

*An
Elected
Official's
Guide to*
PROCUREMENT

by Patricia C. Watt

*Government Finance
Officers Association*

CONTENTS

vii Foreword

ix Preface

1 INTRODUCTION

What is "procurement"?

Why is procurement important?

What are procurement objectives?

What is the legal framework for procurement?

What is procurement authority?

What are general procurement provisions?

What are "procurement documents"?

Are there exemptions from procurement requirements?

11 ETHICAL CONSIDERATIONS

Why are ethical considerations so important?

What actions can result in perceived conflicts of interest?

How can procurement activities be subject to abuse?

What can be done to safeguard the procurement function?

What are the penalties for procurement violations?

17 ORGANIZATION OF THE PROCUREMENT FUNCTION

Who is responsible for procurement?

What are the requirements for procurement personnel?

How does procurement relate to other financial functions?

Should procurement be centralized or

Copyright 1995 by the
Government Finance Officers Association
of the United States and Canada
180 North Michigan Avenue
Suite 800
Chicago, IL 60601

ISBN 0-89125-198-7

LOC no. 95-77272

All rights reserved

-
- decentralized?
How is procurement authority delegated?
How is performance evaluated?
- 26 COMPETITION IN PROCUREMENT
- What is competitive procurement?
What are requirements for competition?
What is a "bidders" (or "vendors") list?
Why are specifications so important?
Should specifications be standardized?
Can some categories of vendors be given preferences?
How can non-competitive selections be minimized?
- 35 SOURCE SELECTION
- What are the methods of source selection?
Are there exceptions to these methods?
How should bids and offers be evaluated?
What is meant by a responsive bidder/offerer?
What is meant by a responsible bidder/offerer?
What are mandatory sources and how are they mandated?
- 42 GOODS vs SERVICES
- What is the difference between goods and services?
How do you determine which method to use when buying goods or services?
What are small purchase procedures?
What is a commodity code?
Are different types of services procured differently?
- 47 SERVICE CONTRACTING AND PRIVATIZATION
- What is service contracting?
Are privatization and contracting out the same thing?
Why is privatization so controversial?
Who is responsible for service contracting?
What steps should be followed in contracting out a government service?

-
- 53 CONTRACT ADMINISTRATION
- What is contract administration?
Who should be responsible for contract administration?
What factors contribute to an effective contract administration function?
- 57 CONTRACT TYPES
- What are the different types of contracts?
What are standard terms and conditions?
What if a vendor wants to change contract terms and conditions?
- 62 COOPERATIVE PURCHASING
- What is meant by "cooperative purchasing"?
What types of cooperative arrangements are used?
What problems can occur with cooperative purchasing?
- 65 ADMINISTRATIVE PROCESS
- What is the administrative process relating to procurement activities?
How should procurement mistakes be handled?
- 67 PROCUREMENT AUTOMATION
- How can automation improve the procurement function?
What is meant by "electronic purchasing"?
What is the impact on receiving and paying?
- 71 APPENDIX
- References

FOREWORD

Procurement is an essential, but often underappreciated, government function. In most governments the largest share of expenditures (usually two-thirds or so) are for personal services that are paid out in the form of employee wages, salaries, and benefits. Following close behind, however, are expenditures made to the private sector for the purchase of goods and services.

These expenditures (one quarter to one third of all outlays) flow through government procurement systems. Their volume, in both number of transactions and total dollar amount, is huge. In fact, state and local government procurement expenditures are estimated to equal about 15 percent of the gross national product.

This publication is designed to provide elected officials and others with clear and practical answers to the most commonly asked questions about state and local government procurement. It provides simple explanations of the most important procurement concepts in a manner that should readily be understood by the lay person.

The Government Finance Officers Association (GFOA) wishes to thank Pat Watt, Director of GFOA's Government Finance Research Center, for writing this publication, GFOA's first on the topic. We also appreciate the efforts of Rebecca Russum, Director of GFOA's Publications Center, for editing and producing the finished document. We hope that this booklet, along

with others in the “Elected Official’s” series, will provide needed information to public officials in search of improved government operations.

Jeffrey L. Esser
Executive Director
June 1995

PREFACE

The integrity and efficiency of a government’s procurement system is a crucial component of its credibility. More governments—and public officials—have foundered on the rock of real or perceived conflicts of interest in the spending of public funds than on any other financial activity. Yet, despite procurement’s obvious budgetary and public relations importance, the function is sometimes a step-child in financial management and often poorly understood by key decision makers.

As with many governmental systems, procurement stands to benefit significantly from improvements through automation. Such benefits can bring more economy to the buying practices of the public sector. Just as the federal government has taken action to make its procurement function more efficient, so must state and local governments. But those actions should be based on sound policy decisions made only with a full understanding of how, and why, government procurement systems operate as they do.

Government procurement laws and regulations typically focus prescriptively on *how* those activities are conducted. As we move into the age of technology—and rightsizing, re-inventing, and re-engineering—the focus is shifting to *what* the objectives of procurement are: integrity, efficiency, and lowest overall cost.

I wish to acknowledge the invaluable assistance of a number of individuals who reviewed the manuscript for this booklet, offered suggestions, and helped me hone the language. They are: Barry Atwood, Director of Finance, South Florida Water Management District; Jim

Brinkman, President, National Institute of Governmental Purchasing (NIGP); Glenn Cummings, Director, Purchasing Division, Broward Co.; Steve Gordon, Purchasing Agent, Nashville/Davidson Metropolitan Government; Kim McGaro, First Deputy Purchasing Agent, City of Chicago; Don Moore, Director, Division of Purchasing and Supplies, Commonwealth of Virginia; Ric Murphy, President, North American Management and Business Corporation; and Jim O'Neill, NIGP. I am most appreciative of their advice in the development of this publication on the topic of government procurement. I should also note that the opinions expressed in this publication are mine alone and do not necessarily reflect the views of the Government Finance Officers Association.

Patricia C. Watt
May 1995

INTRODUCTION

What is "procurement"?

Procurement in the public sector is the process through which a government acquires goods and services for its own use. The terms "purchasing" and "procurement" are often used interchangeably. However, strictly speaking "purchasing" is only one of three stages of the procurement cycle. The stages of procurement are:

- *Planning and scheduling* procurement activities to meet program and budgetary objectives;
- *Source selection (purchasing)*, the process through which solicitations are issued, advertisements run, vendors selected, and goods or services received; and
- *Contract administration*, when the terms of the purchase agreement are enforced and the bills are paid.

Procurement is the government's pipeline to the business community wherein it buys from the private sector those goods and services it elects not to make or provide through the efforts of its own employees. Thus, the way government performs the procurement functions has a substantial impact on the nation's business enterprises. Indeed, procurement *is* commerce in action.

Why is procurement important?

State and local government expenditures for the procurement of goods and services are generally exceeded only by expenditures on personnel—and in some special-purpose governments, procurement expenditures may even exceed personnel costs. According to the National Association of State Purchasing Officials, in 1994 15 percent of the U.S. gross national product is estimated to derive from state and local government procurement expenditures. Government purchases are often viewed as a *controllable* expenditure when budget pressures arise.

The efficiency and effectiveness of the procurement function has a large program impact. If goods and/or services are of poor quality, overpriced, or not available when needed, service delivery inevitably suffers.

The public must have confidence that public funds are spent prudently, on its behalf, and not for the personal benefit of government employees, officials, or their friends. The destructive elements of actual or perceived conflict of interest, fraud, and abuse have most often reared their ugly heads during a procurement process. Unfortunately, the *perception* of fraud or abuse can be just as destructive to the public trust—and individual careers—as the real thing.

What are procurement objectives?

The fundamental objective of the procurement function is to provide operating departments with the goods and services they need in the right quality and quantity, on a timely basis, as efficiently as possible, and at the lowest overall cost.

To achieve this objective, the procurement function seeks to foster as much competition as possible. In doing so, it adopts the goal of fairness by ensuring that all who wish to compete for the opportunity to sell to the government can do so. In some cases, governments may attempt to create competition by encouraging and assisting the development of new businesses.

Finally, the goal of integrity is woven throughout the procurement cycle, so as to maintain the public's trust and reduce the government's exposure to criticism and suit. This goal is achieved through the requirement for complying with all applicable legal provisions.

What is the legal framework for procurement?

Most states have procurement laws, often modelled on the American Bar Association's (ABA) Model Procurement Code for State and Local Governments. Smaller governments often adopt the ABA's Model Procurement Ordinance. However, not all governments have enacted procurement legislation. Still others struggle under laws developed before the beginning of the current technological revolution, that mesh poorly with other laws, or that do not reflect experience since their enactment.

Government procurement laws provide a legal and procedural framework that generally emphasizes price (rather than total cost and value) and openness, control, and accountability rather than efficiency. It is the duty of each jurisdiction's chief procurement official to review, thoughtfully and regularly, the utility of procurement statutes and to recommend periodic modifications for improvements that will enhance the efficiency and effectiveness of the procurement function.

Federal government procurement requirements are specified in the Federal Acquisition Regulations. The Federal Acquisition Streamlining Act, passed in 1994, was intended to simplify federal acquisition thresholds and procedures. Federal procurement requirements flow through to states and localities receiving federal funds via the procurement standards defined in Office of Management and Budget Circulars.

What is procurement authority?

Procurement actions result in legal contracts. Each procurement action is a legal action. Procurement activities are governed by common law, by the Uniform Commercial Code, by government procurement laws and ordinances, and by case law. Thus, those persons making procurement decisions are subjected to legal constraints (and exposure) well beyond what other finance officials may routinely experience.

Because of the significant legal consequences associated with procurement action, the authority to take such action is tightly controlled. Each government has, usually designated by law, a chief procurement official in whom all procurement authority (i.e., the authority to commit the government by executing a contract) is vested. In a government of any size, this official cannot possibly procure all goods and services needed by all the various programs, and so will formally delegate *some* of his/her authority to one or more other specified individuals.

The individual who signs a procurement document must have the authority to do so. Program officials typically do not have procurement authority. They may sometimes wish to give instructions to a contractor to change certain aspects of performance. In such cases, the program official must communicate his/her requirement to someone who does have procurement authority and who is empowered to issue such directions.

What are general procurement provisions?

The essential elements of procurement requirements found in state and local laws are defined by the National Association of State Purchasing Officials and National Institute of Governmental Purchasing as follows:

- purchasing structure, policy, and authority;
- competitive processes;
- planning and scheduling;
- specifications;
- provisions for and restrictions on processes that limit competition;
- bid evaluation and award;
- quality assurance;
- safeguards;
- materials management;
- cooperative purchasing;
- professional development;
- clear written procedures available to the public; and
- environmental concerns.

Flowing through these elements are the common threads of:

- *Authority*: persons taking procurement actions must have formal authorization to do so;

-
- *Competition*: methods of selecting a provider of goods or services should be as competitive as possible, and a competitive sealed bid or proposal should be used unless there are justifiable reasons for using another method;
 - *Documentation*: all steps in the procurement cycle should be recorded in writing; and
 - *Compliance*: both the government and the contractor are legally required to adhere to the written commitments they make.

What are “procurement documents”?

The phrase “procurement documents” is frequently used in the discussion of a particular purchasing situation. This phrase is used to cover all documents which, in their entirety, describe the full contractual relationship between a government and a supplier of goods or services. Procurement documents are:

- *Solicitations* (advertising documents). These are invitations for/to bid, requests for quotations, requests for information, and requests for proposals.
- *Offers*. These are bids, proposals, and quotes made by prospective businesses to supply goods or services.
- *Contracts*. These are the signed agreements between the government and the supplier to buy/sell. (Note that a purchase order is a type of contract.)
- *Amendments*. These are modifications to solicitation documents, to offers, and to contracts.

Many other documents are created during the course of a purchase and kept in the purchase file, but they are not technically “procurement documents.” These other documents include requests by agencies for purchase of items (“requisitions”), explanations of why a particular course of action was chosen (“determinations”), performance monitoring reports, and so forth.

Are there exemptions from procurement requirements?

Not every arrangement that a government makes with a nonpublic-sector entity is a procurement. As explained earlier, procurement is an acquisition of goods or services for a *government’s* use. The procurement law or ordinance may not be very specific about this limitation—which can cause confusion. While it may be desirable to follow a procurement-like process to reach other agreements, in general, it may not be practicable to subject them to the strictures of the procurement law.

What are these other types of agreements? They are certainly those through which goods or services are being provided—but not *acquired* for the *government’s* use. They include:

- Agreements to provide care to individuals in a manner regulated by the government (such as by Medicaid providers or foster parents);
- Franchise agreements through which the government divests itself of the responsibility for providing a service to the public but continues to regulate the provision of service;
- Grants-in-aid, in which the government’s objective is to support or stimulate a public purpose; and
- Joint ventures, in which the government and a private entity become partners in achieving a public purpose.

Some items *are* acquired for the government’s use but excluded from the procurement process either explicitly in the law or as a matter of

practice. Such items range from real estate (which may have its own law) to utilities to postage stamps and other items where (1) there is no price variation or (2) government regulations effectively restrict the sale to a single source.

Drafters and reviewers of procurement laws should consider the efficiency of subjecting every purchase to procurement requirements. They should provide specific exceptions as appropriate because procurement laws are usually subjected to strict interpretation by the courts. That is, if the law does not specifically state something is permitted (or excepted), then it is *not* permitted (or excepted).

It is important to understand the distinction between a grant (financial assistance or pass through of federal grant funds) and a contract (acquisition). Grants and cooperative agreements are used when the principal purpose is to provide support or stimulate activities which have a public purpose. Contracts are used when the principal purpose is the acquisition of property or services for the direct use of the government. Grants and cooperative agreements made by states or large governments should have their own procedures and be exempt from specifics of procurement requirements.

ETHICAL CONSIDERATIONS

Why are ethical considerations so important?

Of all finance-related functions, the procurement function is the one that provides the greatest opportunity for government employees to use government resources to advance their personal interests. Therefore, a high standard of professional ethics is essential among all personnel who participate in, or who can influence those involved in, making procurement decisions.

A perception that public officials are using the procurement system to reward themselves, their friends, or supporters, poisons the public's confidence in government and shakes its faith in the democratic process.

What actions can result in perceived conflicts of interest?

Purchasing actions should always be “arm’s length” transactions. To ensure this, the purchasing function is insulated from political influence. This insulation guards the careers of not only procurement officials but also those with political or supervisory clout. The unwary manager or politician who attempts to influence the outcome of a procurement decision is likely to be perceived as advancing his/her own interests—*regardless* of intent.

The fundamental question to ask to identify a conflict of interest is: “could anything happen, as a result of an action I am about to take, that will be to my personal benefit, or to the benefit of any of my associates, *or that could be perceived* as being to my personal, or my associate’s, benefit?” While this may seem like a very stringent standard, and is broader than the legal definition of conflict of interest, a “yes” answer should serve as a red flag suggesting the need for further thought—or even legal advice.

Although a legal conflict of interest may not exist, public (or media) perception of conflict may. And, *appearance* of conflict, regardless of intention, can damage credibility as badly as real conflict. The prudent government official follows the rule “when in doubt, don’t.”

How can procurement activities be subject to abuse?

Abuse can result from the corrupt practices of government employees *and/or* actions by suppliers of goods and services.

Examples of abuse by government employees or officials include:

- persons external to the process attempting to influence vendor selection;
- circumventing competitive bidding requirements;
- splitting purchases in order to remain within small purchase limits;
- using emergency procedures in the absence of an emergency;
- using sole source when competition is available;
- denying one or more vendors the opportunity to bid or propose;
- using unnecessarily restrictive specifications;
- prequalifying some bidders on a discriminatory basis;
- removing companies from the bidders list without just cause;
- requiring unnecessarily high bonding;
- making information available to some but not all vendors; or

-
- giving unfavored vendors inaccurate or misleading information.

Examples of abusive practices by the private sector are:

- collusion or price-fixing;
- providing kickbacks or offering bribes;
- low-balling to win a contract followed by requests for change orders;
- substitution of lower quality goods than those specified; or
- falsifying certifications.

What can be done to safeguard the procurement function?

The best safeguard is to employ qualified and trained personnel and to establish procedures which effectively insulate procurement activity from political influence. Additionally, effective contract administration is a strong antidote to corrupt or abusive practices on the part of a vendor.

ORGANIZATION OF THE PROCUREMENT FUNCTION

What are the penalties for procurement violations?

Penalties for violations are provided in the law. Deliberate violations by a vendor may result in prosecution for criminal or civil offense, and suspension or debarment. Suspension means that a vendor is prohibited from receiving government contracts temporarily pending an investigation of activities likely to result in debarment. Debarment may be imposed on vendors who have demonstrated bad faith in acquiring or performing contracts, as well as those convicted of criminal or serious civil offenses—which may or may not relate to a government contract. Debarment means that a vendor is not eligible to receive any government contracts for a specified period of time.

Employees of the government who are guilty of procurement violations are dealt with according to the severity of their offense. They simply may require retraining, or need to be transferred, subjected to discipline through personnel action, or referred for prosecution in the case of a suspected felony.

Who is responsible for procurement?

As stated earlier, there are three major stages in the procurement cycle. Each stage is equally important. If the focus is simply on purchasing, with little attention to planning and scheduling, or to contract administration, problems are certain to arise. The three stages are:

- Planning and scheduling,
- Source selection (purchasing), and
- Contract administration.

Top management in the government in program agencies and finance agencies should understand the importance of, and support, the procurement function. Service delivery will be adversely affected if purchasing personnel cannot meet program needs effectively. Then, understandably, program staff may attempt to bypass or shortcut procurement requirements—with probable adverse consequences.

Lead responsibility for the three stages varies depending on the size and complexity of the government, and the way that procurement authority is delegated. Each office with a stake in procurement must be involved for the function to be effective. Budget, accounting, program, procurement, and legal staff must work together as a team.

Planning and scheduling: Planning is necessary in order to consolidate purchases and achieve economies of scale. Scheduling takes advantage of market cycles by anticipating the best time to buy. Departments that budget effectively estimate their need for commodities and services in advance. From these estimates,

a purchasing schedule can be created that takes into account and consolidates departmental needs.

Source selection (purchasing): Program and procurement staff work closely to define what is to be bought. Neither can do it alone. They develop specifications and scopes of work reflecting the program's knowledge of its needs in delivering services and procurement's knowledge of the market. After program and procurement staff decide on the appropriate purchase method and type of contract, procurement staff issue the solicitation and receive bids/offers. Procurement executes the contract and the goods/services are delivered in accordance with receiving procedures. This *separation of duties* is a fundamental aspect of government procurement.

Contract administration: Lead responsibility for contract administration falls on program personnel with the advice and support of procurement staff. Bills are approved and submitted for payment, and the quality of commodities and services is monitored and evaluated. If the program wishes to change the specifications or scope of services, it consults with procurement staff who have the authority to issue and negotiate a change order. If the program is dissatisfied with its purchase, then procurement staff force corrective action by the vendor. When the contract is completed, the program staff "closes out" the work by, for example, recovering equipment from the vendor, completing an evaluation of the purchase, making sure all bills are paid and the purchase file is complete, and forwarding suggestions for improvements to procurement staff.

An effective procurement program is a team effort with a "customer service" orientation in which the using program is viewed as the customer.

What are the requirements for procurement personnel?

Because of the complexity of procurement requirements, persons engaged in those activities must be well qualified and trained. Lack of qualifications and training inevitably result in mistakes and confusion that disrupt service delivery, cost money, create delays, and expose the government to public criticism and/or litigation. Procurement personnel, whether in operating agencies or in the central procurement agency, should all be subject to the same standards. A jurisdiction's official in charge of procurement operations should be a trained, certified, professional purchasing manager.

Training programs are available through universities and colleges, and through the Universal Public Purchasing Certification Council (UPPCC), which is composed of representatives from the National Institute of Governmental Purchasing (NIGP) and the National Association of State Purchasing Officials. NIGP administers two certification programs for the UPPCC: Certified Public Purchasing Officer (CPPO), and Certified Public Purchasing Buyer (CPPB). Participation in continuing education programs is essential if procurement staff are to keep current with changes in laws and regulations, as well as new methods and techniques.

Officials to whom procurement authority has been delegated are held accountable for signing contracts on behalf of the government—a heavy responsibility. It is unfair to place an individual in that position who does not have adequate training. Without adequate preparation, procurement staff will not have a full understanding of the requirements placed upon them, or of their individual exposure.

functions through clear procedures, integrated systems, and good coordination among all involved personnel.

How does procurement relate to other financial functions?

Procurement activities generate financial transactions that are tightly linked to budget and accounting functions. Inventory management (warehousing or material management) is likewise a close partner to the procurement function.

- *Budgeting:* Budget development depends on good estimates of the costs and timing for the purchases of goods and services. Procurement planning and scheduling should go hand in hand with budget development.
- *Accounting:* After a requisition or procurement request is prepared, but before a purchase order or contract is executed, governments often encumber (set aside) a portion of the budget allocation in the accounting system to pay for the purchase. Upon approval of invoices by a program or warehouse official, payments are made and recorded in the accounting system.
- *Material management:* When goods are delivered, they are received at a warehouse or other designated point, and receiving documents are forwarded to the accounting unit for payment. Poor inventory management and re-ordering practices can squander the gains of an otherwise efficient purchasing program. The likelihood of good coordination is enhanced if purchasing, warehousing, inventory, and surplus disposition functions are all under the purview of the chief procurement officer.

An efficient procurement program is thoroughly and effectively integrated with the budgeting, accounting, and material management

Should procurement be centralized or decentralized?

An effective procurement function is *both* centralized and decentralized. The responsibility for policy, oversight, and training is almost universally located in a central agency. To the extent that a central procurement office cannot fulfill operating department purchasing needs efficiently, then decentralization occurs through formal delegation of authority. Centralized procurement offices' primary responsibility is *management* rather than ordering.

Responsibility for large-value complex purchases is generally centralized along with that for bulk purchases. Responsibility for high volume, low dollar threshold purchases is usually delegated to program departments. In large jurisdictions, responsibility for certain types of complex procurements—such as construction contracts, information technology, real property, and so forth—is sometimes entirely delegated to other departments.

The degree of decentralization varies according to local statute, availability of trained staff, adequacy of procurement information systems, and attitude of central officials.

There is no “right” balance between centralization and decentralization. The balance should be what works best in each government, bearing in mind the objective of the procurement function is to ensure that operating departments receive the goods and services they need in the right quality and quantity, on a timely basis, as efficiently as possible, and at the lowest overall cost while ensuring a fair and open process. This balance requires periodic review and adjustment as circumstances change.

How is procurement authority delegated?

Procurement authority should be delegated to the extent practicable in order to make purchases as quickly and cost-effectively as possible, considering the costs of administering procurement activities as well as the purchase price.

Delegation should *always* be in writing. Delegation documents should specify (1) to whom (by name), and (2) by whom (by name) authority has been delegated, (3) the source of authority for the delegation, (4) the specific authority delegated (including any restrictions), and (5) the time period for which the delegation is effective.

There may be several levels of delegation. Small purchase authority is more freely delegated than full purchasing authority. Intermediate levels of authority are often appropriate. Individuals to whom authority is delegated should be properly trained and fully cognizant of both local procurement rules and the responsibilities that come with delegation.

How is performance evaluated?

Evaluation must be linked to the purchasing objectives described on page 3. The twin objectives of efficiency and effectiveness are key objects for evaluation. *Efficiency* depends on the economy of the administrative process of procuring, and on the ability of procurement to buy goods and services at the least cost. *Effectiveness* is the extent to which the goods and services acquired are of the desired quality and available for the use of government programs when they are needed.

A primary measure of procurement performance is evidenced in customer satisfaction—that is, are the operating departments satisfied that they are getting what they need, when they need it, and at the overall lowest cost? A periodic survey may be conducted to determine, subjectively, the degree to which operating departments feel well served. A periodic survey can also generate ideas for improving procurement performance.

Many jurisdictions conduct annual audits of procurement activity. In those cases, audit comments will serve as useful indicators of performance in terms of meeting legal requirements.

Objective measures are more difficult. The following suggestions may be useful if it is possible to collect accurate relevant data to quantify them.

The very availability of data (management information) is, by itself, a useful indicator of procurement performance. If such data are not collected, compiled, and reported *routinely*, then it is quite likely that the procurement

function is disorganized—and therefore neither efficient nor effective.

Objective performance measures include:

- Average length of time to complete a solicitation (this will be different for different types of solicitations, and much shorter for small purchases);
- Average number of bidders/proposers for each type of solicitation;
- Ratio of bid/proposal protests to solicitations issued broken down by type of solicitation;
- Percentage of protests sustained;
- Number and type of vendor complaints;
- Percent of procurement employees receiving training, continuing education, or holding some kind of certification, such as the CPPO or CPPB credentials;
- Percentage of contract monitoring reports filed on time;
- Percent of early payment discounts taken;
- Penalties for failure to meet prompt payment requirements;
- Average number of solicitation amendments (segregated by type of solicitation); and
- Average number of change orders, i.e., contract amendments (segregated by type of contract).

COMPETITION IN PROCUREMENT

What is competitive procurement?

Competition means that the government takes active steps to ensure that it receives as many bids/proposals as possible for each solicitation. Generally, the more bids there are, then the lower the purchase cost is likely to be. Likewise, the more proposals there are, then the higher the quality and the lower the price of the purchase.

In every solicitation, competition is sought unless there are compelling arguments precluding it. A negotiated process does *not* mean there is a lack of competition. Rather, it means that price is not the only deciding factor in the selection, or that it is not possible to describe what is to be bought with sufficient precision so that vendors can determine, without discussion, how much to charge.

What are requirements for competition?

Requirements for competition are specified in the procurement law or ordinance, regulation, and policy. Competitive sealed bidding through invitations to/for bid (ITBs or IFBs) is the preferred method of announcing a government's desire to purchase. Where it is not practicable to buy based on price alone, then competitive sealed proposals are sought through a request for proposals (RFP) process.

Only a fully competitive process can meet the procurement objectives of openness, integrity, and equity. All methods that reduce competition, such as emergency procedures (abbreviated competition), or sole source award (no competition), require written justification by authorized officials.

Procurement laws and policies typically include a public notice requirement (advertising) in order to ensure fair and open access for all vendors who might wish to compete for government business. "Solicitation" is the term used for the process of announcing and describing the government's desire to receive bids or offers from organizations willing to sell an item or service to it.

What is a “bidders” (or “vendors”) list?

Some jurisdictions maintain a list of all vendors who let them know of their interest in selling goods or services to the government. This is known as a “bidders list” or “vendors list.” Such lists are a useful tool for encouraging competition and ensuring that all interested vendors are notified when the government wishes to engage in trade.

It can be expensive to forward a complete solicitation package (IFB or RFP) to a large number of vendors. Some jurisdictions mail out postcards to their bidders list announcing the availability of the solicitation package. Others keep information in their list that identifies the types of goods or service the vendors offer, and only notify those on the list who are in the business of providing the particular item to be acquired. Still others “post” their solicitations electronically and allow interested suppliers to download the solicitations they want.

Why are specifications so important?

“Specifications” is the term used for the description of the item or services sought. The specification for services is usually termed “scope of work.”

Specifications are categorized in the following manner:

- *Design.* The government describes the design or method for production of goods/services; or
- *Performance.* The government describes the goal (measurable) to be achieved through delivery of goods/services.

In seeking competitive sealed bids, the specifications must be precise. There can be no ambiguity about the government’s intention, since price is the only factor in choosing which vendor to buy from.

Scopes of work for negotiated contracts, on the other hand, can be less precise, since there is room for clarification during the negotiating process. In fact, the negotiating process provides an opportunity for the government to learn from vendors about alternative ways of accomplishing a project.

Specifications are important because they serve as the basis for determining whether the supplier provided what the government believes it procured. Poorly written, specifications can cause major problems—including diminished competition, protests, delays, lost productivity, or even damage or injury. It is critical for program staff to work with the procurement staff to develop specifications that promote overall economy for

the purposes intended and encourage competition in meeting the department's needs. Developing "good" specifications is among the most difficult of procurement tasks. A pre-bid or pre-proposal conference is a useful technique to uncover confusion in the way specifications are written.

Procurement officials must sometimes deal with situations in which a department wishes to purchase a particular brand of a commodity, and wants to tailor the specification to exclude other brands. This practice is discouraged because it is inherently anti-competitive. In such cases, the specification can be defined as "brand name or approved equal" in recognition of the common situation in which several manufacturers offer essentially similar products.

Should specifications be standardized?

Standardization of specifications reduces the variety of items purchased. This can simplify inventory management, encourage consolidation of purchases from different departments, and reduce the time spent writing specifications—which may be significant.

Specifications are best when prepared in a simple, standard format. They should be intelligible and concise, and, to the extent possible, reflect what is commercially available in the marketplace.

Scopes of work should reflect service objectives, rather than how those services are to be provided. When scopes of work define *how* the work is to be done, they tend to reflect government employees' notions of operations and may limit vendors' ability to apply insight and imagination to best meet the government's need.

Specifications and scopes of work for items that are continually purchased can be made available in a specifications "library." Such a library can provide a useful tool from which to develop new specifications if they are needed.

Limiting standards may, however, limit competition. Thus, it is important to review specification standards periodically to make sure they reflect current technology and market capacity.

Can some categories of vendors be given preferences?

Procurement statutes may include requirements that give some kind of preference to certain classes of vendors. Preferences are found for:

- Local or in-state vendors;
- Small businesses;
- Businesses owned by disadvantaged groups (women, minorities, veterans, etc.);
- Sheltered workshop products;
- Vendors located in areas of high unemployment; and
- Government institution (correctional) products.

Preferences are usually provided through requirements that a certain percent of purchasing be made from sources in the preferred class. Preferences are used to reach out and encourage participation in government business by all segments of the market.

Preferences are adopted because of a desire to support certain types of business because (1) it strengthens a local economy, and/or (2) it achieves a socially useful objective. If preferences are adopted, then reciprocal arrangements may be made with other states or public bodies.

Purchasing officials sometimes oppose preferences on the grounds that (1) they are unfair because they benefit a few at the expense of the general population, (2) they

reduce competition and therefore increase purchase costs, (3) they are administratively burdensome, and (4) they do not in fact achieve the stated objectives.

In the absence of preferences, a government should ensure that it does not, for example, use unnecessarily high bonding requirements that create barriers for small businesses. The government may also provide teaching or technical assistance to new or small firms so as to enlarge the marketplace for its purchases.

Preference is an area of dispute and has been a frequent subject of litigation.

SOURCE SELECTION

How can non-competitive selections be minimized?

A high incidence of non-competitive procedures is usually indicative of (1) poor procurement planning; (2) an unresponsive procurement function that fails to meet operating department needs; or (3) intentional diversion of purchases to preferred sources.

Non-competitive methods are minimized when the procurement program is run by trained staff who work effectively with, and plan and schedule purchasing activity in conjunction with, operating departments to meet their service delivery needs.

However, in situations where competition is genuinely not warranted, then competition should not be sought. To do so is inefficient and unfair to vendors who are asked to participate in a meaningless “competitive” process.

What are the methods of source selection?

“Source selection” is the process through which government suppliers are chosen.

There are three primary methods of competitive source selection:

- *Competitive sealed bids* is the preferred method for purchases larger than the small purchase threshold. In this method, the government issues an invitation to/for bids (ITB, IFB). These documents include a standard form on which vendors respond by filling out their bid—which is their offer to provide the requested goods or services for a flat price or fixed unit cost. Bids are submitted sealed, and opened in public at a predetermined time. The award is made to the vendor submitting the lowest bid—assuming the bid is responsive to the solicitation and is made by a responsible vendor. Bids are “take it or leave it” propositions.
- *Competitive sealed proposals (CSP)* is the method used for goods and services above the small purchase threshold where the specifications cannot be developed so that they are sufficiently precise to make a selection solely based on price. In the CSP process, the government issues a request for proposals (RFP) describing, as best it can, the item to be purchased and invites interested vendors to make proposals. A “proposal” is an offer by a vendor to provide the requested goods or services as he/she understands and recommends it at a suggested price or unit cost. Both the specifications of the proposed goods or services, and the price are subject to negotiation. Proposals are evaluated, usually

by an evaluation panel of more than one government employee, according to criteria described in the RFP. The award is made to the proposal that is most advantageous to the government considering price and the other evaluation criteria.

- For small purchases, *requests for quotation* (RFQ) are issued to a minimum number of vendors who then submit quotes (prices). A “quote” is less formal than a bid, and may be verbal. Award is given to the vendor who provides the lowest quote for the specified item. The RFQ process is faster and less formal than either IFB or RFP processes and must be fully documented.

Are there exceptions to these methods?

In some cases competition may need to be limited. The procurement regulations or law will usually provide for limitations on competitive methods as follows:

Emergency procedures — when it is necessary to use a shortened method in which as much competition is sought as is practicable given legitimate time constraints;

Sole source procedures — when a single source is deemed to be the only one practicably available and advertising would be pointless;

Proprietary source — when competition can be obtained, as a practical matter, only on the basis of a specification of a good or service produced or marketed by one having exclusive legal right. Multiple suppliers may be authorized to sell a product or service, and all should be permitted to compete.

Unsolicited proposals — in which an offer is made by a vendor, *without* the government’s involvement or seeking offers. Unsolicited proposals should trigger a competitive process. Should the government subsequently decide it has a need for the item/services, then it should advertise its intent to accept the offer so that others who may be able to meet the need can compete.

How should bids and offers be evaluated?

The focus of procurement is on achieving the best overall value for the government's dollar. Therefore, for some purchases it is essential to consider the *full* costs of acquiring and owning commodities, facilities, equipment, and privately provided services, as opposed to just the cost of buying them. Multi-year maintenance, fuel, storage, and retraining costs, etc., must be considered and offset by the "value added," such as customer satisfaction, increased efficiency, and so forth.

Bids are evaluated strictly on price. Award is made to the *responsive and responsible* bidder whose price is the lowest.

Proposals are evaluated partly on price and partly on other factors. These factors can include the extent to which the proposal demonstrates that the offeror understands the government's need, the experience of the offeror and its personnel in providing similar items or services, and the quality of the approach the offeror presents for delivering the needed services. Award is made to the *responsive and responsible* offeror whose proposal is most advantageous to the government. In the interests of fairness, evaluation criteria are disclosed in the RFP.

What is meant by a responsive bidder / offeror?

A *responsive* bidder or offeror is one who responds to all of the significant requirements outlined in the solicitation. Bids or offers that are not responsive to the solicitation are usually considered ineligible for award and are screened out prior to the evaluation process. Non-responsive bids and offers are retained in the purchase file in case there should be a challenge to the determination of non-responsiveness.

What is meant by a responsible bidder / offeror?

A *responsible* bidder or offeror is one who is deemed to be capable of supplying the goods or services requested in the solicitation. A number of factors typically are considered in determining whether or not an organization is responsible. These may be ascertained by asking the following questions:

- Is the organization current in its tax payments?
- Does the organization have all required licenses?
- Is the organization eligible to do business in the jurisdiction?
- Does the organization have experience in providing a type of good or service similar to that described in the solicitation?
- Has the organization received satisfactory performance evaluations for its previous government contracts?
- Does the organization have adequate accounting systems to maintain financial records for an audit of its expenditures if needed?
- Is the organization financially sound/stable?
- Does the organization have the necessary experience, staff, equipment, and/or facilities to satisfy the requirements?
- Have any principals in the organization been found guilty of a felony?

What are mandatory sources and how are they mandated?

Procurement laws or ordinances and their implementing regulations may specify a priority order for sources that must be exhausted before a new solicitation may be issued.

These may include:

- Existing inventories;
- Term or requirements contracts already in place covering multiple department needs;
- Items available from sheltered workshops;
- Items available from correctional industries; and
- Items available through pooled or cooperative purchasing arrangements with other governmental units.

GOODS vs SERVICES

What is the difference between goods and services?

Purchases fall into two major categories:

- *Goods*, which are tangible items, are comprised of two subcategories:

Commodities, which are defined as “articles of trade”; and

Non-commodities, which are complex, novel, or customized goods.

- *Services*, which are intangible, fall into five subcategories:

Personal services, i.e., the labor and skill of an individual;

Professional services, i.e., consulting and expert services from an organization or individual;

Client services, i.e., services provided directly to individuals on behalf of the government;

Construction services, i.e., construction of roads, buildings, and other facilities; and

Technology services, i.e., the design, development, installation, and/or operation or maintenance of automated computer systems, including hardware and software.

Real estate acquisition and disposal is, strictly speaking, neither a good nor a service. Procurement requirements are often ill-suited to the acquisition of real property. Such activities are covered under procurement requirements only if there is not a separate section of the law to address them.

How do you determine which method to use when buying goods or services?

When the specifications *can* be written precisely enough for price to be the only evaluation criteria, then competitive sealed bidding is used.

When specifications *cannot* be written precisely enough for price to be the only evaluation criteria, then competitive sealed proposals (CSP) are sought.

When there is insufficient time to use the full competitive sealed bidding (CSB) or proposal method, then the emergency method is used.

When there is only one source for the item sought, then sole source procedures are used.

Thus, CSB is the usual method for the purchase of non-complex services and commodities in amounts that are too large to be acquired through small purchase procedures. The CSP method is generally used for the purchase of complex non-commodities and services that are too large to be acquired through small purchase procedures.

What are small purchase procedures?

Purchasing requirements are usually stratified by price. Items falling below a "small purchase" dollar threshold can be obtained using simplified, less formal methods than the CSB/CSP process. Very small purchases may be permitted using petty cash. Other small purchases may be made using procurement cards.

For items below the small purchase ceiling, a specified minimum number of offers ("quotes") is obtained over the telephone or in writing. Documentation for verbal, mailed, or FAXed responses to requests for quotation should be maintained in the purchase file to demonstrate that efforts were made to reduce costs.

The administrative costs of using small purchase procedures are significantly less than for CSB or CSP methods. Thus, in setting the small purchase limit, administrative savings must be traded off against the potential for increased costs of purchase from buying in small quantities.

What is a commodity code?

The National Institute of Governmental Purchasing commodity code system is the standard for state and local governments. It is a coding system which assigns a code (identifier) to every type of item a government is likely to purchase.

Commodity codes are used to categorize goods and services. These codes provide a method for organizing data about purchases and suppliers and to generate other data required for an effective procurement program. Used in conjunction with a suitable automated system, a good commodity coding system allows a procurement office to reduce postage and mailing costs, increase the number of responses to a solicitation, and collect, analyze and report information that can improve services to departmental customers.

For example, by tracking all purchases for a given commodity code over the period of a year, a procurement office can determine whether it makes sense to establish a single term contract for an item or alternatively, to schedule a series of purchases throughout the year.

SERVICE CONTRACTING AND PRIVATIZATION

Are different types of services procured differently?

Sometimes procurement laws or regulations have separate provisions for the acquisition of different kinds of services. For instance, variations in the standard CSB or CSP methods may be provided for non-professional services as compared to professional services; for medical services; for construction; for legal services; or for data-processing services. These variations are intended to tailor details of competitive methods specifically to the needs and nuances of the particular purchase category.

What is service contracting?

Service contracting is the phrase used to describe arrangements in which a government contracts with a private entity to provide or manage services for which the government is legally responsible.

The services to be provided may be specifically identified in law (such as garbage pick up) or they may be administrative activities that are necessary to provide services efficiently (such as an automated scheduling system). In service contracting, the government retains ultimate control and accountability for the services.

Who is responsible for service contracting?

To be effective, the responsibility for service contracting must be a joint effort between the manager with responsibility for providing the services and the procurement manager who has delegated authority for executing the contract. Both must play active leadership roles and must coordinate closely with each other.

When the department providing the services has authority to execute the contract, then the department manager seeking the service contract has an obligation to become thoroughly cognizant of the procurement requirements and should seek assistance from trained procurement personnel.

For example, a finance department may have authority to procure financial services. In such cases, finance managers must pay keen attention to procurement requirements when they select banks, trustees, securities dealers, underwriters, financial advisors, and the like. In all cases, competition is essential. Otherwise, given the large dollar value and sensitivity of these types of contracts, charges of favoritism—or worse—may arise. The sale of bonds through competitive sealed bids avoids any question about motives behind the award. A competitive request for proposals process, while providing competition, may not, however, be *perceived* by the public as such.

Are privatization and contracting out the same thing?

“Privatization” is the term used to describe the *process* of transferring to a non-government entity the responsibility for delivering services previously delivered by the government. The government may or may not remain accountable for service delivery.

Privatization covers a range of modes of alternative service delivery. These include:

- *Divestiture* of the responsibility for delivering services. This occurs when the government gets out of the business of delivering a service and divests itself of both management responsibilities and the assets previously used for providing services.
- *Service contracting* (also known as “contracting out” or “out-sourcing”). This occurs when the government procures the services of a vendor to perform a function for which the government retains control, responsibility, and accountability.
- *Franchising* occurs when the government gives to a private entity the right to provide a service and run it as its own business. The government continues to regulate the service monopoly to ensure adequate consumer protection.

Why is privatization so controversial?

The decision to privatize a service is likely to be controversial *if* more than a handful of government employees will be affected. The privatization process may involve the loss of jobs for government workers, or at a minimum their transfer to, and retraining for, other positions. If the employees belong to collective bargaining units it is likely that the unions will oppose privatization using all avenues available to them.

The privatization of services that closely affect people (such as child care, nursing homes, transportation, etc.) is more sensitive and subject to much greater public scrutiny than privatization of purely administrative activities (data processing, accounts receivable, etc.).

If the privatization decision is well thought through, it is preferable to involve employee or union leaders so that they fully understand the rationale and the alternatives. Governments in some cases have encouraged their employees to compete with private firms for the opportunity to provide the services. In such circumstances, employee groups that win the contract are sometimes able to improve their own efficiency substantially.

To justify a decision to privatize, a careful cost savings or cost-benefit analysis is normally prepared. This may be difficult if a government does not have an effective cost accounting system.

What steps should be followed in contracting out a government service?

Contracting out a government service is a complex and potentially controversial undertaking. It must be done as a team effort with the involvement of all affected parties. These may include:

- the procurement authority,
- the program department,
- legal counsel,
- the personnel authority,
- the labor relations office,
- the budget office, and
- the department (if any) responsible for regulation of the services.

If the affected employees are in collective bargaining units, then union representatives should be kept informed of the process. They may be encouraged to develop proposals (bids) to compete with vendors for the continued delivery of services.

It may be advisable for the executive branch to involve the legislative body by, at a minimum, providing prior notification of intent, and possibly seeking input—either formally or informally. Employees who are adversely affected are likely to approach elected members of the governing body in attempts to block the contract.

Advocacy groups of citizens who have a stake in the service being contracted out may also need

to be provided an opportunity for input and kept informed.

If the method used for contracting out is a competitive sealed proposal process, the scope of work may include the requirement for joint development of a transition plan by the selected vendor and the government so as to ensure an orderly transfer of responsibilities from the government to the contractor.

CONTRACT ADMINISTRATION

What is contract administration?

Contract administration is the final phase of the procurement cycle and begins at the point a contract or purchase order is executed. The objective of contract administration is to ensure that the vendor and the government comply with the contract. Only then can the public be sure that it got what it paid for.

There are two aspects to contract administration:

- *Quality assurance*, in which the quality of the goods or services which were provided are monitored. Monitoring reports are prepared, and the procurement authority is notified of any deficiencies.
- *Contract management*, in which invoices are reviewed and approved, compliance with the terms and conditions of the contract is ensured, and modifications are made if needed.

Thus, contract administration consists of the following types of activities:

- Preparing and filing reports on vendor performance;
- Submitting requests to the purchasing authority for changes or extensions (options) to the contract, or termination;
- Developing a checklist or schedule of all actions the contractor is to perform, and tracking those actions to ensure they are completed.

Generally, a contract can only be terminated

under conditions specified within it. Contracts can be terminated for non-performance (default) if, after being notified, the vendor fails to meet the specifications. Contracts also may be terminated for convenience of the government, to cover unforeseen circumstances where goods or services are no longer needed or as a result of budgetary constraints.

Who should be responsible for contract administration?

The program department responsible for using the goods or services is responsible for contract administration with the advice and assistance of the procurement authority. The program department requests that the procurement authority execute any further procurement actions that may be required, such as amendments or extension to the contract, or in extreme cases for terminating the contract.

For service or large-dollar commodity contracts in large governments, responsibility for contract administration is sometimes divided between a "program monitor" who monitors the quality of goods or services, and a "contract monitor," who ensures that all the contract provisions are monitored.

CONTRACT TYPES

What factors contribute to an effective contract administration function?

Waste, fraud, and abuse rarely occur in contracts with clear specifications that are properly administered. Effective contract administration requires that the procurement authority establish clear procedures and convey them to operating departments. Training should be given to program personnel explaining how to perform contract administration activities. Routine contract monitoring reports should be required and reviewed by management of operating departments, with copies provided to the procurement authority for its review.

What are the different types of contracts?

Contract types vary according to form, and according to the distribution of risk and responsibility between the contractor and the government.

1. Price

Contracts can be categorized according to price arrangements as follows:

- Firm fixed price,
- Fixed price per unit,
- Fixed price with incentive,
- Fixed price with economic price adjustment,
- Cost plus incentive,
- Cost plus fixed fee,
- Cost reimbursement, and
- Time and materials.

Procurement laws generally prohibit the use of a cost plus percentage of cost arrangement, since it provides no incentive to the vendor to hold costs down.

2. Risk

Contracts can be categorized by the government's commitment to purchase.

- Definite quantity contracts where the amount of services or volume of goods to be supplied is fixed;

-
- Requirements (or “term”) contracts in which the supplier will fill all the government’s needs for an item during a specified period (term) at a specified price;
 - Indefinite quantity contracts (also called price agreements or blanket purchase orders) in which the government may purchase an item at an agreed upon price from the supplier if it so chooses.

3. Period

Contracts can also be categorized by the period covered:

- *Completion.* Performance ends upon completion of a set of tasks; and
- *Term.* The government specifies the dates between which goods/services are to be provided.

4. Form

Contracts are also categorized as to form:

- *Purchase orders* are “short form” contracts used for small or uncomplicated purchases, or for large orders made against a term or requirements contract;
- *Letter contracts* are issued in order to give a vendor a binding commitment and allow work to begin immediately;
- *Definitive contracts* include all documents and certifications required by the solicitation.

What are standard terms and conditions?

A contract is the legal document that spells out the responsibilities of the supplier and the government. Clarity is essential so that disputes can be avoided. Terms and conditions are listed that identify the requirements placed by the government on its contractors.

Typical contract components include:

- Period covered,
- Deliverables,
- Schedule for delivery,
- Delivery instructions,
- Price agreements,
- Payment process,
- Process for amending the contract,
- Signatures by authorized parties, and
- Order of precedence and severability clauses.

Because governmental jurisdictions are considered to have “deep pockets,” many other clauses are included for added protection. A government usually will include in its contracts a set of “standard” terms and conditions that apply to every contract, and “special” terms and conditions whose use varies depending on the item being purchased and the acquisition process. Purchase orders typically include standard terms and conditions preprinted on the face or reverse.

Typical standard terms and conditions for government contracts include clauses which cover:

- Indemnification,
- Requirements for compliance with federal laws and regulations,
- Requirements for compliance with state and local laws,
- Termination procedures,
- Disclosure requirements,
- Ethical standards,
- Responsibility criteria, and
- Dispute resolution and due process.

Generally, contract documents are executed “bilaterally.” This means they are signed by both parties. Sometimes documents are executed “unilaterally”—such as when purchase orders are signed only by the government.

What if a vendor wants to change contract terms and conditions?

Occasionally a vendor will balk at some of the government’s terms and conditions and request that they be changed or deleted. A change to the standard terms and conditions in an invitation to bid is considered an alteration to the request and may render the bid or quote non-responsive.

While language in the major components of the contract may be negotiable in a request for proposal process, the language in the standard terms and conditions section is considered mandatory. Any changes to standard or special terms and conditions should be approved by legal counsel.

COOPERATIVE PURCHASING

What is meant by “cooperative purchasing”?

The term “cooperative purchasing” (sometimes known as “pooling”) is used when two or more governments combine their purchasing requirements and enter into a contract which meets the needs of everyone in the group (pool).

Pooling can reduce the administrative costs of procurement and can result in lower costs due to economies of scale when placing large orders. Usually, one participant will handle most or all purchasing activities on behalf of the others. Cooperative purchasing is an effective tool for smaller governmental units.

What types of cooperative arrangements are used?

Cooperative purchasing arrangements can have a variety of forms. For instance:

- In some states, localities may be allowed to buy off state contracts. In making a purchase, the locality can place orders directly from the vendor against a state contract. The state’s contract terms/conditions apply to the purchase and the locality pays the vendor directly.
- The federal government is moving to allow states and localities to buy off large federal contracts. These contracts are known as GSA schedules because they are created by the General Services Administration. GSA schedules are catalogues of items, suppliers, and prices. GSA’s terms and conditions apply to the purchases which would be made directly by the state or locality from the vendor.
- Councils of governments (COGs) or other regional organizations may act as purchasing agents for their member governments.
- A local government may act as purchasing agent to meet the needs of one or more neighboring jurisdictions.

ADMINISTRATIVE PROCESS

What problems can occur with cooperative purchasing?

Because a participating government may not have direct control over cooperative purchasing activities, it may be harder for it to effect changes or improvements to them unless it is playing the lead role.

Ideally, the lead purchasing authority will conduct surveys of, or hold meetings with, participants in cooperative purchasing activities to identify problems and develop improved methods. It is important that effective procedures be clearly explained to all participants so they can provide feedback on vendor performance to the lead authority.

Additionally, planning is extremely important for cooperative purchasing arrangements to work well. If a participant does not convey to the lead purchasing authority what its needs will be, and when those needs will occur, it is hard for the lead authority to achieve all potential savings.

Billing or payment problems with an individual participant may arise for the vendor under cooperative purchasing arrangements, and the lead authority may have little ability to resolve them.

What is the administrative process relating to procurement activities?

To ensure due process and avoid litigation and costly court battles, procurement laws provide for administrative procedures to settle disputes between a vendor and the government.

A vendor who feels a contract has been unfairly awarded to another firm, or that it has been otherwise unfairly treated during a solicitation, may “protest” the award of the contract by filing a complaint with the chief procurement official, and then, if still unresolved, with an appeals panel appointed by the chief executive. Similarly, disputes arising in the course of a contract may be taken to the chief procurement official, then the appeals panel.

Appeals may take on more or less of the character of litigation depending on the rules of procedure as provided for in the procurement law or regulations. The more formal the procedures, however, the more protracted and costly—and disruptive to service delivery—the dispute resolution process is likely to be. Mediation, arbitration, or partnering are alternative methods of dispute resolution that can be used successfully to settle disputes and avoid litigation.

PROCUREMENT AUTOMATION

How should procurement mistakes be handled?

As with all endeavors, mistakes sometimes occur in procurement activities through ignorance of requirements, or simply from carelessness.

Some procurement laws provide that any mistake during source selection, no matter how minor, automatically voids the resulting contract. Such a rigid requirement can result in an inordinate amount of time spent repeating steps in the procurement process until they are done perfectly. This makes for a significant decrease in efficiency.

In other situations, the test of materiality is applied: if the mistake is minor and causes no harm to the government, the selected vendor, or competing vendors, then it may be overlooked.

Employees who continue to make errors during procurement activity may need to be retrained, reassigned, or subjected to disciplinary action. Vendors who continually make mistakes should be counselled or may be penalized or suspended if their performance cannot be improved to satisfactory levels.

How can automation improve the procurement function?

Procurement, without automation, consists of a flood of paper flowing from desk to desk to filing cabinet. This paper flow includes requisitions, requests for quotation, request for proposals, invitation for bids, quotes, bids, proposals, purchase orders, contracts, change orders, receiving reports, invoices, and other documents.

Automation can significantly enhance the efficiency and effectiveness of procurement activities by eliminating much of this paper, by capturing data for management reports, by eliminating duplicative activities, and by storing historical data on which to base future procurement decisions.

In transitioning to automated procurement processing, it is important to "re-engineer" the way work is done and *not* simply automate existing ways of doing business. This may be difficult, since it will require retraining (and possibly reassigning) employees. Without re-engineering, however, the full benefits achievable through automation are unlikely to be realized.

A good commodity coding system is an essential ingredient when the procurement function is being automated.

Some procurement officials, however, point out that electronic purchasing may result in a reduction in purchasing controls. Auditors should be involved in the development of EDI systems to ensure they include adequate internal controls.

What is meant by “electronic purchasing”?

Some governments (including the federal government) “post” their solicitations electronically on bulletin boards or electronic libraries that vendors can access by computer to review and respond electronically. This eliminates the need to maintain bidders lists, as well as to prepare and mail multiple copies of solicitation documents.

Purchases can be made electronically using a “purchase card” or “procurement card.” Cards are issued to authorized personnel, with a limit on the amount which can be charged—and which may be pre-encumbered in the accounting system prior to release of the card. The cards can be used directly by authorized employees, like credit cards, for small purchases to approved vendors.

Since a purchase is a two-way activity, much of the paper flowing through government systems is duplicated in matching paper flowing through vendor systems. Automation provides a way to reduce this duplication through a technique known as electronic data interchange (EDI).

EDI is the government-to-business exchange of data in standard electronic formats. For example, a purchase order can be electronically transmitted to, and read by, a vendor’s computer system, vastly reducing the processing time and chance for errors. Additionally, payments may be made through an electronic funds transfer (EFT) to the vendor’s bank account. Electronic purchasing can optimize stock levels, ensure efficient reordering practices, reduce paperwork, and speed up payments to vendors.

APPENDIX

What is the impact on receiving and paying?

Electronic processing provides instantaneous acknowledgement of receipt of goods or services removing the need for paper processing. Electronic invoices may be matched with electronic receiving reports and funds electronically transferred, with all audits performed automatically. Only discrepancies need to be addressed manually, thus reducing the labor required.

Electronic purchasing can reduce or eliminate payment delays. This is an important consideration because delayed payment:

- is a disincentive to vendors considering bidding for government contracts and thus reduces competition—it may even put vendors out of business;
- inflates prices and adversely affects suppliers who cannot “float” the government; and
- is a major barrier to the entry of new or small businesses into government markets.

References

State and Local Government Purchasing, 4th edition. 1994. National Association of State Purchasing Officials, 3560 Iron Works Pike, P.O. Box 11910, Lexington, KY 40578-1910 (606/231-1850)

Glossary in State and Local Government Purchasing, 4th edition. 1992. Council of State Governments, 3560 Iron Works Pike, P.O. Box 11910, Lexington, KY 40578-1910 (606/231-1850)

Issues in Public Purchasing: A Guidebook for Policy Makers. 1992. National Association of State Purchasing Officials, 3560 Iron Works Pike, P.O. Box 11910, Lexington, KY 40578-1910 (606/231-1850)

Dictionary of Purchasing Terms. 1986. National Institute of Governmental Purchasing, Inc., 11800 Sunrise Valley Drive, Suite 1050, Reston VA 22091-5302 (703/715-9400)

The Model Procurement Code for State and Local Government. 1979. American Bar Association. Available from National Institute of Governmental Purchasing, Inc., 11800 Sunrise Valley Drive, Suite 1050, Reston VA 22091-5302 (703/715-9400)

The Model Procurement Ordinance for Local Government. 1982. American Bar Association. National Institute of Governmental Purchasing, Inc., 11800 Sunrise Valley Drive, Suite 1050, Reston VA 22091-5302 (703/715-9400)

Other titles in GFOA's series of booklets for elected officials include:

***An Elected Official's Guide to
Financial Reporting***

(by Stephen J. Gauthier)

***An Elected Official's Guide to Internal
Controls and Fraud Prevention***

(by Stephen J. Gauthier)

An Elected Official's Guide to Auditing

(by Stephen J. Gauthier)

***An Elected Official's Guide to Debt
Issuance***

(by J. B. Kurish and Patricia Tigue)

***An Elected Official's Guide to Fund
Balance***

(by Stephen J. Gauthier)

***An Elected Official's Guide to
Government Finance***

(by Girard Miller)

Quantity discounts apply to purchases of six or more copies of any title. To order, call or write to:

Government Finance Officers Association
of the United States and Canada
180 N. Michigan Ave., Suite 800
Chicago, IL 60601

Phone: 312/977-9700

Fax: 312/977-4806