

2020

Public Procurement in Florida

An Introduction
for
Non-Procurement
Professionals



White Paper sponsored by:
FLORIDA ASSOCIATION OF PUBLIC
PROCUREMENT OFFICIALS

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Who we are:

On July 10, 1967, twelve government purchasing agents in southeast Florida formed a committee to establish a formal association. Twenty-seven years later the Association name was changed to the Florida Association of Purchasing Officers. Then, in 2011, the name was changed to the Florida Association of Public Procurement Officials (FAPPO) to better reflect the broad nature of responsibilities within the role of professionals in their agencies and to distinguish the Association as one that represents those within the public sector.

Over the years FAPPO has grown and matured as an organization and is now recognized nationally as one of the leading associations dedicated to the public procurement profession. At the time of writing, the membership of FAPPO had grown from its humble beginnings to 1,000+ public procurement professionals. It is governed by a Board of Directors that includes current officers and past presidents who meet four times a year to conduct the association's business.

Our Mission:

The mission of FAPPO since its inception has been to empower Florida public procurement professionals through communication, education and networking opportunities. As such, the vision of the association is to be the premier resource for knowledge and information on public procurement in Florida.

What we do:

FAPPO hosts a number of educational opportunities each year such as conferences, trade shows, and workshops. These are provided to members at a discounted rate, but open to all procurement professionals who wish to further their skills and abilities. It also maintains a website and uses social media platforms to update and inform members of happenings within the State legislature, within industry, and in the profession that affect them and how they operate and conduct business.

Introduction:

From time-to-time, the Florida Association of Public Procurement Officials (FAPPO) directs the research that explore topics of interests and subsequent drafting of a white paper whereby the findings can be presented to its members and others within government. While not exhaustive, the information contained in this document provides a general overview of the public procurement process in Florida.

White papers such as this represent one way in which FAPPO can actively support its mission of education. This paper specifically addresses the basic principles of procurement in Florida. It is presented in a manner that can be used as a tool in educating those outside of the profession such as public officials, agency senior management, media and private citizens.

This paper was prepared by a team of Florida public procurement practitioners representing counties, cities, school and transportation agencies to assist public agencies in better understanding the role of public procurement in their agencies. It is recommended that each agency first refer to their respective code, procurement policies and procedures, and Legal Department for more specific guidance. The information presented in this guide is based on the most common questions posed by elected officials and senior managers about the procurement function and related business processes. Welcome!

What does Procurement do?

Procurement facilitates acquisitions of products and services of behalf of the agency, in accordance with Florida Statutes and local ordinance and code. Best and efficient use of taxpayer funding is always the objective. Elected officials may interact with Procurement for approval of formal award recommendations, answer technical questions or may participate on an evaluation team in a source selection process. Senior management may interact with Procurement in the development and approval of specifications and scopes of work, as an evaluator on a source selection process, and as an approver in the requisition and award process.

They buy paper, trucks and furniture, right?

Today's Procurement teams buy much more than 'stuff'. In fact, at many agencies 80% of purchases are for services, consulting, and complex program management! Here are some common products and services that support government agencies:

- Construction
- Capital Equipment (Fleet, Large Equipment)
- Supplies and Materials for Operations
- Inventory (tools, parts, cleaners)
- Uniforms
- Architects and Engineers
- Consulting
- Management Services
- Maintenance, Repair and Operating Services (MRO)
- Technology

Which credentials signify “top” procurement professionals?

Public procurement credentials such as CPPO (Certified Public Procurement Officer) and CPPB (Certified Professional Public Buyer) designate certified team members. A new public procurement certification, the NIGP-CPP, has recently been introduced. In addition, credentials specific to private sector procurement are also prevalent such as the CPSM, CSM, CPSD, C.P.M., and A.P.P. All of these designations result from specific educational qualifications, years of experience and demonstrated competence through testing. They signify the highest skilled procurement practitioners.

How is public procurement different from private sector?

In the private sector, goods are acquired by any means or method that does not violate the law. The amount of competition before buying is not at all regulated. A supplier could work under contact indefinitely if both sides agree, even if better terms and pricing are available in the

market. That supplier could even be a friend or relative of the CEO or other company decision maker. In public sector the means and methods used are strictly prescribed by law. In Florida, these activities are made even more transparent through public records and public meeting laws that ensure open, fair and competitive selections in the public “sunshine.” Bias towards relatives, friends or other influencers is strictly prohibited. Length of ongoing contracts is carefully defined. Contracts that exceed five years in length are rare, unless the contract is with a utility or for long-term management services with a heavy capital investment.

Doesn't procurement always award to the low bidder?

Not always. There are many Procurement Methods that can be utilized as permitted under your local code. In fact, “value-based” selections are becoming much more common than hard bids which award to the lowest bidder. Simply put, quotes and bids work best for products and services that can be clearly specified and aren't complex or custom. Purchases that require design, that solve a problem, or provide management of a program or function are most often solicited as value-based Requests for Proposals, Requests for Qualifications, and Invitations to Negotiate (RFP, RFQ and ITN). Cost is still a factor for most, but not the primary criterion. Here are the commonly used formal procurement methods in Government:

The Competitive Methods:

INVITATION FOR BIDS, aka INVITATION TO BID (IFB or ITB)

Award is recommended to the lowest, responsive, responsible bidder who meets minimum requirements. Responsive means the bidder properly provided all requested information and forms, and responsible means they have the means and capacity to fulfill all requirements. (e.g. – you can't award an agency-wide grounds maintenance contract to a company with one-person and a push mower!).



Examples:

Fleet Vehicles, Pest Control, Industrial Supplies, Equipment, Construction

**What to look for:**

1. Bid Tabulation – How many firms responded? If an indefinite delivery contract for as-needed quantities over time, are costs multiplied by the Agency’s annual usage rate in the tabulation? How do the costs compare with last time? Is the low bid realistic or unrealistically lower than the second low? Are any costs listed at \$0? Are all bids within a competitive range? Where is the awardee from? Were any bids rejected? Why? Were appropriate Evaluation Discounts applied in the tabulation? (Some agencies evaluate a bid at a lower rate if the bidder is a small, disadvantaged, or a minority owned business. A discount percentage is applied to the bid based on a scale. This may be referred to as a “preference.”)
2. Was it advertised? Your agency’s Procurement Code may require advertising for general procurements. Florida Statute 255.0525 *requires* advertisements for certain construction projects. Construction projects of specific dollar amounts have prescribed timeframes for advance notice. There are also many ways to notify potential suppliers online.
3. Compliance – does the approval request demonstrate that the bidder met minimum requirements (experience, licenses, etc.)? Is this bidder on any state or federal suspension or debarment lists? Was the bidder compliant with applicable ordinances such as local preference, hiring or apprenticeship? Did they comply with F.S. 287.133 Public Entity Crime or 287.134 Discrimination, F.S. 287.135 Scrutinized Companies?
4. Commitment – Is this a single project, or a multi-year renewable contract? (You will also be involved in the renewal process.) Will the commitment cover more than one budget year? Is there proof of adequate funding? Is this construction and part of a Capital plan?
5. Owner and Firm – Were the owner and principals free of conflict of interest? Are they related in any way to agency staff or elected officials? How long has the firm been in business? Are they registered to do business in Florida on www.sunbiz.org?
6. End User – Which Department or Business Unit is requesting the award? What need does it satisfy? Is this a new requirement or a new award for an on-going need? If equipment is being replaced, what is the plan for the old equipment? How old was the old equipment? Is this award to complete work that was under default by a different firm? What improvements are expected?

7. References – Did staff check references and financials satisfactorily? If this satisfies an on-going need, who was the previous awardee and how did they perform?



Statutes:

Public Records F.S. 119 defines Florida’s open records law. F.S.119.071 exempts sealed bids from public record until a decision has been made or until 30 days after opening, whichever occurs first. Therefore, formal and sealed, bid responses and tabulations may not be available immediately after deadline on opening date. Other exemptions in this section protect sensitive records such as financial statements, “trade secrets,” intellectual property, and information related to technology and security. F.S. 286.011 requires pre-bid meetings to be publicly noticed, and requires recorded minutes.

Note: F.S. 287.057 describes the state procurement policy in detail. If you are part of an educational agency, the policy is similarly described in the Florida Administrative Code, F.A.C. 6A-1.012 Purchasing Policies.

REQUESTS FOR PROPOSALS (RFP)

Award is recommended to the firm whose proposal provides the best *value* to the agency. The scope of work usually describes a solution, plan, design or program that is needed, and includes limiting factors such as timeframe, available space, desired outcomes or budget. This value-based selection process has predetermined minimum qualifications, evaluation criteria (that are usually numerically valued and sometimes weighted), and an evaluation team that collectively reviews each proposal and recommends award. Cost is always an evaluation criterion but is usually not the predominant criteria. At some agencies, cost might not be shared immediately with the evaluation team to prevent bias. The Evaluation team consists of subject matter experts from staff (usually cross functional) and may also include citizens or governing board members. The process relies on proposers’ putting their best foot forward in their submissions, and not introducing unrequested new information late in the process. However, the team may request clarifications to submitted materials, personal interviews of the proposing firm’s team, and a best and final offer where cost may be reduced. The

Evaluation Team then jointly agrees on the best proposal. There is a period after selection where the chosen solution's specific scope, timeline deliverables and contract terms are negotiated and finalized. This can add time to the process.



Examples: Medical Benefits, Parking Management Services, IT Consulting



What to look for:

1. Competition – How many firms responded?
2. Adequate Schedule – How much time passed between the posted or advertised date and the date proposals were due?
3. What was the compelling reason(s) the proposal is recommended?
4. Do the recorded minutes of the evaluation team meetings reflect a thorough process and a clearly best proposal? Was the team free of bias? Were direct reports from the same department on the team?
5. Items 2-7 from ITBs also apply, however RFPs do not have bid tabulations. A tabulated matrix of responses and cost may be available.



Statutes:

Public Records F.S. 119 and Advertising F.S. 255.025 (see ITB). F.S. 286, Florida's Public Meeting law (Sunshine Law) requires all meetings related to the RFP process to be open to the public. However, 286.0113 exempts negotiation, strategy or presentation meetings from being open to the public, but they must be recorded. Those recordings (written or audio) are exempt from public record for 30 days or until a decision has been made.

REQUESTS FOR QUALIFICATIONS (RFQ)

Award is recommended to the firm whose Statement of Qualifications best meets the stated requirements. Actual designs or solutions are not requested in this method. It is similar to a personnel hiring process. This is the unique method used in Florida under the Competitive Consultant's Negotiation Act (CCNA) to select Architects, Engineers, Surveyor's and Mapping, and Master Planning Consultants (when used in comprehensive local government infrastructure development plan projects), also known as Professional Services. Cost is not a component of these solicitations. An evaluation team selects at least three top ranked firms and is approved to negotiate a contract, cost and rates. Should negotiations be unsuccessful, with the top firm the team must negotiate with the second ranked firm and so on. Should negotiations be unsuccessful, the team may not negotiate with a firm they dismissed. CCNA applies when construction exceeds \$325,000 or professional services exceed \$35,000. The Request for Qualifications (RFQ) may be used outside of A/E services and a cost/fee schedule may be submitted.

**Examples:**

Environmental Engineers, HVAC Engineers, Structural Engineers, Landscape Architects, Master Planners, Surveying Companies, Building Designers

**What to look for:**

1. Awarding this type of professional service under any other method (IFB, RFP, ITN, Quote) violates Florida Law!
2. Items 1-5 above also apply, especially competition and incumbency.



Statutes: Competitive Consultants Negotiation Act (CCNA) F.S. 287.055, plus all referenced in RFP above.

INVITATIONS TO NEGOTIATE (ITN)

This method is gaining popularity for complex solutions as it is very similar to an RFP, including evaluation criteria and evaluation team, however the agency may shortlist and negotiate specific terms, scope and contract with one *or more* shortlisted firms before award. When several firms are individually negotiating with the agency for the final contract, it provides more incentive to drop unfavorable terms. The process is not quicker than an RFP, but upon award, a final contract has been agreed upon by both parties and is immediately ready to execute!



What to look for: See RFP



Statutes: See RFP

USE OF OTHER GOVERNMENT CONTRACTS (aka PIGGYBACK)

If allowable through Code or Charter, this selection method allows an agency to contract under the same pricing, terms and conditions of a contract that was competed and awarded by another governmental agency. Piggybacking is an efficient sourcing method for low risk, low complexity products and services. Scope or statement of work and specifications must be essentially identical to the original agreement. Subject to legal approval, supplemental terms can be added to address terms specific to the agency, such as governing law, venue and indemnification. F.S. 287.056 authorizes purchases from state contracts by counties, municipalities, colleges or universities.

COOPERATIVE PROCUREMENT

If allowable through Code or Charter, the agency may utilize a contract resulting from a solicitation competed by a national cooperative organization such as Sourcewell (formerly

NJPA), Omnia Partners (former US Communities and National IPA), the Florida Sheriffs Association, or others. These solicitations provide buying power on a state or national scale. They also allow your procurement team to focus on more strategic purchases and maintain efficiency and competition with a smaller staff. As in piggybacks, specific supplemental terms may be added, and a scope or statement of work specific to the agency's project is created which includes details on the specific services needed, location and timeline. If you've heard that cooperative and piggyback purchasing is "lazy", think of how many redundant solicitation processes it saves taxpayers nationwide for common goods and services – with the benefit of national volume pricing!

Methods That Do Not Require Competition:

SOLE SOURCE

This type of source selection does not require competition, because the item is available from only one source, or utilizing other brands may impact warranty or compatibility.



Examples: Software licenses or support may be sole sources due to proprietary nature. Replacement parts for heavy equipment may only be available from the original manufacturer. Defibrillators may be sole sourced (standardized) so unified product training can be provided in the agency. Some agencies publicly post an intent to sole source notification to confirm that there are no other sources.



What to look for: The Department should provide a clear and compelling justification. Vague claims such as "only gold level support provider in Florida" should be questioned!

EMERGENCY PURCHASES

In general, this is authorization granted by the agency's top ranking executive through code or policy to purchase materials or services without competition in order to prevent a disruption of essential operation or condition adversely affecting the safety, health, or security of persons or property. This could be related to damage from any cause, including post disaster recovery. Emergency purchases are presented to elected officials for "ratification" as soon possible after the purchase.



What to look for: A clear and compelling justification provided by the Department.



Tip: Always include your Procurement team in disaster operations planning.

FLORIDA USE LAW

This is a source in the Florida State Use Law Program, Statute 946.515, which allows the State and its political subdivisions to purchase supplies and services from prison/rehabilitative industries (PRIDE) without competitive bidding.

FLORIDA VOCATIONAL REHABILITATION PROGRAM

The Florida State Vocational Rehabilitation Program, Statute 413.036, encourages the State and its political subdivisions to purchase supplies and services from workshops for the blind or severely handicapped without competitive bidding. This includes firms such as Respect or Lighthouse for the Blind.



THINGS TO KNOW ABOUT PUBLIC CONSTRUCTION CONTRACTING

1. **Design-Build** A project delivery method that combines the architectural, engineering, and construction services required for a project into a single procurement and contract. A Guaranteed Maximum Price (GMP) is provided to the agency when design is finalized.
2. **Design-Bid-Build** The most common delivery method for construction where design and construction are sequential under two procurements and two contracts.
3. **Job Order Contracting (JOC)**

This is a specific project delivery method where a consultant provides a catalog of construction line items with unit costs adjusted for regional pricing. Under separate bid, Job Order Contractors are awarded construction contracts over a fixed period. They base project costs on data from the catalogs (also called unit price books) and an agreed coefficient. They concurrently design and build the project with the agency. This method is intended to save time and cost associated with architectural and design consultants, as well as the time to separately bid the individual projects. The Job Order Contractor delivers the project as a task under the terms of the overall job order contract.
4. **Construction Manager (CM)**

The agency contracts with a construction management firm based on qualifications to complete a preliminary project design and bid the construction for an agreed price, plus any changes or amendments.
5. **Construction Manager at Risk (CMAR)**

A Construction Manager hired based on qualifications who provides a Guaranteed Maximum Price (GMP) to the agency when design is finalized. They are considered “at risk,” as the agency does not pay any more than the GMP. Pricing is shared with the agency throughout the project and is value engineered with the architect and agency

involved to contain cost while meeting all design requirements.

Ethics:

Procurement Ethics in Florida

The Code of Ethics for Public Officers and Employees is found in F.S. 112 (Part III). The Code is extremely relevant in procurement activities. Public officials must remain impartial, unbiased and cannot use their position for personal gain. Accepting gifts, favors or special deals is prohibited. You may not do business with your own agency as a supplier. Always disclose any business relationships that create, or could create the perception of a conflict of interest. Perception is reality. Contact your Legal Counsel for guidance.

Terms to Know:

Agency. The state, a state agency, a municipality, a political subdivision, special district or school board or district

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

Bid Bonds

These bonds protect the agency from bidders who are awarded yet fail to enter into a contract after the award. The settlement to the agency is intended to compensate them for the cost to start over and resolicit the requirement. They are usually required when a performance and payment bond or construction bond is required in the solicitation.

Bidders List

A list of pre-registered firms that will be invited by the agency to participate in the solicitation.

Commodity Code

A classification based on product or service type used by the agency to categorize solicitations and purchases, and by the supplier to identify their standard offerings.

Cone of Silence (Lobbying Prohibition)

In Florida, public agencies restrict communications with elected officials and employees during the competitive solicitation process. Typically, from the time a solicitation is advertised, until the governing body approves it, bidders may only communicate with the procurement agent. The purpose of this restriction is to prevent bidders from influencing decision makers during the evaluation and selection process. During this time, beware of conversations at trade shows, phone calls, personal meeting requests and of course any offers of gifts or favors as described in F.S. 112. Any inquiries from Bidders should be directed to the procurement agent.

Cooperative Purchasing. The combining of requirements of two or more public procurement units in order to obtain the benefits of volume purchases and/or reduction in administrative expenses.

Emergency Purchase. A purchase awarded under emergency provisions when it is determined that conditions exist which create a disruption of essential operations or conditions adversely affecting the safety, health or security of persons or property such as may arise by reason of floods, hurricanes, riots, equipment failures, or such other reason .

Firm – any individual, partnership, corporation, association or legal entity.

Performance and Payment Bonds or Construction Bonds

These should be required by the agency before work starts on high risk or pricey projects. They are required under F.S. 255.05 for all projects valued at \$200,000 or more. They provide insurance protection from suppliers that fail to complete the contracted work or fail to pay their subcontractors. The bonding agency will assign a contractor to complete the unfinished work, or compensate the unpaid subcontractors. Without this protection, the agency would be financially responsible for these additional costs.

Procurement Methods The methods used to determine the supplier of goods or services:

Invitation to Quote (ITQ – informal), Invitation to Bid or Invitation for Bids (IFB, ITB), Requests for Proposals (RFP); Request for Qualifications (RFQ); Invitation to Negotiate (ITN); Sole Source; and Emergency Purchases. Also called Solicitation types.

Professional Services. Professional services means professional engineering, architectural, landscape architectural, and registered land surveying services.

Project – an activity as described in the solicitation, advertisement of public notice.

Protest

Is a written objection by a bidder or proposer to the award of a contract, with the intention of overruling the decision.

Protest Bonds

A protest bond protects the agency by compensating them should a protest of an award be overturned. In theory, they are recovering for lost time and administrative cost. F.S. 255.0516 is specific to protests of school board, college and university projects.

Scope of Work A written, detailed description of the services required within the solicitation. A Specification section may also be included.

Sole Source. A purchase awarded without competition when it is determined in writing that there is only one source for the required supply or service or when competitive bidding is either not feasible or advantageous to the agency. A sole source purchase must meet the criteria as permitted by the agency's written policy.

Specification. A description of the physical or functional characteristics or the nature of a supply, service, or construction item; the requirements to be satisfied by a product, material or

process indicating, if appropriate, the procedures to determine whether the requirements are satisfied.

Statement of Work A written, detailed description of the services to be performed in the contract. Includes additional details as determined through the solicitation process, which may include specific roles, responsibilities, means, methods, timelines and progress payments.

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