

CONTRACTS/PROCUREMENT MANAGEMENT PRESENTS

NYS GUIDELINES AND

PROCEDURES FOR

REQUESTING A

CONTRACT



PROCUREMENT AT SUNY DOWNSTATE



- Integrity of the process
- An equal playing field for all vendors
- A clear audit trail
- Meets NYS legal requirements

CONTRACTS

- **Contracts** are used to procure any type of service—including, but not limited to, consulting services, banking services, technology, maintenance agreements on equipment and construction services.
- It is every requestor's duty to adhere to the procurement guidelines, plan appropriately to implement contracts, be accountable to ensuring receipt of contract services, and to track spending on all contracts.

CONTRACTS

There are several things to consider when you want to enter into a contract to procure a service:

- What needs to be **procured**?
- What are the **specifications** or **scope of work**?
- Does the procurement require a **competitive bid**?
- What is the **best procurement vehicle** for this good/service transaction? **Lowest bid, Best Value, Single/Sole Source, Other**?
- What evaluation/award **methodology** will be used?
- What are the steps involved?
- How much **time** will it take?
- What is your **budget**?
- Are there many vendors offering the product? Is there only one optimal choice?
- How many years will this contract be in place? (e.g. **Three year, five years or more**?)
- What is **my role and responsibility**?

WRITING SPECIFICATIONS

- Writing specs is the responsibility of the requesting department
- The Purchasing Division is responsible for reviewing the specs to ensure a proper description of the product or service.
- Vendors preparing formal specifications shall be precluded from bidding on their specifications for that job.
- Specs include what the product can do, must do, and must not do
- Specs must be as detailed as possible and state what is needed clearly, yet not so specific as to limit competition.

CONTRACTS AND PROCUREMENT \$ REQUIREMENTS \$

- **\$0.01-\$10,000 – justification for Vendor Selection - Three verbal or written quotations.**
- **\$10,000- \$20,000 – justification with documentation showing that the price is reasonable and Quarterly Ad in NYS Contract Reporter.**
- **\$15,000 + (S F L) 139 J&K and G-226 Consultant Services**
- **\$20,000.01 – NYSCR, Albany Times & Brooklyn Minority (Competitive Bidding)**
- **\$100,000 – NYSCR, ST220, G-221 Vendor Responsibility, SFL 139 J&K**
- **\$250,000 + .Services, Technology, Real Estate and Revenue Contracts**
- **\$125,000 – Sole/Single Source Procurements to be approved by OSC**
- **\$0 (Zero Dollars) for Workers Compensation and Disability Benefits**

“New” Contract Procurement

- The Governor has signed procurement legislation allowing SUNY to procure certain items without AG and OSC pre-approval. The following changes are effective immediately:
 - 1. OSC and AG approval is **NOT** required for the following contracts regardless of the amount:
 - . Procurement of materials, equipment and supplies (including computer equipment);
 - . Procurement of motor vehicles;
 - . Construction contracts;
 - . Construction-related services contracts such as Architectural or surveying services;
 - . Printing contracts.
 - 2. **All** other Contracts, excluding any of the above, but including those specified below, of an amount exceeding \$250,000.00 and other applicable oversight approval thresholds must be pre-approved by OSC and AG.
 - . Real Estate: Acquisition and disposition of real estate such as real property purchases, deeds, leases, revocable permits etc;
 - . Services: Contracts for services, other than construction related services contracts. Services contracts are those which require the vendor to perform a task or tasks or those for which the bulk of the expenditure on the contracts is for the payment vendor's personnel costs;
 - . Technology: Contracts which involve the vendor's deployment of a technical means or method in providing a solution to SUNY such as the acquisition of computer software systems and products etc;
 - . Revenue contracts;
- Article eleven-B(Contracts with not for profit organizations)

Please note that the foregoing list is not exhaustive and only provides examples of contracts which still require pre-approval

ORDER OF PROCUREMENT REQUIREMENTS

Procurements are made in the following order:

- Preferred Sources
 - Correctional Industries (Corcraft)
 - IBNYS (Industries for the Blind of NYS)
 - NYSID (Industries for the Disabled)
- OGS Centralized Commodity Contracts
- Open Market (Discretionary Buying)
- Competitive Procurements
 - IFB (Invitations for Bid)
 - RFP (Request for Proposal)
 - RFQ (Request for Qualifications)

OGS CONTRACTS

- If the preferred sources cannot provide the commodity meeting the form, function and utility that the agency requires then the agency must then go to the OGS Centralized Contracts. This applies to commodities only.
- If the product on the OGS contract does not meet form, function and utility, the agency must document findings in the Procurement Record.
- OGS or less - If an agency obtains pricing from a vendor through a method prescribed by the SFL, and that product is available from an OGS contract, then the agency must afford the OGS contract vendor the opportunity to match this price.

CONFIRMING ORDERS

Guidelines, OSC Bulletin No.G-195

“A STATE EMPLOYEE WHO DIRECTS A VENDOR TO START PROVIDING GOODS OR SERVICES WITHOUT AN APPROVED CONTRACT MAY BE PERSONALLY LIABLE FOR ANY INDEBTEDNESS THAT IS ULTIMATELY HELD TO BE OWED TO THE CONTRACTOR.”

Contract work should not begin until all necessary approvals are received.

CONFIRMING ORDERS

- **THE POLICY AT DOWNSTATE MEDICAL CENTER STRICTLY PROHIBITS CONFIRMING ORDERS**
- Confirming Orders are goods or services received without a valid purchase order or contract, these transactions are in violation of SUNY Downstate's policy
- In the event a confirming order did occur, the User department must secure the signature of a Senior Vice President or Chief Financial Officer before submitting the requisition to Contract/Procurement Management.

EMERGENCY PROCUREMENT ORDERS

An emergency is defined as an urgent and unexpected event where health and public safety or the conservation of public resources is at risk. A failure to properly and timely plan in advance for a procurement, which then results in a situation in which normal procurement practices cannot be followed, will not constitute an emergency.

In the event of an emergency, the relevant DMC department must immediately alert the Procurement department of the nature of the situation followed by a complete written explanation of the emergent situation.

(If the emergency occurs on off hours, 5pm – 8am, or on the week-end, Saturday or Sunday, the notification to the Procurement department should be the next business day.)

ACCOUNTABILITY OF SERVICE CONTRACTS

STATEMENT ON AUDITING STANDARDS #99

SAS #99:

Misstatements arising from:

- 1 - Fraudulent financial reporting and**
- 2 - Misappropriation of assets**

The auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material, misstatement, whether caused by error or fraud.

ACCOUNTABILITY

- All contracts must be reviewed to ensure the User department is receiving services and products as stipulated in the terms and conditions of the contract
- Invoice **rate** must be verified against Contract **price list**
- Ensure funds are available for all payments
- Maintain a Payment Accountability Grid Sheet
- Track PM performance and retain copies of all Service Reports
- All equipment must receive the required contractual PM (Preventative Maintenance)

USER DEPARTMENT RESPONSIBILITY

1. Select the staff member who will be responsible for managing the contract throughout the term of the contract for payments. In addition, Service Contracts for equipment must be monitored for service calls and approving payments for labor and parts.
2. The appointed person should receive the specifics of the work being done from the Service Technician (including the completed service report showing the rate charged, parts, and materials used, etc.)
3. Maintain the payment Accountability Grid Sheet for all contracts (Service, Consultants, Technology, Software, etc.)
4. Invoice detailing cost must be reviewed and signed off by the appropriate person.
5. Indicate on invoice which departmental account code to charge if encumbrance is tied to multiple account codes.

USER DEPARTMENT RESPONSIBILITY

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6. Ensure funds are available for all payments during the term of the contract. If account **balance is depleted** the User Department is responsible to submit an additional requisition to increase the allocation.

CONTRACT DEPARTMENT'S RESPONSIBILITY

1. Evaluate the most effective way of developing the Service Contract (length of contract, time and material, etc.)
2. Provide User Department and Account Payable Department with the details of the Service Contract (to include scheduled PM, specifics on what is covered, cost, contract period, etc.)
3. Attach a Departmental Payment Accountability Grid Sheet detailing the start-up allocation of funds and space to record payment against the allocation with an ending new balance.

SUMMARY RECOMMENDATION

Develop policies and procedures to ensure all required preventive maintenance is performed on equipment according to the terms of the contract. Ensure these policies and procedures are documented and communicated to staff responsible for verifying preventive maintenance is received. Review preventive maintenance performance, parts replaced, completed service reports in order to validate invoice for payment.

Prevailing Wage Rates

Prevailing Wage Rates are the wages and supplements to be paid and/or provided to laborers, workers and mechanics employed on a public work project.

The minimum wages and supplements that must be paid are listed in the current Prevailing Wage Schedule.

Prevailing Wage Rates

State Law requires that Prevailing Wage Schedules be made part of all contracts between a government entity and a contractor.

The Contracting Agency must provide the prime contractor with a copy of the appropriate prevailing wage schedule.

PRC# - Prevailing Rate Case

The Contracts and Procurement Dept.
Must register all public work projects with
the Department of Labor.

DOL will issue a **PRC #** after the On-line
Prevailing Wage application is completed

www.empire.state.ny.us

Prevailing Wage Rates must be used on any public work project.

Generally, projects for construction, reconstruction or maintenance done on behalf of a public agency (entity) are public work.

In addition, projects for electrical wiring, movers, installation of cabling, etc.

Prevailing Wage

NEW LEGISLATION

OSHA 10- requires that Public Contracts in excess of two hundred fifty thousand dollars (\$250,000) contain a provision that all workers complete a OSHA course in construction safety that is at least 10 hours in duration.

(Effective date: July, 2008)

NYS Certified Minority & Women Owned Business

NYS Executive Law Article 15-A and SUNY policy require all campuses and vendors/contractors with whom they do business, to make a ***good faith effort*** to procure materials, supplies, equipment, and services from NYS certified minority or women owned business (MWBEs) and meet established goals for MWBE participation in contracts.

Also, the procurement process must outline steps to be in compliance with Federal Equal Employment Opportunity Act of 1972.

Supplier Diversity (M/WBE) Requirements

❖ DMC must:

- employ and document a good faith effort;
- require vendors to submit a work plan to be approved by the **DMC** campus, for achieving MWBEs goals established in the contract;
- require vendors to submit compliance reports and other relevant documentation (e.g., books, records, payroll records);
- review vendor and any subcontractor documentation to determine whether the contractor made a good faith effort; and
- when appropriate, grant a partial or total waiver of goal requirements.

BULLETIN NO. G-226

June 19, 2006

Consultant Disclosure Legislation

- The State of New York amended State Finance Law to add a reporting requirement for vendors that provide **consultant services**.
- New York State Finance Law mandates the annual reporting of employment data from vendors that have active consultant services agreements valued above \$15,000 with any New York State agency (including {*SUNY Downstate*}).

CONSULTANT SERVICES

G-226

- New Consultant Contract includes FORM “A”
- State Consultant Services Contractor’s Annual Employment Report (“Form B”) is to be used to report the required information.
 - Number of persons employed
 - Number of hours worked
 - Amount paid to vendor for work performed by employees
- The first required reporting period will be the 2006 – 2007 fiscal year, which ends March 31, 2007. (The State fiscal year April 1st – March 31st)

BAA - BUSINESS ASSOCIATE AGREEMENTS

- The BAA is to ensure that all business associates (BA) enter into an appropriate contract with SUNY Downstate that will provide satisfactory assurance to SUNY Downstate that the BA will appropriately safeguard the protected health information (PHI), in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- A Business Associate is a person who is not a member of SUNY Downstate's workforce who on behalf of SUNY performs or assists in the performance of a function or activity involving the use or disclosure of individually identifiable health information (IIHI).

BAA — CON'T

- All contracts after **April 14th, 2003** must have an appropriate **business associate agreement**.
- The development of the procedure section is the responsibility of the respective department. It is dependent upon the unique needs of each department's operating structure and shall be customized accordingly.
- It is the responsibility of all medical staff members and hospital staff members to comply with this policy. Medical staff members include physicians as well as allied health professionals. Hospital staff members include all employees, medical or other students, trainees, residents, interns, volunteers, consultants, contractors and subcontractors of the hospital.

ADDITIONAL CONTRACT DOCUMENTATION

- Workers Compensation – www.wcb.state.ny.us
- Vendor Responsibility – G-Bulletin 221
- VendRep OnLine System
- Lobbying Law – SFL 139 j & 139 k
- DRA – Deficit Reduction Act of 2005

METHODS of PROCUREMENT

- Competitive Bids
 - RFP (Request for Proposal)
Contracts
 - IFB (Invitation for Bid)
PURCHASE ORDERS
 - RFQ (Request for Qualifications)

METHODS of PROCUREMENT

Quote/Proposal - a non-binding statement of price, terms of sale, and description of goods or services offered by a vendor as a basis for negotiations for entering into a contract.

Bid – a binding price offering that has been submitted in a sealed envelope to prevent dissemination of its contents before the deadline for the submission of all bids.

METHODS of PROCUREMENT

Competitive Bids using IFB

- Invitation for Bids (IFB) is **most typically used** where requirements can be stated and award will be made to the “lowest responsive and responsible bidder”
- Must be used for commodity/printing purchases
- May be used for the purchase of services and technologies

IFB states: “As a requirement to bidding, bidders must attend a site visit.

The word **MUST** indicates a mandatory requirement.

The agency cannot waive the site visit for the incumbent vendor as it was a mandatory requirement.

The site visit was mandatory, therefore, anyone who did not attend the site visit should be rejected as being non-responsive.

METHODS of PROCUREMENT

Competitive Bids using **RFP**

- **Request for Proposals** (RFP) is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and when the method of award is “best value”
- Mostly used for services and technology
- Used for complex procurements
- Bid evaluations completed by User Department and Contracts & Procurement

Sole Source Procurements

- *A procurement in which only one vendor can provide the commodities or services required.*

Single Source Procurements

- *A procurement in which two or more vendors can supply the commodities or services required, the state agency, upon written findings setting forth the material and substantial reasons therefore, may award the contract to one vendor over the other(s).*

SINGLE SOURCE VENDOR JUSTIFICATION

- The state agency shall document:
 - *The circumstances leading to the selection of the vendor, including the alternatives considered;*
 - *Specify unique feature of the vendor's product or service. Describe how the unique features are pertinent to your requirements..*
 - *List other brands or models of the product or service which were considered and an explanation of why they were unacceptable.*
 - *The basis upon which it determined the cost reasonable.*

BIDDERS DEBRIEFINGS

Bid solicitations ***must include*** information advising bidders that a debriefing may be requested by any unsuccessful offerer, within a reasonable time frame after the contract award, regarding the reasons that the proposal or bid submitted by the unsuccessful offerer was not selected for an award.

During the ***debriefing***, you may do one or more of the following :

- Limit the discussion to the reasons why the bid was not successful.
- Discuss the reasons why the winning bid was selected
- Offer advice and guidance to the bidder to improve future bids.

THE CONTRACT TEAM

Maureen Crystal Contract Director

Nicole Small Coordinator 718-270-7270

Jason Weiss Legal Counsel

Herb Goldberg Contract Officer

Howah Hung Contract Officer

Donovan Lorde Contract Buyer

Raquel McBean Contract Assistant

THE CONTRACT TEAM

CONSTRUCTION

Brian McGraw – Director

Dan Devine – Purchase Associate

Frantz Poyau – Purchase Associate

Ray Selvadurai – Purchase Associate

Marvin Smith – Buyer

Lori Durden – Buyer

THE CONTRACT TEAM

FACILITIES

Brian McGraw – Director

Greg Moses – Purchase Associate

Joe Vaccaro – Purchase Associate

Dionne Harper – Buyer

Ken Lee – Buyer

Questions ?

The End