



Selling to Government Agencies

A Road Map to success



2014

Why do we bid?

- Contrary to popular belief, we bid for a variety of reasons. Low price is certainly an important one but it isn't the most important one.
 - We bid to get the most out of every tax dollar available to us
 - Make sure that all the potential vendors are treated equally
 - Protect against favoritism
 - Abide by the laws of the state
 - Protect against fraud and collusion both inside and outside of our organizations

Before we get started

There are a few things I will be referring to throughout the class. They are:

- General Municipal Law
- State Education Law
- OGS contracts
- Preferred Sources
- GSA contracts
- Prevailing Wages
- Purchasing Manuals

These are the things that dictate how we do business. A well informed vendor knows what the rules of each are. It allows them to take advantage of the system where they can while still staying within the law.

Reference Materials

General Municipal Law is what governs about 90% of what we do. It is there to protect the public AND the vendor against fraud and collusion in the Public Bidding sector.

Basically all of the rules are covered under GML 100 through 109.

I HIGHLY suggest you get a copy of these rules. They are available at most Public libraries or from West publishing at www.west.thompson.com. You do not need the entire set. Just the one that includes sections 100 through 109. The principal section is GML 103. This discusses the rules for bidding and awarding the purchase of goods and services, when we have to bid or quote, when we are not required to bid and what the vendors options are after a bid is awarded.

School Education Law is another book that is good to have. Although the vast majority of what schools do is the same as everyone else, there are some things that they are required to do that the rest of us are not. Again, this book may be obtained at your public library or by going on line at www.nysdepartmentofeducation.com

How do we Purchase Goods and Services

Public entities may obtain goods and services in a variety of ways.

- **Preferred sources** – These are a group of agencies that the State has determined to be in the best interest of the State to use. Therefore, we are mandated to purchase from them when they are able to supply what we need at a fair price.
- **NYS Contracts** – These are a group of contracts awarded by the State. Although they are primarily awarded for the use of State agencies, all political subdivisions are allowed to use them as well. They are typically a “fair price” and do not require any bidding which makes them a quick alternate to the bidding process.
- **Requests for Proposals** - These are used for the most part when sealed bids are not the most appropriate means for acquiring the services we need. They are seldom used in acquiring goods but are more often used in hiring engineers, architects, doctors or in designing systems such as software, or communications systems.

- **Sealed Bids** – Sealed bids are used when the annual dollar figure for a like set of commodities exceeds \$20,000.00 aggregately for a year. They are a formal process and are required to be carried out in the same manner by all entities. The rules will be discussed later on in the class.
- **Quotations** – Quotes are different than bids in many ways. They are used to acquire all those things that do not fall under the umbrella of the other methods listed. They are typically not as formal and many times do not require board action.
- **Cooperatives** – These are most popular with schools and typically are done through the local Board of Cooperative Educational Services (BOCES). The important thing to know about a cooperative is, once an entity has signed on to the cooperative they are bound to utilize it for the duration of the contract. This is because the vendors have based their pricing on the aggregate totals from all the members to give discounted prices economies of scale works in both directions.
- **Hospital cooperatives** - Hospitals and Nursing Homes are the only exception to the rule when it comes to cooperatives. These entities may purchase off of certain private cooperatives without bidding as long as the cooperative itself has abided by certain rules.
- **National Cooperatives** – These are new for municipalities in New York. They are contract done by municipalities in other states adopted for use by other by a national group. US Communities, National IPA, Western Alliance, TCPN are examples of national cooperatives. Municipalities must confirm the contract meets NYS law before they can use these contracts.

Sealed Bids

Sealed bids are the most open yet most difficult way to acquire goods and services from the viewpoint of both the vendor and the bidding entity.

We are required to solicit sealed bids for all goods that can reasonably be expected to exceed \$20,000.00 in a year for “like items”. Or for services and public works projects that will exceed \$35,000.00. This doesn’t mean \$20,000.00 worth of pencils but \$20,000.00 worth of everything that is included in the office supply catalog.

There are exceptions which we will get to later that can be a HUGE advantage to you.

Bids are EXACT. There is not or at least should not be any gray in a sealed bid.

Here are the basic rules.

- Anyone may request a copy of the bid
- All bids must be advertised in the “paper of record” for the bidding entity
- There must be at least 5 calendar days between the advertisement and the opening,
- All bid openings and prebid meetings are public. You may not be refused attendance as long as you are there at the time of the opening or the meeting. You are not allowed to show up late and expect to be allowed to attend.

- All bids MUST be received prior to the time indicated on the notice to bidders. Late is late, don't expect to be allowed to show up a minute late and have your bid accepted. There are virtually no exceptions to this rule.
- All bids are to be opened and read aloud in front of the vendors or whomever attends the bid opening.
- Vendors are not allowed to review the documents at the time of the opening.
- A bidder may be required to submit a bid deposit before they are given a set of the documents. This bid deposit may not exceed \$100.00 and must be refunded to the vendor upon request and return of a complete set of the documents in good order. However, this is only for one set and we are only required to return the deposit until thirty calendar days after action by the Board.
- Equals must ALWAYS be allowed except where there is a current "standardization resolution" on file for a particular item. This resolution must be authorized by 3/5's of the board and must be available upon request. The words "no substitutes" are meaningless in a bid. The burden of proof and any associated costs are the vendors issue. Supporting documentation of equality has to be included with the bid submission or the vendor may be deemed nonresponsive. If a vendors "equal" is deemed by the entity not to be an equal, we are obliged to allow you an opportunity "to be heard" before we can go on to the next vendor. We cannot simply throw out a product and move on without giving you a chance to prove your case. So be ready if you submit an equal as you may only get one or two days notice to come in.
- Prebid meeting may not be mandatory unless there is some overriding factor such as a roof that has obstacles that need to be measured. Otherwise you may submit a bid without attending the prebid meeting.

- Questions to a bid must be answered in the form of an addendum if they vary or otherwise change the original bidding document.
- Everyone that obtained a copy of the bid from the owner must be give a copy of all addenda to allow everyone to bid on an equal footing.
- An award or other action to a sealed bid **MUST** take place within 45 calendar days of the opening of the bid. Otherwise the vendors cannot be held to their prices. However, once an award has been made the vendor must hold their pricing for whatever time the bid indicated.
- Sealed bids may take many forms. The following are just some of the different forms a sealed bid may take.
 - Life cycle bids
 - Market basket bids
 - Line item bids
 - All or nothing bids
 - Construction bids by trade
 - Percent off of catalog bid

Best Value Bids

- Best Value Bids are sealed bids that do not get awarded to the lowest responsible bidder but to the bidder that offers the best value bid to the municipality.
- Best Value bids will contain objective and quantifiable criteria that will be considered along with price to determine the best value.
- These bids are administered the same as a normal sealed bid with the exception that the price is not read or made public at the bid opening.
- Factors that might be considered in addition to price include:
 - Miles per gallon – fuel expense
 - Warranty period
 - Recommended maintenance costs

Quotations

Those purchases and contracts that fall beneath the threshold of sealed bids must be handled in accordance with GML 104b. Basically, this says that all entities must have a purchasing manual that dictates how all purchases under the bidding threshold will be handled.

Quotes can take many forms and differ from sealed bids in many ways.

- Quotes do not have to be publicly advertised
- Quotes are not publicly opened
- The entity is not required to supply anyone that requests a copy of the quote with one. They can pick and choose who gets in the game.

RFP's

There are many reasons to do an RFP. However, RFP's are frequently frowned upon as many times they do not put all the vendors on an even footing.

RFP's are typically done for professional services or for services which are so difficult to put exactly into words as to make it virtually impossible to do effectively.

The entity knows where it wants to be but not the best way to get there. And hiring a consultant to write the specifications may not be much better.

Examples might be installing a telecommunications system, networking your facility, things of this nature. You know what you want to end up being able to do but don't necessarily know the "best" way to get there.

Another example would be hiring medical staff, engineers and architects. In cases like this price may take a second place to experience, and expertise.

The issue with RFP's is always fairness. It is imperative that the owner keep the entire process as open and even as possible.

Differences between Sealed Bids and RFP's

Sealed Bids must be publicly advertised

RFP's do not

Sealed bids must be accepted from anyone that wishes to submit a bid

RFP's may be accepted from only those vendors supplied with a copy of the RFP by the agency

Sealed Bids are exact. You either meet the specs or you don't

RFP's allow latitude for vendors to be inventive as to how they solve the problem as presented to them.

Sealed bids must go to the low responsive/responsible vendor

RFP's may be awarded to the vendor that best meets the needs of the entity although price certainly play a significant part in the determination.

Prevailing Wages

What are prevailing wages:

Prevailing wages are a set of job titles, mostly but not all pertaining to construction projects, that are required to be paid by vendors doing work for All Public entities. They are typically the local union scale and are governed by the NYS Department of labor.

Although they are mostly construction related they also are required when doing such things as installing white boards, hanging projection equipment and screens, janitorial services, installing movable panel systems.

Failure to pay prevailing wages on a project can result in being placed on a debarred list by the State or Federal government. Any vendor on that list may not be awarded a government contract of any kind.

Recent changes in the law allows us to do “Turn-Key” construction for higher amounts than previously with certain conditions. The dollar amount changes depending on your location.

Subcontractors lists and requirements – see reference material

§ 101. Separate specifications for certain public work. 1. Except as otherwise provided in section two hundred twenty-two of the labor law, every officer, board or agency of a political subdivision or of any district therein, charged with the duty of preparing specifications or awarding or entering into contracts for the erection, construction, reconstruction or alteration of buildings, when the entire cost of such public work shall exceed three million dollars in the counties of the Bronx, Kings, New York, Queens, and Richmond; one million five hundred thousand dollars in the counties of Nassau, Suffolk and Westchester; and five hundred thousand dollars in all other counties within the state, shall prepare separate specifications for the following three subdivisions of the work to be performed:

- a. Plumbing and gas fitting;
- b. Steam heating, hot water heating, ventilating and air conditioning apparatus; and
- c. Electric wiring and standard illuminating fixtures.

2. Such specifications shall be drawn so as to permit separate and independent bidding upon each of the above three subdivisions of work. All contracts awarded by any political subdivision or by an officer, board or agency thereof, or of any district therein, for the erection, construction, reconstruction or alteration of buildings, or any part thereof, shall award the three subdivisions of the above specified work separately in the manner provided by section one hundred three of this chapter. Nothing in this section shall be construed to prevent any political subdivision from performing any such branches of work by or through their regular employees, or in the case of public institutions, by the inmates thereof.

3. In the county of Erie, specifications for public work pertaining to the construction of a county stadium may provide for assignment of responsibility for supervision and coordination of any of the contracts for such work to a single responsible and reliable person, firm or corporation.

4. In the county of Albany, specifications for work construction of a civic center may provide for responsibility for supervision and coordination of contracts for such work to a single responsible and firm or corporation.

5. Each bidder on a public work contract, where the preparation of separate specifications is not required, shall submit with its bid a separate sealed list that names each subcontractor that the bidder will use to perform work on the contract, and the agreed-upon amount to be paid to each, for: (a) plumbing and gas fitting, (b) steam heating, hot water heating, ventilating and air conditioning apparatus and (c) electric wiring and standard illuminating fixtures. After the low bid is announced, the sealed list of subcontractors submitted with such low bid shall be opened and the names of such subcontractors shall be announced, and thereafter any change of subcontractor or agreed-upon amount to be paid to each shall require the approval of the public owner, upon a showing presented to the public owner of legitimate construction need for such change, which shall be open to public inspection. Legitimate construction need shall include, but not be limited to, a change in project specifications, a change in construction material costs, a change to subcontractor status as determined pursuant to paragraph (e) of subdivision two of section two hundred twenty-two of the labor law, or the subcontractor has become otherwise unwilling, unable or unavailable to perform the subcontract. The sealed lists of subcontractors submitted by all other bidders shall be returned to them unopened after the contract award.

Myths & Facts of Purchasing

Myth: Bid deposits are nonrefundable and can be for any amount

Fact: GML 102 dictates that bid deposits may not exceed \$100.00 and a full refund must be given to any vendor requesting a refund and returning a complete set of plans and specifications within thirty days of award or rejection of the bid. A full refund less the actual printing expenses must be given to any unsuccessful or non bidder for all other copies upon request within the same thirty days.

Myth: Political Subdivisions may indicate “no substitutions”

Fact: GML 103 requires ALL political subdivisions to accept equal products for anything other than a product that has been standardized on by a 3/5 vote of the authorizing Board. – Discuss the rules here

Myth: Low bid wins

Fact: The low “responsive/responsible” vendor submitting a bid must be awarded a contract if one is made. – What does that mean

Myth: Entities may establish 15% local or minority preferences

Fact: GML 103 does not allow for preferences of any type unless specifically required where Federal or State money is involved. And then only to the extent specifically indicated by the Federal or State agency. Or by a “County” with a pre 1953 preference

Myth: Vendors may be required to hold their pricing for 60, 90 or even 120 days for an award.

Fact: Vendors may not be required to hold their prices for any longer than 45 calendar days from the opening of the bids. The agency MUST make an award by that time or the vendor is released from and requirement to hold their price. However, the agency may ask the vendor to hold their price longer and the vendor is within its rights to do so. But may not change their price and receive an award.

Once the award is made, the vendor is bound by whatever stipulations they agreed to when they bid concerning holding their awarded price.

Myth: Once a bid is awarded, the municipality MUST buy those materials.

Fact: A bid is simply an offer from the vendor to the municipality. An award is simply a statement by the municipality indicating that if such products or services are utilized, they will be purchased from the vendor (s) awarded a contract by that Board.

Myth: Prebid meetings are mandatory.

Fact: Prebid meetings may not be mandatory unless there is a specific reason that all the material necessary to allow a vendor to submit a bid cannot be put in print. However, the agency has no responsibility to make accommodations to allow a vendor onsite to view the project or take measurements after the prebid meeting is complete. “GO TO THE PREBID MEETING”

Myth: Only those vendors attending the prebid meeting receive addenda.

Fact; The owner is required to furnish all vendors that have received a set of the specifications from the agency with all addenda.

Myth: Agencies may require a bid to be submitted electronically.

Fact: Although electronic bids are accepted under certain regulations, all agencies must accept paper sealed bids as well.

Myth: Being on an agencies “vendor list” guarantees you will be notified of all bids.

Fact: Municipalities are only “required” to advertise in their paper of record unless the use of Federal or State monies sets other requirements. Vendor lists are for the use by the agencies as reference material and we are not required to notify vendors individually.

Myth: Prevailing wages only apply to construction projects over \$35,000.00.

Fact; Prevailing wages apply to all work determined to be article 8 or 9 work by the NYS department of labor.

There is no monetary threshold for prevailing wages.

Myth: If a vendor loses a contract for one type of work they cannot get a contract with that entity for any other work.

Fact: A vendor may not be denied a contract for a certain type of work simply because they lost another contract with that entity or another entity. Things change, circumstances change. Each contract must be determined and awarded on its own merits.

Myth: A vendor must “prequalify” an equal product prior to the bid opening.

Fact: The entity is required to accept any equal offered as a part the sealed bid. However, the vendor must include the equal as a part of the bid and if that equal is not accepted they may not offer an alternative to that product after the bid opening.

Secrets of Success

Be on time: In Public Purchasing late is late. It isn't my job to make sure your bid is in the Purchasing department on time. Be early, call to make sure it is there.

Read the fine print: Know what the rules are when you put in a bid. Don't call with questions. Put them in writing in some manner.

Supply everything that is requested with the bid. Every bid will contain this statement. "Failure on the part of the vendor to submit any material at the time of the bid opening may deem that bid as nonresponsive.

Don't embellish: Don't change the bid form or try to improve it. Simply offer your best product for the bid at the lowest price you can.

County Contracts can be the pot of gold at the end of the rainbow:

Getting a County contract for a product or service other than an article 8 or 9 type of work can be a gold mine. Due to recent legislation any vendor that holds a County contract for

any goods or service other than an article 8 or 9 work may shop that contract around the State to any Entity other than the State government itself. The only thing is that the bid must contain wording indicating that the County is extending this contract to all agencies. The good news for you is that this is totally your decision. You cannot be required to extend that contract to any other entity. And you can only sell them exactly what you bid at the exact same price. There are other things that need to be done but they are not your problem. If the bid doesn't contain the wording, I would suggest you ask the County if they would be willing to add it to their General Information section of the specifications. It could be of mutual benefit. You can offer them a better price and you can sell more product.

GML can be your best friend:

Get a copy of McKinney's Consolidated Laws of New York Annotated sections 100 through 109. it's the other teams playbook. Remember, knowledge is power. You can't win if you don't know the rules.

NYS and GSA

GSA Pricing.

Local Governments can now purchase from two GSA contracts. Schedule IT70 and 1122 Law Enforcement. Other than these two GSA contracts, GSA contracts are NOT an exception to competitive bidding statues.

NYS Contracts.

These are contracts of convenience that are done at the State level. They are not done “for” political subdivisions, but for the State and political subdivisions are allowed to piggyback off of them.

State contracts may be very lucrative, however they are very difficult go get and typically deal on a very small margin.

- If you have a County contract which states that political subdivisions can use it; it is just like a having a state contract. Other local governments can use that contract as long as it is under the exact same terms and conditions as the County contract.
 - The vendor cannot change any of the terms and conditions of the original bid in order to sell additional products to other local governments.
- Other contracts with local governments in New York State may now be offered and used by other local governments similar to county contracts.
- The initial bid document must include language that allows for the bid to be used by other political subdivisions for it to be used by others. This can not be added after award.

Now get out there and

SELL

SELL

SELL