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2016 RISSA/RIASBO LEGAL INSTITUTE

WHEN IN DOUBT, BID IT OUT!

I. SOURCES OF AUTHORITY

1. State Law.

There are several sources of state law that effect how or why we must go out to bid for purchase of services and goods.

A. R.I. Gen. Laws § 45-55-1 et seq. is the main statute requiring that the award of contracts by municipality. It provides for competitive sealed bidding, competitive negotiations, non-competitive negotiations and small purchase procedures.

Most of us are familiar with the requirements of **competitive sealed bidding**.

- Contracts exceeding the 5/10K unless:
 - For professional engineering/architectural services or
 - “it is determined in writing that bidding is not practicable.”
 - Can specs be prepared that permit an award on the basis of the lowest qualified bid price or lowest qualified evaluated bid price **and**
 - The available sources, time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.
- The bid must state whether it is based on the lowest bid or lowest evaluated or responsive bid, and include the objective measurable criteria to be utilized.
- Adequate public notice of the bid and given sufficient time prior to the date stated in the notice for the opening of bids. Notice may include:
 - publication in newspaper of general circulation (as determined by the purchasing officer)
 - not less than 7 days nor more than 21 days before date for opening bids.

- Purchasing officer may make a written determination that the 21 day limitation needs to be waived. The writing shall state the reason it was waived and state the number of days, giving a minimum and maximum before the date set for opening of bids when public notice is to be given.
 - Bids must be opened publically at a time and place designated in the invitation for bid. Each bid and bidder shall be recorded and an abstract made available to the public. Subsequently, all docs available to public and retained.
- Contract awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated or responsive bid price.
 - Correction or withdrawal of bids may be allowed only to the extent permitted by regulation issued by the purchasing officer.

1.) This statute does not preclude selecting the best or most superior bidder. The purpose of the law is to safeguard public funds by recognizing that a company that ranks higher on criteria specified in an RFP may not be the lowest bidder, but may save municipality money over the course of the project based on experience and other intangibles. See: H.V. Collins Co v. Tarro, 696 A.2d 298 (R.I. 1977).

2.) The standard of judicial review of awarding bids is whether officials have acted fairly and honestly with reasonable exercise of sound discretion. Nelson's Bus, Inc. v. Town of Burrillville, 639 A. 2d 63 (R.I. 1994). The Court will interfere with an award only when it is shown that an officer acted corruptly or in bad faith or so unreasonably or so arbitrarily as to be guilty of a palpable abuse of discretion. Peter Hajian Assocs. V. Board of Library Trustees/Building Conn. Ex rel. Cross, 685 A.2d 283 (R.I. 1996).

If competitive sealed bidding is not successful because the prices are in excess of available funds, the purchasing officer determines that there are no additional funds available, and the best interest of the municipality will not permit delay to revise bids or re-solicitation bids, then you can engage a negotiated award. If there is more than one bidder, follow the rules for competitive negotiations. If only one bidder, follow § 45-55-8.

R.I. Gen Laws § 45-55-6 deals with **competitive negotiations**. When a purchasing officer determines in writing that competitive sealed bidding is not practicable, a contract may be awarded by competitive negotiation.

Competitive negotiations happen when the purchasing officer determines (in writing) that the bids received are unreasonable as to all or part of the bid requirements or were not independently reached in open competition. Competitive negotiations are noticed out as are a regular bid and the RFP must indicate the relative importance of price and other evaluation factors.

Each bidder:

- (1) must be noticed of intention to negotiate and is given a reasonable opportunity to participate;
- (2) the negotiated price is lower than the lowest rejected bid by any competitive bidder; and
- (3) the negotiated price is the lowest negotiated price offered by a competitive offeror.

The bid selected must be most advantageous to the municipality considering the price and evaluation factors stated in the RFP.

The actual negotiations may be in writing or oral and with all responsible bidders who might be potentially successful. Purchasing officer may not discuss any information derived from other proposals submitted by competing bidders. Discussions are not necessary when the prices are fixed by law or regulation or when time of delivery or performance will not permit discussions or where it can be demonstrated that the award could be based on the initial offers.

B. The law also provides for alternatives to bidding under this law. We will discuss those shortly.

C. A bid may be cancelled if it is determined in writing that the action is not in the best interests of the municipality. R.I. Gen Laws § 45-55-10.

TIPS

- A common theme of all these statutes is that the reasoning and final decision of a purchase officer must be in writing. While many purchasing officers see this as a burden, it forces the decision maker to justify his decisions in a cogent and logical manner. This will force the decision maker to consider the efficacy of his decisions.
- It is important commit all decisions and reasoning to writing.
- Develop a model or common set of specs to limit the time it takes to initiate the bid process.
- Develop a list of pre-qualified contractors as a group that you will always solicit bids from.
- Don't select a contractor from the state-wide bid list. Those prices may not be lowest.
- As a purchasing contractor, you have the statutory responsibility to obtain the lowest responsible bid. You should take reasonable steps to make sure you have done so.
- Always be prepared to bid a purchase of services or goods.
- Develop a set of rules and regulations to allow maximum use of exemptions under the state bidding statute.

2. Review your City/Town Charters and Ordinances, School Committee Bylaws and/or Policy

Many cities and towns have Charter provisions and or ordinances which are more restrictive than the requirements of State law. It is important to review those restrictions. In most cases, a school district should comply with all applicable laws, rules and regulations.

II. Focus Issues

- What is a sole source and when may I obtain a single bid?
- What is an emergency purchase and when may I hire without bidding on this basis?
- When may I negotiations after bidding?

III. Alternatives to Bidding

State law provides a number of alternatives to the requirements of the state bidding statute. However, these alternatives should not be seen as a method to pick a preferred vendor or a way to save time. In all circumstances, the purchase officer should consider whether he/she is making a decision to make the best use of the public's money. This is a fiduciary responsibility owed to the taxpayers. With these points in mind consider the following:

1. State Master Bid List R.I. Gen Laws § 37-2-56
2. Joint Purchasing Agreements § 16-2-9.2
 - Any two or more school committees may establish joint purchasing agreements with themselves or with RIASC.
 - RIASC, on behalf of any school committee, may ask RI Department of Administration to bid and set up a list of purchase services and goods. (Create their own state master list.)
3. Rhode Island Inter-local Cooperation Act R.I. Gen Laws § 45-40-1 et seq.
 - May purchase along with any federal agency or any state or subdivision. **Note** that AG review and approval is necessary. Some examples of approved organizations:
 - USA Communities
 - Association of Educational Purchasing Agencies
 - US General Services Administration
 - National Intergovernmental Purchasing Alliance
 - National Joint Purchasing Alliance
 - Rhode Island Energy Aggregation Program (League of Cities & Towns)
 - The Cooperative Purchasing Network
 - Western State Contracting Alliance
 - Sequence for approval of a cooperative or joint purchasing arrangement.

When utilizing cooperative purchasing arrangements enabled by R.I. Gen Laws §§ 45-40.1-1 et seq, the School Administration follows the below sequence prior to engaging in such purchases:

- 1.) Identify appropriate cooperative purchasing entities with respect to purchasing needs of the District.
- 2.) Seek written approval of the Superintendent of Schools, the Business Manager, School Committee.
- 3.) Prior to the School committee granting its approval, it shall be provided with information related to the following:
 - a. The intended uses for the cooperative purchasing arrangement.
 - b. Reasonable assurances that the pricing provided through the cooperative arrangement are intended to maximize the purchasing value of public funds in procurement of goods and services.
- 4.) Any approved cooperative entity shall then be submitted to the Attorney General's Office pursuant to R.I. Gen Laws § 45-40.1-4 (f) (as applicable).
- 5.) The agreement shall then be filed with the keeper of the local public records and with the R.I. Secretary of State.
4. Collaborative and Collaborative Enabling Statutes.
5. Rhode Island Inter-local Trust.
6. RIASC – special enabling statute.