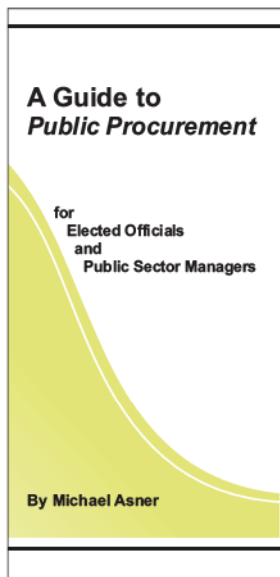


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A Guide to *Public Procurement*

**for
Elected Officials
and
Public Sector Managers**

By Michael Asner

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Third printing, March 2006

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Additional copies can be purchased for \$20 each from:
www.rfpmentor.com/procurement.html

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Every government expenditure is subject to public scrutiny. And, in recent times, more of these expenditures are being challenged. Often, the challenge is based not on what goods and services were acquired but on the process used. We often hear claims that the process was unfair, or biased, or that there was no process, or that the contract was awarded without competition.

All of these claims highlight the reality that spending government funds is very different than buying “stuff” (goods and services) in the private sector. The process is different, the objectives are different, and the private sector does not have to deal with public policy related to procurement.

This publication is designed to provide elected officials and public sector managers with instant information about key concepts and issues in procurement. We have tried to provide short, understandable answers to important questions such as “What is procurement?”, and “Why do we insist upon fair and open competition?”.

Before beginning, let me tell you why I wrote this guide.

Over the last fifteen years, I've given workshops on procurement issues to government people across North America. As a result, I've had hundreds of hours of conversations and discussions about procurement issues and problems. These discussions have been held with procurement executives, buyers, and program managers from the federal, provincial, state and local governments, and from universities, libraries, school boards, and airport authorities.

Procurement people want elected officials to hear their message . . .

There are several recurring, common concerns - important messages for politicians and senior executives within governments and agencies.

Many procurement people believe that:

- Few senior managers and elected politicians understand what procurement people do. They don't understand what value procurement people add to the process. They generally think that procurement people impede progress by insisting that unnecessary tasks be done. (See: 13. But what do procurement people do all day?)
- These same managers and elected officials fail to understand that procurement is governed not by a local political agenda but by public policy and the courts. There are rules that must be followed in every jurisdiction, not just by the federal government. (See: 7. What is the legal framework for procurement?)
- And finally, these same managers and elected officials fail to recognize that procurement is organized as a profession and has a strong code of conduct for its members. (See: 9. What values do our procurement people hold?)

Vendors want elected officials to hear their message . . .

During this same time, I've worked with private sector firms to help them understand how to sell to governments. I give a workshop on Creating Winning Proposals. This has permitted me to discuss key concerns with a wide variety of private sector firms: printing companies, engineers, systems integrators, recycling firms, accounting firms. These firms, from all over North America, have a common set of concerns:

- Vendors generally don't understand and are often intimidated by the procurement process.
- Vendors distrust the process and are concerned that, although a government is announcing a competition for a contract, the winner has already been decided. (See: 8. What sorts of abuses occur?)
- Vendors believe that governments hide information or, at least, make it difficult to obtain. The proposal writing process is very expensive and when you lose it is often difficult to find out the specific reason you lost. (See: 11. What information is available to the public?)

INTRODUCTION

This guide was originally intended to inform newly elected politicians about procurement concepts, practices and emerging issues - issues which present both risks and opportunities. However, since its publication we have realized that this guide also tells private sector firms how governments must run their procurements.

I have organized this guide as a series of questions and answers. I've tried to keep the answers short, provide a little bit of extra reference material and present a balanced view.

All of the editorial material in this publication has been written by me. Clearly, the opinions contained in this publication are mine and not necessarily shared by others.

Many thanks to all my colleagues who provided help, encouragement, and advice in the development, and production of this booklet. Special thanks to Sharon Sheppard and Jim O'Neill.

Some Fundamental Issues

1. What is procurement?

The Oxford dictionary has several definitions for this word. The one that applies to the public sector is “procure - to obtain, especially by care or effort”. But procurement is more than simply buying “stuff” (otherwise known as “goods and services”), it’s more than “purchasing”. It’s more than simply spending money with the private sector to acquire goods and services.

Procurement, in the public sector, is *the process* for budgeting funds, and acquiring goods and services. The process has at least three stages:

- Planning and scheduling of programs, activities and tasks to meet departmental objectives;
- Source selection (this is a procurement term) designating the acquisition process which includes deciding on your purchasing method, preparing the bid documents, advertising the opportunity, evaluating the responses, selecting a vendor, and actually acquiring the “stuff”; and
- Contract administration to ensure that the terms of the contract are satisfied.

2. Why is procurement important?

Governments spend enormous amounts of money on goods and services. For example, New Mexico spends about \$500 million each year (excluding professional services); Virginia spends about \$4 billion each year on goods and services.

So procurement is important for several reasons.

- Safeguarding public funds . . .

Procurement staff are responsible for maintaining the integrity of spending public funds. The audit reports of state and local governments frequently fault politicians, senior management and procurement staff for failing to safeguard public funds and for failing to follow established procedures.

- Efficiency and effectiveness . . .

It's important that goods and services be reasonably priced, high quality and on time - otherwise the efficiency of government or the effectiveness of programs suffers.

- Public confidence . . .

It is important that the public perceive that procurement is being carried out in an ethical and prudent manner. It's the public's money and there is a growing lack of confidence in the procurement process. The regular occurrence of stories of fraud, personal benefit, and conflict of interest are often associated with the procurement process.

- Supplier confidence . . .

The procurement process works best when there is real competition. This requires the active support of the supplier community. Prices rise and quality drops when there is little competition. Competing for government business costs suppliers time, energy and money. If the process does not make business sense, they won't do it. If the process is not fair, they won't do it. And if they distrust the process, they will not compete. They will spend their marketing dollars on other, more profitable, activities.

- Public policy and the law...

Public bodies are required as a matter of both public policy and law to ensure that goods and services are obtained by fair and open competition. Failure to do so can result in courts awarding damages to aggrieved suppliers.

3. Why do we have a procurement function or department?

Acquiring “stuff” (more formally known as “goods and services”) requires skills, disciplines, and knowledge. The fundamental mission of the procurement function is to provide the operating units or departments with the goods and services they need. They have to provide them in the right amounts, when needed. They have to provide quality goods and services at a reasonable cost, or best value.

The procurement function defines the policies and procedures which the entire organization must follow.

Part of the mandate of the procurement function and its people is to promote competition. But the way they behave is restricted. They have to ensure that they treat suppliers in a fair and equal manner as defined by the courts (See: 7. What is the legal framework for procurement?) The process has to be able to survive public scrutiny.

Well-run and effective organizations have defined procurement policies, procedures, and processes to ensure that procurement is “fair and open” and effective.

Procurement has to provide a balance between public policy and efficiency. While efficiency is important, procurement’s role as the custodian of public policy is paramount. This is the role which is constantly challenged in litigation.

4. What is a procurement policy?

Well-run and effective organizations have defined procurement policies, procedures and processes to ensure that procurement is “fair and open” and effective.

While the federal government and most states and agencies have well defined policies, those of local governments are often poorly drafted. A good policy statement tells the organization and the public what to expect from procurement.

Here's a typical policy statement. This example is from Baltimore City Public School System:

- to provide for increased public confidence in the Policies and Procedures followed in public procurement;
- to ensure the fair and equitable treatment of all persons who transact business with the School Board;
- to provide increased economy in the Baltimore City Public School System procurement activities and to maximize, to the fullest extent practicable, the purchasing value of public funds of the Baltimore City Public School System;
- to foster broad-based competition within the free enterprise system;
- to provide safeguards for the maintenance of a procurement system of quality and integrity.

A Quick Quiz

Effective policies share seven characteristics. Evaluate yours and see how you do. Give yourself one point for each "yes". Many local governments score three or less.

Effective policies are:

- (1) reasonable;
- (2) clearly stated;
- (3) up-to-date and available in writing;
- (4) available on your organization's intranet and public web site;
- (5) known throughout your organization and by the public;
- (6) consistently applied in all appropriate situations; and
- (7) legal.

More Information

All of Baltimore City Public School System's procurement policies and procedures can be found at: <http://www.bcps.k12.md.us/Procurement/Procedures/>

5. Why is "fair and open competition" the backbone of procurement?

It is public policy that all firms should have an equal chance of obtaining government business. Competition is the cornerstone of the government procurement process. It gives each bidder the incentive to bring forward its best solution to the operational problem, at a competitive price and it ensures that all qualified suppliers are afforded access to government contracts.

This mandate for "fair and open competition" must be incorporated into the purchasing process in each organization.

The purchasing processes for all governments and public bodies are specified, controlled and organized by statutes, regulations, policy directives, by-laws, and guidelines based on fair and open competition. These principles apply to all public entities including school boards, colleges, universities, and airports. (See: 7. What is the legal framework for procurement?)

6. I know it's English, but what do all those strange terms mean?

Procurement has its own vocabulary. Here are some of the terms frequently overheard when procurement people gather, but not widely understood by the rest of society. There are hundreds of procurement terms. This is only a sampling of some of those terms which creep into management reports.

award: the presentation, after careful consideration, of a purchase agreement or contract to the selected bidder or offeror.

back-door buying or selling: unofficial, irregular, devious buying or selling, usually resulting from undue efforts to induce preference for a particular vendor with the intent of limiting competition; often directed at senior management or elected officials.

best and final offer (BAFO): the final proposal submitted after negotiations are completed that contains the vendor's most favorable terms for price and services or products to be delivered.

best value: a selection based on several factors such as quality, past performance and life cycle cost.

bid: an offer submitted by a prospective vendor in response to an invitation for bid (IFB) issued by a purchasing authority; becomes a contract upon acceptance by the buyer.

boilerplate: a colloquialism, used in purchasing to identify standard terms and conditions incorporated in solicitations, contracts, or purchase orders which are often preprinted or incorporated by reference.

cooperative purchasing: the combining of requirements of two or more public procurement units in order to obtain the benefits of volume purchases and/or reduction in administrative effort and costs.

emergency purchase: a purchase made to alleviate a situation in which there is a threat to health, welfare, or safety under certain conditions defined as an emergency by the jurisdiction, that does not allow time for normal, competitive purchasing procedures.

evaluation factors: those factors specified in the RFP that will be considered in determining to whom a contract will be awarded.

invitation for bids (IFB): a formal request to prospective vendors soliciting price quotations or bids; contains, or incorporates by reference, the specifications or scope of work and all contractual terms and conditions.

life cycle cost: the total cost of ownership; the total cost of acquiring, operating, maintaining, supporting, and (if applicable) disposing of an item.

mandatory: obligatory, required by order, a provision that may not be waived.

partnering: the establishment of a mutually beneficial relationship with a vendor or contractor for the specific performance of work.

pre-bid conference: meeting held with prospective bidders prior to solicitation of bids, to clarify any ambiguities, answer bidder questions, and ensure all bidders have a common basis of understanding regarding the supplies or services required.

request for proposal (RFP): a competitive solicitation method used when other factors will be considered in the selection of the contractor in addition to price.

request for quotation (RFQ) a bid solicitation method when the award will be made on the basis of the supplier able to satisfy each of the mandatory requirements and having the lowest cost.

restrictive specifications: specifications that unnecessarily limit competition by eliminating items capable of satisfactorily meeting actual needs, often by requiring features which exceed the minimum acceptable characteristics required for satisfactory performance.

shall: denotes the imperative in contract clauses or specifications. Compare with **may**.

sole source procurement: a situation where a particular supplier or person is identified as the only qualified source available to the requisitioning authority.

standing offer: an arrangement whereby a supplier offers to supply on demand goods and services described in the offer, at the price or on the pricing basis stated, and subject to all the terms and conditions set out therein.

More Information

The following web sites contain definitions of common procurement terms:

Admin Minnesota:

<http://www.mmd.admin.state.mn.us/mn06008.htm>

University of California, Berkeley:

<http://businessservices.berkeley.edu/HtmFiles/ProcureGlossary.htm>

New York State:

<http://www.ogs.state.ny.us/purchase/pdfdocument/PnpPsgGlossary.pdf>

King County, WA:

http://www.metrokc.gov/finance/procurement/glossary/glossary_q.asp

Ethics, Laws and Abuses

7. What is the legal framework for procurement?

The purchasing process for the public sector is specified, controlled and organized by statutes, regulations, policy directives, by-laws and guidelines.

Generally, the framework imposed by statutes and policies contains three essential elements:

- (i) Procurement is to be accomplished using a competitive bidding process;
- (ii) Selection is based on lowest price or best value;
- (iii) Bidders must be treated equally and fairly.

Unsuccessful bidders, believing they have a cause, can bring an action in private law, usually under the law of contracts or tendering.

The laws and courts in many states have established a number of duties and responsibilities which the buyer has. Some of these duties, established by the courts, include the duty to:

- (i) disclose all the requirements in the solicitation document;
- (ii) treat all bidders and proponents equally and fairly;
- (iii) publish the basis for evaluating the bids and proposals in the solicitation document;
- (iv) award the contract based only on the factors described in the solicitation document;
- (v) award the contract only to bids or proposals which meet all of the mandatory requirements.

If a supplier is successful in proving its claim, often the courts can award substantial damages or order a new competition.

A Quick Quiz

- Has your procurement function been reviewed by a lawyer within the last two years to ensure that your process, documents and procedure comply with recent court rulings?
- Has your procurement manager taken at least one course on the law related to public procurement?
- Does your procurement manager have access to a lawyer who specializes in the law related to public procurement?

8. What sorts of abuses occur?

Here's a sampling from court cases, audit reports for state and local government and other sources.

Examples of abuse by government employees or officials include:

- awarding contracts without any competitive process, often to friends or relatives
- splitting purchases to remain within small purchase limits
- using sole source when competition is available
- declaring emergencies when none exist
- employing unduly restrictive specifications or requirements to favor one vendor
- providing information to only some vendors
- waiving mandatory requirements for favored vendors
- providing incomplete specifications in the bid documents

To provide a more balanced picture, some private sector firms also engage in abusive or illegal practices:

- collusion or price-fixing
- falsifying certifications
- providing false statements of qualifications or experience.
- initiating vexatious complaints.

9. What values do our procurement people hold?

In many western countries, including Canada and the U.S. the behavior of purchasing people is influenced by a common set of principles - values in which practitioners strongly believe. In some organizations, these values are supported. In others, they receive, at best, lip service. Most procurement scandals would be avoided if the organizations simply followed their own procurement processes, and listened to their procurement people.

These values have been promoted and endorsed by professional associations, government entities and the courts. Some states have enshrined ethical principles in their procurement statutes.

Here are some examples.

The National Institute of Governmental Purchasing, a U.S.-based organization with chapters in Canada, has a 4-page Code of Ethics dealing with responsibilities, conflict of interest, perception, confidential information, and relationship with suppliers and others. This Code has been adopted by many states and local governments.

The National Association of Educational Buyers has a 1-page Code of Ethics.

The University of Washington has published a 1-page statement of Purchasing Ethics that cites state law. <http://www.washington.edu/admin/purchstores/yourdept/ethics.html>

Often, organizations translate these statements into operational rules or standards of practice. Consider the issue of gifts or gratuities from suppliers.

The NIGP Code permits accepting gifts of "nominal value" when the "value of such items has been established by your employer". The NAEB Code of Ethics requires its members to "decline personal gifts or gratuities".

As with most ethical areas, there is a grey area: what about small gifts? My favorite compromise between strict policy and pragmatism is one local government that permits its purchasing people to receive gifts from suppliers **but only if the gift can be consumed within 24 hours.**

A Quick Quiz

- Is there a Code of Ethics in your Purchasing Policy?
- Are your purchasing people members of professional associations? Is membership a condition of employment?
- Does your organization promote professionalism? Does it pay for membership? For training?
- Has your Procurement Manager ever been told "I know we didn't do this one properly, but just sign it!"

10. What can be done to safeguard the procurement function?

The procurement function and its people are subject to pressures from many of its stakeholders; from politicians, suppliers, and, often, from within their own organizations:

- Major users and program managers want things done quickly and often see little value in developing detailed requirements. They often see little value in “fair and open” competition, as they already know who they want to get the work.
- A specific department (often Information Technology) may see procurement as simply delaying the project and not understand procurement's role as the custodians of public policy.
- Politicians don't necessarily support “fair and open” competition when their constituents lose business.
- The Procurement Dept. is often understaffed with time only for crises and major projects. Or they are excluded from major procurements.
- The procurement function is often decentralized to Departments who have little training and little awareness of the requirements for “fair and open” competition.

The best way to safeguard the procurement function is to have it report to the chief executive officer, to ensure that it receives the “buy in” from top management, and to make it's values and mission part of the culture of the organization.

A Quick Quiz

Eleven positive indicators are given below. How many apply to your organization? If your organization gets fewer than 9, its time to strengthen the role of procurement. Under 5, don't let the auditors in!

1. Employ qualified and trained personnel.
2. Establish written policies and procedures.
3. Educate departments about the role of procurement and the significance of “fair and open” competition.
4. Have the procurement function report at the same level as Information Technology but to a different manager.
5. Provide a public report on procurement activities.
6. Announce each sole source competition and the reasons for it.
7. Perform audits either before each major contract award, or annually.
8. Nominate a procurement ombudsman available to the public and to all vendors.
9. Have an “open door” policy; provide industry briefings about policies and doing business with your organization.
10. Provide the procurement manager with a written job description which includes ensuring that procurements are performed in a visibly fair, open and ethical manner consistent with the law and rulings of the courts.
11. Ensure that vendors are provided information concerning competitions that they have not won.

11. What information is available to the public?

Federal and state laws dealing with access to information make all public records available to any person. These laws go by a variety of names including freedom of information, access to information, open meetings law, and public records act.

Using these laws, any person can request and obtain procurement documents. In most cases, all procurement information will be released unless it is judged potentially harmful to the business interests of one of the parties.

All of the following procurement documents could be made public after award of a contract:

- The evaluators' notes
- The scores of each proponent
- The memo recommending the winner
- Copies of each proposal
- The contract.

In some jurisdictions, information is automatically released once a contract is signed. In other places, information is guarded and not released until a formal request is made.

A Quick Quiz

- Is your organization subject to Freedom of Information legislation?
- Is there a written policy determining which information will be automatically released?
- Is this information available on your procurement website?
- Does your organization encourage the disclosure of information? Is this used to develop supplier trust and confidence?

More Information

U.S. Dept. of Justice, Freedom of Information Guide:
<http://www.usdoj.gov/oip/foi-act.htm>

The Freedom of Information Center provides links to each state's FOI laws:

<http://www.missouri.edu/~foiwww/citelist.html>

Illinois has established a web page Ensuring Open and Honest Government which deals with its FOI Act:

http://www.ag.state.il.us/government/foia_illinois.html

12. Why do suppliers complain?

Most suppliers who have a concern about a particular procurement will complain to the procurement manager. They will seek some level of explanation for the perceived problem. When a reasonable explanation is provided, the concern often disappears.

In many organizations, suppliers are offered a debriefing in which they are provided information about their proposals and the reasons they did not win.

When suppliers cannot get timely explanations from their buying organization, they may go public - either to the elected officials, the press, or the courts.

Suppliers complain because they believe that they were treated unfairly, or that the procurement process was flawed. Sometimes, suppliers have been misled by key users, usually not procurement people, who don't know the rules.

But there are other, more self-serving reasons, to complain. Some suppliers always complain. This is a tactic they use to obtain the maximum amount of information about the reasons for losing. Also, suppliers who complain are often treated less harshly in the next process to ensure that they don't complain again.

I also know of one supplier who sent his lawyers in to challenge an award. His job was on the line. The supplier's senior sales person claimed that the evaluation process was unfair. This tactic was intended to preserve his job a little longer and to delay the procurement decision.

A Quick Quiz

- Does your organization have a process for handling supplier complaints?
- Is the process known by the supplier community?

- Is the purpose of the process to resolve complaints or to simply identify aggrieved suppliers?
- Is there a process for promoting co-operation and understanding with the supplier community?

More Information

The City of Miami has a 3-page procedure. Protests must be initiated within two days of the notice of award of a contract. Only proposers can protest. Protests may not challenge the evaluation criteria or weights. And protests are first dealt with by the Chief Procurement Officer. <http://www.ci.miami.fl.us/Procurement/docs/BidProtest.pdf>

The State of Nebraska has a one-page protest procedure that identifies the timing (within ten days of intent to award), the official in charge (Materiel Division Administrator), and the tasks. http://www.das.state.ne.us/materiel/purchasing/rfpmanual/fo rm_protestprocedures.pdf

The City of Orlando has a two-page Bid Award Disputes procedure. Protests often cause the contract award to be suspended until the protest is resolved. <http://www.ci.orlando.fl.us/admin/purchasing/appealofpurch agentdecision.htm>

Organization of the Procurement Function

13. But what do procurement people do all day?

Procurement people perform more than 80 different tasks on different procurement activities and phases. For example:

During the planning phase, they provide information on applicable laws, and develop procurement policies.

During the market research phase, they provide benchmarking services and comparison studies.

During the sourcing phase, they develop independent evaluation criteria.

During the analysis of alternatives, they conduct risk analyses.

During the award phase, they conduct vendor debriefing sessions.

During contract execution, they secure legal opinions, if required, and evaluate trade-offs.

During the receipt phase, they manage logistics.

During the payment phase, they manage return for credit requests.

During the contract administration phase, they issue and control contract amendments.

During the project management phase, they identify vendor performance problems.

During the performance measurement phase, they resolve disputes.

A Quick Quiz

- How many procurement activities can you name?
- How many of them add value to the process?
- Do your procurement people have job descriptions based on responsibilities?

More Information

This list is one of my favorites and was provided by Marlene Knight, Procurement Manager, City of Mississauga (Ontario). The list identifies 82 value-added activities in 13 categories. The complete list can be found at:

<http://www.rfpmentor.com/whatdoprocurementpeopledo.html>

14. What are the requirements for procurement personnel?

Performing procurement activities for a public entity is complex - there are domestic and international laws, court rulings, public policy issues as well as internal directives, policies, and guidelines. People doing this work must be well qualified and trained. Otherwise, there will be mistakes, poor practices, and illegal acts which can increase costs, and expose the entity to harsh public criticism and litigation.

Procurement people should all be subject to common standards.

Officials with procurement authority are accountable for their actions and it is unfair to place someone in that position without adequate training, and without an understanding of their role as custodians of public policy. Some organizations insist that procurement people be accredited by one of these organizations. These organizations include:

Institute for Supply Management <http://www.ism.ws>

National Association of Educational Buyers www.naeb.org

National Contract Management Association
<http://www.ncmahq.org>

National Institute of Governmental Purchasing
www.nigp.org

National Purchasing Institute
<http://www.nationalpurchasinginstitute.com>

Purchasing Management Association of Canada
a www.pmac.ca

Some states (and local governments) provide their own in-house training and certification. Alaska, for example, has a Procurement Officer Training and Certification Program. <http://certification.dgs.admin.state.ak.us/>

A Quick Quiz

- Does your organization require that the Procurement Manager be a member of a professional organization?
- Does the manager require a professional designation such as Certified Professional Public Buyer (CPPB)?
- Does the job description and salary for Procurement Manager reflect the complexity and importance of this position?

15. How is the procurement function organized?

In most organizations, the procurement function is both centralized and decentralized. The central group acts as the “orchestra leader”.

Certain common functions are performed by a central group. Typically, these functions include the development of policy, training, and ensuring compliance with policy. Often, the central group provides consulting services to the departments. And the central group often has a quality control responsibility: they must approve major RFPs prior to their being issued.

The actual procurement activities, preparing and issuing bid documents, dealing with vendors, and evaluating proposals are often performed by the operating departments, sometimes with direct assistance or involvement of the central group.

In some organizations, large-value, complex procurements such as those for information technology may be performed by a specialized central group for all departments.

The degree of centralization of the different elements of this function varies according to the history, needs, capabilities, size and culture of the organization. There is no correct degree of centralization for all organizations. It is a balance between efficiency, service, and ensuring that fair and open competition is protected.

Competition

16. What is a competitive procurement?

It is public policy that all firms should have an equal chance of obtaining government business. Competition is the cornerstone of the government procurement process. It gives each bidder the incentive to bring forward its best solution to the operational problem, at a competitive price and it ensures that all qualified suppliers are afforded access to government contracts.

“Fair and open” competition doesn't just happen. Governments have to take active steps to ensure that they receive lots of bids/proposals for each solicitation. Procurement people know that a competitive marketplace must exist for the process to work. When this occurs, prices drop and the quality of the proposals increases.

Competition is always the preferred approach and is abandoned only when there are compelling reasons for precluding it. (Sole sourcing - the awarding of a contract without any competition - is, by its nature, offensive to the public policy of “fair and open” competition.)

There are, in principle, only two types of competitive procurement: an Invitation for Bids, or a Request for Proposals.

The Invitation for Bids (also called a Quote) is always the preferred approach. In this method, the procurement is done on the basis of price alone. The responsible vendor that can supply the specified goods or services at the least cost is awarded the contract.

When you can't buy based on price alone, then a Request For Proposals is used. In this method, the “winner” is determined by a combination of factors, such as quality, or past experience of the vendor, or proposed solution, in addition to price.

Procurement policies, regulations or “best practices” include a public notice requirement. This used to be done via newspapers but is now being replaced by a notice on

an electronic tendering site on the Web. Once the notice has been posted, suppliers are given a specified period of time to prepare and submit their responses. After the closing date, bids are evaluated based on the price. Proposals are evaluated, usually by a committee, based on price and other factors specified in the Request For Proposals. The contract is then awarded and an announcement made.

Procurement methods (such as sole sourcing), which reduce competition are contrary to the public policy and require specific justification each time they are employed. (See: 18. What are the different ways to acquire goods and services?)

Inappropriate activities by executives within a public entity can also reduce competition. For example, I know of one engineering director who provided his favorite supplier with information not found in the RFP. This activity clearly put all the other competitors at a disadvantage, and was contrary to public policy. More importantly, this director had violated his state's procurement laws and had, by his actions, put his organization at risk.

17. Why are specifications so important?

A "specification" is a description of the item or services being sought. Another term for the specification of a service is "scope of work" or "statement of work".

When using an Invitation for Bids, the specifications must be precise. Each vendor is required to comply exactly with each and every specification. Having done this, the contract is awarded on the basis of price. For example, you want to purchase 1 million sheets of 20 lb. paper, packaged 500 sheets to a bundle and delivered to your warehouse within 30 days of signing the contract. Each term is mandatory and any vendor not able to meet these terms will not be awarded the contract.

When using a Request for Proposals (RFP), the specifications can be less precise. The RFP identifies the factors to be used in the evaluation; for example, the Experience of the Project Manager. The RFP may elaborate saying that his or her formal training, prior related experience, and education will be important. The Evaluators would then assign a point score based on the information in the Proposal. The total evaluation score would then determine the company to be awarded the contract. An RFP involves some element of judgement being applied by the Evaluators. The RFP process is more complex, more difficult, and attracts more problems than the Invitation For Bids process.

Specifications are extremely important. They serve as the basis for determining whether the supplier provided what the government believes it procured. Poorly written specifications cause major problems - reduced competition, protests, delays, cost overruns and failure of the project itself.

Users having difficulty in specifying their requirements are encouraged to find similar procurements completed by other agencies. It is unacceptable for users to include vague, poorly written, ambiguous specifications in a solicitation document.

Typically, the user departments are the subject-matter experts and provide much of the information used in the specifications. Many associations have developed extensive libraries of specifications.

More Information

Issue 50 of The RFP Report provides lots of information about the Statement of Work.

<http://www.rfpmentor.com/rfp-report.html>

18. What are the different ways to acquire goods and services?

There seem to be many ways that a government can buy things or hire a firm to do something. In fact, there are many variations on two basic approaches. The first incorporates the principle of “fair and open” competition, and is used whenever possible. The second is used in those rare circumstances when competition is not appropriate.

Types of Competitive Procurement

1. Invitation to Bid

In some jurisdictions, this is called Request for Quotation, or an invitation to bid. (Remember, that procurement terminology varies from one jurisdiction to another.) This is the preferred procurement method and is used when the requirements can be identified specifically and the contract awarded only on the basis of lowest cost. The bid document contains all of the specifications and terms and conditions.

2. Request for Proposals (RFPs)

The supplier is invited to submit a solution to a problem, or requirement. The selection of a winning proposal is based on the factors identified in the Request for Proposals such as merits of the technical solution, and each vendor’s past performance. Price is only one evaluation factor and the selected solution is often not the lowest cost proposal.

In some organizations, there is never enough time to prepare a Request For Proposals. Rather than extending the existing contract for a few months, some organizations simply renew the contract for another three years. This approach has been challenged in the courts and found improper.

3. Other Types

These include small purchases, sole source, two-step sealed bidding, standing offers and the use of reverse auctions.

In some situations, competition is impracticable:

1. an unforeseen situation or emergency
2. to ensure compatibility with existing products
3. where there is only one supplier
4. for warranty work
5. in buying original works of art
6. when buying from another government.

The use of these non-competitive methods is obviously subject to abuse. Awarding a contract as a 'sole source' when other firms can also do the work has been a common practice in some organizations. To discourage this practice, many organizations require that sole source awards be publicized and accompanied by a written justification. (See: 20. Why is "sole sourcing" a problem?)

A Quick Quiz

- Does your organization publish a report, at least annually, identifying all procurements and contracts awarded by type, supplier and value?

More Information

St. Johns River Water Management District has seven different procurement methods defined in their Procurement Manual:

http://sjr.state.fl.us/programs/mgmt_admin/admin/bids_contracts/pdfs/procurement_manual/proc_manual_11-15-04.pdf

City of St. Joseph, Missouri has a 2-page write-up of Purchasing Methods:

http://www.ci.st-joseph.mo.us/finance/purchasing_procurement.cfm

Patrick Henry Community College, Martinsville, VA has a 6-page description of its Methods of Procurement:

<http://www.ph.vccs.edu/info.cfm?t=39&c=0&path=32,166,246,256>

19. Are bids and proposals different?

Yes. In using a bid, the contract is awarded to the firm with the lowest price. All of the specifications are mandatory.

The process for using an Invitation to Bid includes the following steps:

1. Identify the specifications.
2. Prepare the bid document which includes all the specifications and terms and conditions.
3. Publicize the competition.
4. Award the contract to the lowest bid from a responsible vendor.

In using a Request for Proposals, the contract is awarded to the firm that is judged as providing the best proposed solution. The judgement is made using the evaluation factors contained in the RFP. These factors always include price. Other factors depend on the specific requirements but often include past performance, project management experience, and merits of the technical solution. The contract is awarded to the proposal which is considered "best value". This may not be the lowest cost.

The process using a RFP includes the following steps:

1. Identify the specifications or statement of work.
2. Establish an Evaluation Committee.
3. Prepare the RFP.
4. Publicize the competition.
5. Hold a bidders' meeting to answer questions (optional step).

6. Evaluate proposals based on the evaluation criteria stated in the RFP. The evaluation process may include demonstrations, or presentations.
7. Award the contract to the vendor whose proposal provides the “best value” based on the evaluation factors stated in the RFP.
8. Provide the vendor who submitted losing proposal with a debriefing - an opportunity to learn why their proposal was not accepted.

More Information

New Mexico's Procurement Code Regulations describe the process, rules and requirements for Invitation for Bids and RFPs: <http://www.state.nm.us/spd/pcr141.pdf>

20. Why is “sole sourcing” a problem?

Sole sourcing is the awarding of a contract to a supplier without any form of competition. It has been the subject of newspaper articles, auditors' reports, and questions in many different legislatures and councils.

Sole sourcing, by its very nature, offends the public policy of “fair and open competition”. When sole sourcing is used, the agency is stating that there is no competition available in the marketplace, and that only one supplier is capable of satisfying the requirements. Clearly this is an unusual happening and must be handled carefully.

Ideally, the sole sourcing process contains some checks and balances:

- The procurement people do some market research to identify alternate suppliers.
- The procurement people then prepare a bid document to identify the specifics of this procurement. They also prepare a written justification which must be approved by management before a sole source contract can be signed. This written justification becomes a matter of public record.
- The procurement people post a notice, using an electronic tendering site, that they intend to award a contract without competition. The notice identifies the nature of the procurement (the specifications), and the name of the company which will be awarded the contract. The notice also invites any companies which believe they can provide the goods and services to contact the procurement people within a specified time.

- If no alternative suppliers respond to the notice, then the contract is awarded to the identified company. If any supplier indicates that it is capable of providing the goods and services, the sole sourcing process is suspended and a bid document is issued using the electronic tendering site.
- On a regular basis, quarterly or annually, all contracts awarded on a sole source basis are identified.

More Information

This article from The Request For Proposal Handbook discusses some of the issues and problems associated with awarding a contract without any competition: <http://www.rfpmentor.com/solesourcing.html>

Alaska's Administrative Code defines the conditions for use of sole source procurement: <http://touchngo.com/lglcntr/akstats/AAC/Title21/Chapter010/Section155.htm>

Springfield (MO) has published a 3-page policy for Sole Source Procurement: <http://sps.k12.mo.us/purchasing/main.solesource.htm>

Other Topics

21. What is co-operative purchasing?

Cooperative or collaborative purchasing is the acquisition of “stuff” by two or more agencies acting together. This form of procurement is growing rapidly as participating agencies realize cost reductions, sometimes up to 10%.

There are hundreds of different co-ops in Canada and U.S. For example, there are co-ops of educational buyers, and of public agencies within the same state. By acting together, the agencies get better prices since volumes are higher. There are other benefits related to greater efficiencies in the procurement process, and enhanced knowledge of the purchasers.

There are two major approaches for agencies working together. First, there is joint tendering in which the co-operating agencies agree on a set of common specifications for goods or services. They then develop joint tenders and a common contract.

The second approach is “piggybacking” in which an agency obtains its own contract with a supplier but includes language in the contract so that other public sector agencies can purchase the “stuff” under the same terms and conditions. Many states permit municipalities to “piggyback” on their contracts.

A Quick Quiz

- Is your organization a member of a cooperative purchasing group?

More Information

There is lots of information about this topic available on the web, simply do a search on “cooperative purchasing”.

Here are some representative cooperative purchasing groups:

Texas Building and Procurement Commission consists of more than 600 public entities, primarily municipalities, counties and educational institutions:

<http://www.tbpc.state.tx.us/stpurch/coopmain.html>

Metro ESCU (Educational Cooperative Service Unit of the Metropolitan Twin Cities Area) consists of 35 school districts: <http://www.ecsu.k12.mn.us/index.html>

Western States Contracting Alliance consisting of 15 western states and open to all governmental entities within each state: <http://www.aboutwsca.org/welcome.cfm>

U.S. Communities is sponsored by five major associations: Association of School Business Officials International (ASBO), National Association of Counties (NACo), National Institute of Governmental Purchasing (NIGP), National League of Cities, United States Conference of Mayors. Cities, counties, schools, higher educational institutions, special districts, state agencies, and nonprofits ranging across all 50 states use U.S. Communities as an important strategic sourcing tool. <http://www.uscommunities.org/>

Educational & Institutional Cooperative Service, Inc. is a not-for-profit buying cooperative established by members of the National Association of Educational Buyers (NAEB) to provide goods and services to members at the best possible value. The Cooperative is owned by its membership of more than 1500 tax-exempt colleges, universities, prep schools, hospitals, medical research institutions and hospital purchasing organizations located throughout the United States. <http://www.eandi.org/>

22. What is e-procurement?

Electronic Procurement, sometimes called Electronic Purchasing, is the use of the internet for some or all purchasing activities. These activities could include simple transactions such as issuing purchase orders, paying bills or posting bid documents; exchanging information with vendors about specifications, or deliveries.

E-procurement is often limited by problems related to integrating different systems, high initial costs, difficulty in maintaining catalogues, and incompatible systems for accounting, purchasing, and inventory management.

E-tendering is one small part of e-procurement. (See: 23. What is electronic tendering?)

A Quick Quiz

- Has your organization implemented any elements of e-procurement?
- Does it have a plan and a timetable for implementing e-procurement?

More Information

There is a book, ePurchasing Plus, that is an excellent collection of ideas, stories, references, and case studies. 621 pages, \$49.95 (U.S.) See: www.epurchasingplus.com

agencies with limited resources (and even a few larger ones) use private sector firms to post their bids.

23. What is electronic tendering?

Electronic tendering, sometimes referred to as e-tendering, is simply the provision of information about procurement opportunities using the web. Using these systems, vendors can learn about new procurement opportunities and obtain the bid documents. In most cases, the bid documents can be downloaded to the vendor's computer.

In recent years, the practice of posting bids on the Internet has exploded. Today, the Internet is the sole, official bid publishing medium for the federal government; 45 of the 50 states publish bidding opportunities on the Internet; 46 of the top 50 cities; and 36 of the top 50 counties.

Varying Degrees of Technical Sophistication

Agencies posting bids on the Internet do so with varying degrees of technical sophistication, depending on available dollars and technical resources. At the sophisticated end of the spectrum, bid posting systems have the following characteristics.

- Bids are contained in a database with user-friendly entry to the information. Bid descriptions provide links to detailed bid documents available in .doc, pdf, or HTML formats.
- Bids are automatically emailed to vendors who sign up for selected categories of products and services.
- All solicitation documents are posted to the site and vendors are automatically notified of amendments by email.
- Awards are publicly posted using the same system, and award documents are tied electronically to the original solicitation document.

With the least sophisticated systems, agencies post little more than bid titles and closing dates. A few smaller

There are many benefits of such a system to the buying organization.

- Procurement opportunities can be posted easily and cheaply.
- Documents can be distributed quickly.
- Document management costs drop radically.
- Procurement activities become highly visible.
- Value-added services for vendors, such as bid notification, or award notification, or information about the procurement process, can be added at little cost.
- New vendors are often attracted to electronic tendering sites, thereby increasing competition.

Many governments and agencies have their own sites. In addition, some associations post the bid opportunities of their members. And finally, there are private sector firms who offer these services as well.

More Information

Here are a few representative electronic tendering sites:

FedBizOpps is the single government point-of-entry (GPE) for Federal government procurement opportunities over \$25,000. Government buyers are able to publicize their business opportunities by posting information directly to FedBizOpps via the Internet. <http://www.fbo.gov/>

Washington's Electronic Business Solution is an Internet vendor registration and bid notification system. Governmental buyers can post bidding opportunities and amendments. <http://www.ga.wa.gov/webs/>

The Hudson Valley Municipal Purchasing Group (HVMPG), is a group of municipal agencies located in New York's Hudson Valley created this Regional Bid Notification System. <http://www.hvmpg.com>

BidLink provides market coverage for all major defense department buying centers. <http://www.bidlink.net>

BidNet works with Purchasing Departments to develop services that simplify and expedite spec writing, provide wider distribution of solicitations and automate their procurement processes. www.bidnet.com

Business to Government Source provides state and local governments with one-stop access to vendor information and provides governments with the ability to post bids online. www.b2gsource.com

DemandStar, connects business and government to opportunities online. www.demandstar.com

GovernmentBids.com is an online government bid and RFP listing services. The site has listings from local, state, and federal agencies. www.governmentbids.com

SPIRIT is Arizona's new, comprehensive e-procurement system. SPIRIT enables a supplier to do the following over the Internet (<http://www.azspo.az.gov/spirit/index.htm>):

- Register a company to do business with the State
- Receive Request for Proposals (RFPs), Invitation for Bids (IFBs), and Request for Quotations (RFQs)
- Submit proposals, bids, and quotations
- Receive contract award results
- Review evaluation reports and competitor submissions

Thank You

Some of the material in this section was taken from Posting Government Bids on the Internet, an article by Richard White: <http://www.fedmarket.com/articles/government-bids-internet.shtml>

24. Why do so many projects fail?

There are many reasons: lack of solid procedures, lack of skilled staff, poorly defined responsibilities, poorly drafted specifications and poor communications among the various stakeholders and with the vendor community.

However, there is a way to let the procurement process compensate for some of its own deficiencies: permit vendors to revise their proposals based on feedback from the buyers. This process which is well established in New Mexico is known as "best and final" offers. In many jurisdictions it is either not known or used only rarely.

In using the Request For Proposal process, the contract is usually awarded to the firm whose proposal received the most points. However, the winning firm, in some cases, may have only received 60% of the available points. The winner was a mediocre solution! Probably the proposal had some deficiencies: maybe, the project management plan was weak, or several aspects of the technical solution were vague.

Best and Final Offers

The Best and Final Offer is a way to improve proposals and get less risky solutions. Using this process, finalists are allowed to modify their proposals to correct deficiencies and weaknesses identified by the evaluators. This is the only time that proposals can ever be modified.

Here's how it works. Based on an initial evaluation, the Evaluators determine a group of finalists, say three proposals with scores between 60% and 70%. Each vendor is given a guide, or a series of questions which highlight the concerns or deficiencies associated with its proposal. Vendor #1 may be told that its project management plan is weak. And Vendor #2 may be told that the costs are too high. Based on this input from the Evaluators, the vendors are invited to submit revised proposals. Evaluators take great care to ensure that information is not transferred from one vendor to another. These revised proposals are then evaluated using the original evaluation factors and process identified in the RFP.

The use of Best and Final Offers helps ensure that the winning proposal is always an excellent proposal - one with more than 85% of the available points.

This procedure is common in the U.S. but used only infrequently in Canada.

The use of Best and Final Offers permits an organization to obtain revised proposals with little extra effort: a briefing for the group of finalists, and a second round of evaluations. This additional step, that of obtaining Best and Final Offers, only adds two or three weeks to the process and significantly reduces the risk of awarding a contract based on a mediocre proposal.

A Quick Quiz

- Does your organization use this technique of Best and Final Offer?

More Information

Chapter 8 of The Request For Proposal Handbook contains a discussion of BAFO:

<http://www.rfpmentor.com/bestandfinaloffers.html>

25. What is a reverse auction?

Minnesota is a pioneer in the use of reverse auctions, a purchasing process that can save states valuable procurement dollars.

In a traditional auction, prospective purchasers bid against each other for a particular product or service offered by one supplier. In a reverse auction, however, prospective suppliers bid against one another in an effort to be selected by one purchaser—in this instance, a state government agency. The bidding occurs in real time. Each bidder knows the bids of all others and can repeatedly amend a bid while the auction proceeds. By allowing suppliers to compete during the short time frame of a reverse auction, the state agency gets the lowest possible price and best overall terms.

The Minnesota Department of Administration has had the authority to use reverse auctions for goods since 2000, placing it among the first states in the country to experiment with reverse auctions. And in 2003, the state became the first to obtain software that enabled it to conduct its own reverse auctions, rather than contract the process out. Since then, the state has conducted more than 180 reverse auctions. Running the program costs the state about \$150,000 a year—but it yields annual savings of about \$1 million. So far, the state has saved about \$5 million through the use of reverse auctions.

In 2003, the state legislature expanded the reverse auction authority to include several professional and technical services, including engineering design and computer services. The set-up of a reverse auction makes it most applicable for supplies and raw goods in which quality specifications can be defined. Subjecting services to reverse auctions is more complex, because quality measures are difficult to quantify. For needs such as IT systems or professional services, for example, states may remain reluctant to use the reverse auction process often, if at all. However, the Minnesota Department of Administration believes that through pre-qualification of vendors on non-price-related criteria such as experience, even procurement of intellectual services can potentially be achieved through a reverse auction.

Minnesota isn't the only state now using reverse auctions

to save money. Several states have experimented with the process and are beginning to integrate the process into more regular use. Delaware, Massachusetts, Pennsylvania and Texas have conducted reverse auctions. Wisconsin, which has used the method in awarding property management contracts, in 2003 reported a savings of 8.8 percent over the old method. Other states with the capacity to conduct reverse auctions include Arizona, Iowa, Utah and Virginia. In 2004, states collectively spent \$151 million acquiring goods and services through reverse auctions. Government procurement experts predict that number will increase by 300 percent to more than \$450 million by 2007.

More Information

Not just a cost-reduction tool: Technology frees up time for buyers to work on strategic sourcing., By Jim Carbone, Purchasing February 17, 2
<http://www.purchasing.com/article/CA506258.html>

A description of how Reverse Auctions were adopted by State Purchasing Georgia
http://statepurchasing.doas.georgia.gov/00/channel_title/0,2094,35226973_38318426,00.html

States find reverse auctions limiting for IT buys by William Welsh, Government Computer News, 12/22/04
http://www.gcn.com/vol1_no1/daily-updates/31409-1.html

Thank You

This article has been provided with the permission of Government Performance Project. Their home page is: <http://results.gpponline.org/>. The article can be found at: (<http://results.gpponline.org/Innovationdetails.aspx?id=1141&relatedid=2&stateid=0>).

26. Where can you get more information about these issues?

This small publication is just an introduction to some of the critical elements of public procurement. Information and answers can be obtained from many sources: from lawyers or consultants specializing in this area, from practitioners (have a cup of coffee with your procurement manager), from web sites, books, and publications, from courses, from conferences and from professional associations.

Many professionals would be glad to spend some time with an elected official discussing procurement and public policy issues.

There are thousands of web sites which contain lots of valuable information about public procurement issues. In fact, a simple catalog of this information would run several hundred pages.

More Information

If you have questions about any of the issues raised in this publication, send me an email: michael@rfpmentor.com