
PROCUREMENT BULLETIN

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IG GREETINGS

*Omnibus ad quos praesentes
litterae pervenerint, salutem*

This issue of *Procurement Bulletin* contains answers to several questions that have come to my Office over the past couple of months. I hope that all procurement officials will find these questions and answers useful.

Additionally, my Office has extensive experience reviewing specifications for compliance with Chapter 30B. You can read some of our suggestions in the "Helpful Tips for Writing IFBs and RFPs" column on page two of this newsletter.

We are currently scheduling seminars in design and construction as part of the Massachusetts Certified Public Purchasing Official (MCPPO) program. These seminars are tentatively scheduled to be held in October and November 1998. For further information about these seminars, contact Anne Tierney or Genesi Dorsey at (617) 523-1205.

Sincerely,

Robert A. Cerasoli
Inspector General

INSIDE

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Quality Counts

This should be obvious: quality matters in procurement, whether in the public or the private sector. The public sector may have a greater interest in openness and fairness in contracting, but that does not mean that quality should take a back seat to other objectives. Nevertheless, some people misinterpret the requirement to be open and fair as meaning that vendors have a right to public contracts if they just promise the lowest price. That is wrong. Contracts must be won not just on price, but on the quality of supplies or services offered and the quality of firms – their past performance and the likelihood that they will deliver what they promise. That is “best value” contracting.

There are three principal ways in which you can ensure that you obtain the quality you want: the standards you set in your procurement, the check you perform on the responsibility of bidders, and the performance measures you use to evaluate contract performance. First, set the competitive bar that vendors must reach as high as necessary to ensure that you only do business with qualified firms that can deliver what you want. In your invitation for bids or request for proposals, you can and should set quality requirements for things like past experience including a record of good performance on prior contracts. Also, where relevant you

can consider factors in addition to price that will affect total life-cycle costs. In a Chapter 30B procurement, you may decide to consider the extent to which offerors exceed your quality requirements in an RFP.

Second, when it is time to judge the responsibility of bidders, do your homework to make sure you only contract with a firm that will perform. Check references, including references in your own jurisdiction to see how the firm has performed in the past. Then use the information you

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Language Matters . . . A revised and updated Procurement Manual for Chapter 30B will soon be available. One change underscores the interest in quality: we have replaced the term “minimum requirements” with the term “quality requirements.” For some, the term minimum requirements may have implied low standards, but the concept is really the same – you set the quality requirements to make sure that you obtain the quality of supplies and services your jurisdiction needs. The change has already been made in our *Practical Guide to Drafting Effective Invitations for Bids and Requests for Proposals for Supplies and Services*. For an updated copy of the guide, visit our website at www.state.ma.us/ig/.

Quality Counts, cont.

obtain to decide whether to award the contract to the bidder.

Finally, take responsibility for monitoring contractors' performance and letting other jurisdictions know about it. Measure how contractors are doing. Let contractors know of your concerns as the contract progresses. When you are called by another agency for an evaluation, be fair and honest. Did the contractor perform as required under the contract? Were there circumstances beyond the contractor's control that explain any poor performance? Would you want to hire the contractor again for a similar contract?

Helpful Tips for Writing IFBs and RFPs

Chapter 30B requires you include all contractual terms and conditions applicable to the procurement in your IFB or RFP. Most jurisdictions also include their standard terms and conditions, sometimes referred to as "boilerplate" terms. It is important to check special requirements of a particular procurement against your jurisdiction's standard terms and conditions to ensure that there are no conflicting provisions. For example, your standard terms may require certain insurance limits, but for a particular procurement, another section of your IFB may state a higher limit. This situation could result in ambiguous specifications and might require re-bidding the contract.

Speaking of Responsibility . . . Here is some of what the statutes have to say about responsibility (with emphasis added):

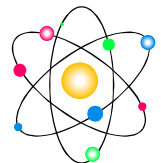
Supplies and Services: "'Responsible bidder or offeror," a person who has the *capability to perform fully* the contract requirements, and the *integrity and reliability which assures good faith performance.*" (M.G.L. c.30B, §2)

Building Construction: "'Responsible" means *demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work* called for by a particular contract, based upon a *determination of competent workmanship and financial soundness* in accordance with the provisions of section forty-four D of this chapter;" (M.G.L. c.149, §44A)

Public Works Construction: "The term "lowest responsible and eligible bidder" shall mean the bidder (1) whose bid is the lowest of those bidders *possessing the skill, ability and integrity necessary for the faithful performance of the work;*" (M.G.L. c.30, §39M)

And while the **Designer Selection** law does not specifically define "responsible," it does state that criteria for selection of designers "include: (i) *prior similar experience;* (ii) *past performance on public and private projects;* (iii) *financial stability;* . . ." (M.G.L. c.7, §38F)

Energy Saving Standards for Office Equipment



The federal Environmental Protection Agency (EPA) has instituted the Energy Star program to help consumers identify and write specifications for many products, including office machines that conserve energy and cut down on paper use. Energy Star standards for office machines include the following features:

- copiers, fax machines, computer monitors, and printers power-down automatically during periods of inactivity
- copiers default to make two-sided copies and fax machines scan double-sided documents

Buying equipment that meets Energy Star standards helps protect the environment and saves money by reducing wasteful consumption.

For more information on Energy Star standards, check the web site at www.energy.star.gov or call the EPA's toll-free customer service center a 1-888-782-7937.

Questions About Chapter 30B

May I use another municipality's bid specifications for the procurement of the same or fundamentally similar supplies or services?

Yes. It is a good idea to start with bid/proposal specifications that other awarding authorities have used successfully and adapt them to meet your specific needs. This advice applies to the procurement of either supplies or services.

May I use specifications provided by a vendor and if I do, must the vendor supplying the specifications be prohibited from submitting a bid/proposal for the contract?

The use of vendor-supplied specifications is not prohibited, but a word of caution is in order. When you solicit specifications from the vendor community, you should consult similar specifications from several vendors and consider them as "starting points" for the development of specifications that will meet your particular needs. You should also recognize that some vendor-supplied specifications may be proprietary in nature. Under Chapter 30B, awarding authorities may only

use proprietary specifications when no other manner of description suffices.

A vendor who supplies specifications to an awarding authority is not prohibited from submitting a bid or proposal for the contract, so long as there is open and fair competition.

I am procuring a fire vehicle for our jurisdiction. May I ask for a base bid with two alternates, so if I have enough money, I can purchase the alternates for the vehicle?

If you ask for alternates for a Chapter 30B contract, you should have a clear rule to determine who will receive the contract. The one safe way to establish a clear rule is to establish a dollar limit (in all likelihood, this dollar limit will be your appropriation for the purchase) and put that dollar limit in the IFB. This allows you to draft a clear rule for award that establishes only one low bidder. For example, the bidder who offers the most alternates, at the best price, without exceeding the dollar limit will win the contract.

Useful Websites for Procurement Officials

Association of School Business Officials
<http://www.asbintl.org>

Commonwealth Procurement Access and Solicitation (COMM-PASS)
<http://www.comm-pass.com>

Massachusetts Association of School Business Officials
<http://www.masbo.org>

National Institute of Government Purchasing
<http://www.nigp.org>

National Association of Purchasing Management
<http://www.napm.org>

Massachusetts Office of the Inspector General
<http://www.state.ma.us/ig/ighome.htm>

Operational Services Division (Massachusetts State Purchasing Agent)
<http://www.magnet.state.ma.us>