

The Purchasing Police

By Peggy Hayes, CPPB

In the last few months government purchasing in Arizona has grown increasingly complicated. This is due to some degree by huge budget cuts and in great part to the newly drafted legislation dealing with employment eligibility and scrutinized business operations in Iran and/or Sudan, A.R.S. § 35-391.06, 35-393.06, 41-4401, and 23-214. As a Buyer, I have worked with others of our purchasing staff and our legal department to draft language to incorporate into our solicitations and contracts. As a result, we have inserted language into both Terms and Conditions and a signature document certifying the contractor's compliance. We require all contractors to certify their compliance or they are found non-responsive to the solicitation. This could have the affect of limiting competition when they are unclear about what the requirements mean. We refer to the statutes specifically in the wording, but some contractors may think it does not apply to them because they aren't in Arizona, and may take exception to it, rendering their offer unacceptable.

Now the questions begin. Contractors ask "Why must I comply with this when I do not reside in Arizona?" The simplest answer we can offer is that even though their business is not located inside Arizona, they are still conducting *services* which furnish "*Labor, Time or Effort*" to a government entity under the jurisdiction of Arizona law. This is not always met with agreement and the result is that they do not want to sign the certification or contract documents. The process of questions and answers can delay the award of a bid. Contractors frequently want to refer the issue to their legal department which further delays the process.

Now, I have some questions of my own.

Example:

What do you do if you need a product that is Sole Source, and the contractor refuses to certify that they are compliant with the statutes?

What do you do about cooperative contracts that you are utilizing? Should you alter the original terms and conditions of the entity that drafted the contract in the first place by requesting the contractor now comply with your new rules?

If not, that leaves the department with the expense of a time-consuming solicitation by a staff that has already been reduced to the bare minimum due to budget cuts.

I have to wonder if the person(s) who drafted this legislation ever thought about these things? Have they ever worked in a purchasing department themselves? What is the State doing when faced with these issues? Have they been faced with these issues?

While I understand that the legislature must continually take steps to keep up with our ever changing world, and draft laws accordingly, I often wonder how much time the people doing the drafting actually spend doing research down in the trenches that are going to be affected by the changes. Did the drafters of these statutes go to the state purchasing department and sit down with them and discuss all the ramifications of their actions? Did they look at the purchasing policies and ordinances of any of the cities within the state? Did they conduct any opinion surveys of those to be affected? Did they just bow to the pressures of people pushing their private interests in the form of new legislature? In my opinion, few (if any) politicians back legislature that they or someone they know are not going to profit from in some way. I just have to wonder at the real reasons behind these statutes. The Sudan and Iran scrutinized business is easy to understand considering Homeland Security, but the rest of it leaves me perplexed. When did purchasing departments merge with the I.N.S.? Why are we suddenly being expected to be immigration specialists checking to see if our Contractors are complying with state employment requirements?

These are just my opinions and musings, but I wonder how many others feel as I do? Do you?