual quantities in the IFB). If you need to add or subtract routes later on, you could then do so using the unit prices specified in the contract.

If the IFB and resulting contract

explicitly provide for possible increases (up to a specified limit) in the units of service to be provided, such increases within that limit would not be subject to the 10 percent rule, which allows an increase up to 10 percent of the original contract price without rebidding. However, any increases beyond the upper limit specified in the contract would require an amendment to the contract, and such amendment would be subject to the 10 percent rule.

7. Make sure that you treat all vendors fairly by providing them with an equal opportunity to submit bids.

For example, if you decide to issue an addendum making changes to the IFB, you should also extend the bid due date to ensure that bidders are given a reasonable amount of time to submit bids. You should send the addendum to all bidders who picked up your IFB and require bidders to acknowledge receipt of the addendum.

If you ask for references, make sure that you evaluate each bidder's references in the same manner. If you evaluate three references for one bidder evaluate only three for the others.

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Tips, Cont.

8. Include a fuel escalation/de-escalation clause in the contract.

The IFB should specify the formula to be used in calculating the contract price adjustments to which the contractor will be entitled. You may use a published index of wholesale fuel prices, or follow the example of many communities who designate the posted price at a local gas station as the basis for the fuel escalation/de-escalation formula.

9. Include a wage escalation clause in the contract terms.

You may want to include a wage escalation clause that permits contract price adjustments if changes in the prevailing wage law trigger increases in the amounts paid to the contractor's employees. However, the wage escalation clause should make clear that simply negotiating a higher wage package with the contractor's employees will not trigger a contract price adjustment. Like the fuel escalation/de-escalation clause, the wage escalation clause must be included in the IFB.

In general, escalation clauses must be tied to a set formula or external price index, and must be included in the IFB.

QUESTIONS ABOUT CHAPTER 30B

How can I obtain the most useful references for vendors bidding on our municipal contracts?

All procurement officials know the difficulty of obtaining an accurate picture of a vendor's past performance through the use of reference checks. Too often the references provided by vendors do not include those that reflect prior performance problems.

To avoid this problem, you can require vendors to submit a complete list of jobs they have performed that are similar in size and scope to your contract, with names and contact numbers. You may choose to limit this list to contracts performed in the past year or years, or whatever time period makes sense for your contract. By asking for a complete list, rather than allowing the vendor to self-select three or four "good" references, you will get a more accurate picture of the quality of their work. You can then contact all the names on the list, or just three or four at random if the list is too long. Make sure that you treat all vendors equally by contacting the same number of references for all bidders.

May I include an option to renew a contract in my invitation for bids, and, if so, do I

consider the renewal price when I evaluate bids?

Yes and no, respectively. You may include an option to renew or extend the contract provided it meets the following requirements:

1. The option must have been included in the IFB for the contract. If you want to include such an option, everyone must know about it before submitting a bid.
2. The option must be exercisable at your sole discretion. This means that you make the decision and the vendor is obligated to extend the contract on the terms stated in the bid.
3. Before you exercise any option to renew or extend, you must make a written determination that, in effect, the option gives you a better deal. How you do this depends on the size and the nature of the contract. For example, you can call other municipalities, survey other vendors, and do whatever else is reasonable to ascertain that exercising the option will be advantageous to your jurisdiction.

You should not consider the price of renewing a contract at the time that you open and evaluate bids. Instead, you should consider the price at the time you decide whether to renew the contract.

The Massachusetts Certified Public Purchasing Official [MCPPO] Program

The Office of the Inspector General has been authorized by the Massachusetts Legislature to provide a certification program for public purchasing officials. Four types of certification will be offered:

General Certification will be granted to officials who complete a two-day seminar that includes (a) an overview of purchasing principles and statutes, (b) fair labor standards requirements and practices, and (c) ethics laws and considerations.

Specialized Certifications will include the following:

Supplies and Services Certification will be granted to officials who complete seminar requirements focusing on M.G.L. c.30B requirements, practices, and issues.

Design and Construction Certification will be granted to officials who complete seminar requirements focusing on contracts awarded for design services, public works construction, and public building construction.

Energy Savings Contracting Certification will be granted to officials who complete seminar requirements reviewing issues and opportunities in energy-savings contracting.

Participants must complete the two-day General Certification seminar before taking any of the specialized certification programs. Completion of the General Certification Program and one specialized certification program will certify the participant as a Massachusetts Certified Public Purchasing Official [MCPPO].*

The two-day General Certification seminar will be offered in the McCormack State Office Building, One Ashburton Place, Boston on the following dates:

- **January 16 and 17, 1997 from 8:00 a.m. to 4:00 p.m.**
- **February 26 and 27, 1997 from 9:00 a.m. to 5:00 p.m.**

This is a comprehensive two-day program. The non-refundable cost of the program is \$200 per person. If you have any questions about the program, please call Beth Hayward at (617) 727-9140.

Instruction will be provided by experienced staff from the Office of the Inspector General, the Office of the Attorney General's Fair Labor and Business Practices Division, the Department of Labor's Division of Occupational Safety, and the State Ethics Commission.

*Participants will be required to pass a written examination for each certification course. Participants will also be required to continue education in the field of public procurement in order to maintain certification. OIG courses may satisfy continuing education requirements for other certifications that participants hold. Please check with your certifying board or agency.

**The Massachusetts Certified Public
Purchasing Official [MCPPO] Program**

**Seminar Agenda
General Certification Program**

Welcome and Introduction

Goals of public purchasing

Purchasing principles

Overview of the purchasing cycle

Determining needs and choosing purchasing method

Soliciting quotations, bids or proposals

Contract Administration

Statutes

Overview of Massachusetts General Laws Chapters 30B, 7, 149, and 30, §39M

Differences and similarities in statutory procedures

Statutes governing other procurements

Elements of a Public Contract

Contract formation: legal requirements

Contract rights and remedies: Uniform Commercial Code and Massachusetts General Law Chapter 93A

Practical considerations for drafting contracts

Essential components

Contract modifications and renewals

Basics of Antitrust and Fraud in Procurement Law

Special Issues Pertaining to Construction Bid Laws

Ethics Laws and Considerations

Prevailing Wage Law

Written Examination

Seminar Registration

To register for the General Certification seminar, please complete the form below, enclose a check for \$200 payable to the Office of the Inspector General, and mail it by the deadline dates to:

Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108
Attn: Beth Hayward

Seminar Registration Form

Please enroll me in the General Certification course for January 16 and 17
(Registration must be received by December 31, 1996)

Please enroll me in the General Certification course for February 26 and 27
(Registration must be received by February 5, 1997)

Name

Address

City

State

Zip Code

Phone

Title

Jurisdiction