

Meeting the New(?) Procurement Requirements

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Procurement Objectives

- Obtain high quality goods and/or services at lowest price
- Representative of district and program values
- Promote open and fair competition
- Comply with federal, state and local regulations



State and Federal Regulations

- Threshold for competitive process
 - \$87,800 State 2016 (Adjusted Annually)
 - \$150,000 Federal
- Methods of Procurement
- County and District policies



Federal Procurement Requirements

- Title 2, Code of Federal Regulations (2CFR) Part 200, Subtitle A, Chapter II, particularly 200.317-200.326 Contain the requirements and regulations governing funds provided through the National School Lunch Program.

The rules apply to:

1. National School Lunch Program
2. Child and Adult Care Food Program
3. Summer Food Service Program for Children
4. Special Milk Program
5. School Breakfast Program
6. State Administrative Expense (SAE) Program



Procurement Methods


- Micro Purchase (<\$3500) 2 CFR 200.320 (a)
- Small Purchase (>\$3500 and <\$150,000) 2 CFR 200.320 (b)
- Competitive Proposal(RFP) 2 CFR 200.320 (d)
- Sealed Bid (Formal Advertising) 2 CFR 200.320 (c)
- Non Competitive Proposal 2 CFR 200.320 (f)
- Alternate Methods

(A contractual procurement agreement applies to all of the above methods)



Sealed Bid vs. Competitive Proposal

- Award based on price only
- No negotiations allowed
- Quality is not a consideration
- QPL locks bidding agency. Item descriptions required.
- Difficult to determine qualified bidders
- Value does not count
- Leaves district open to legal disputes
- Price is negotiable
- Quality of product or service is considered
- At opening pricing is not necessarily revealed
- Factors other than price carry importance
- Most qualified competitor can be selected
- Awards can be made to a bidder offering a nonconforming product



Piggybacking – To bid or not to bid.....who knows?

- YES..... you can still piggyback (SP 35-2012 & PCC 20118) with some limitations
- Requirements
 - ✓ Piggyback clause
 - ✓ Meets State & Federal guidelines
 - ✓ Documentation and Verification
 - ✓ Can not create a material change

(Counties may have additional restrictions and/or requirements)



Piggybacking – To bid or not to bid.....who knows?

INTERGOVERNMENTAL COOPERATION/PIGGYBACKING

For the term of the contract and any mutually agreed upon extensions pursuant to this Request for Proposal, **at the option of the Contractor**, other school districts proximated within Riverside County may purchase goods and services at the same unit price(s) subject to the same terms and conditions pursuant to the Public Contract Code Section 20118. All potential Contractors are advised that, if all districts elect to utilize this contract, the estimates Average Daily Participation for all districts is in excess of **TBA** breakfasts, **TBA** lunches, **TBA** snacks and **TBA** suppers. Additionally, districts and school sites located in Riverside County span a geographic area of approximately 7,303 square miles. **Acceptance or rejection of this clause will not affect the outcome of this RFP.**

Piggy Back Option Granted _____

Piggy Back Option NOT Granted _____



Procurement Pitfalls

- Limiting Competition
- Bid Splitting
- Conflicts of Interest
 - ✓ Code of Conduct Policy
 - ✓ Quid Pro Quo
- Vague or ambiguous information
- Confidentiality
- Overly Responsive



Contract Types

- Materials and Supplies

3 Years (Current plus two rollover options)

- Service

5 Years (Current plus four rollover options)



Procurement Categories

PRIMARY

- Paper and Non Food
- Fresh Produce
- Dairy
- Bread and Tortillas
- Canned and Dry
- Frozen and Processed Commodities
- Snack and Beverage

SECONDARY

- Equipment
- Direct Delivery
- Pizza or other vended foods
- Repair Services
 - ✓ Public Works > \$1000



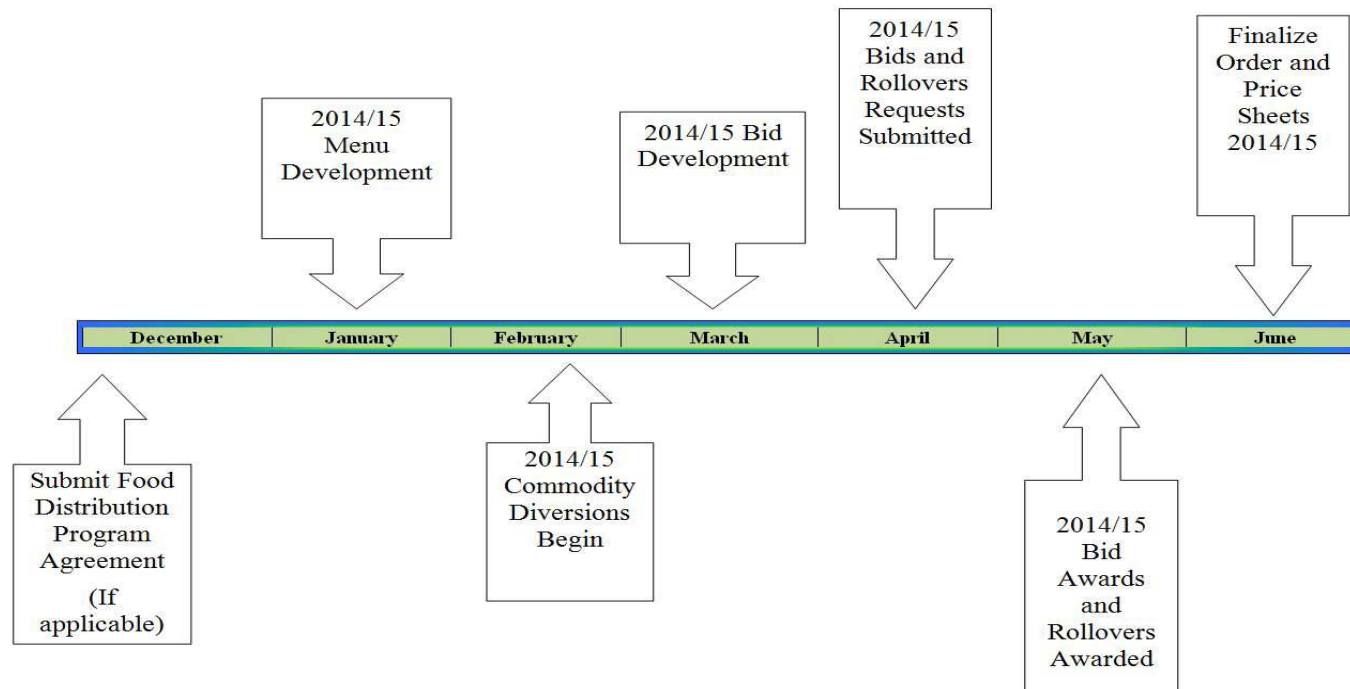
Procurement Planning

- Determining the correct method (Sealed Bid, RFP, etc.)
- Developing core values
- Identifying Key Activities
 - Menu Development
 - Commodity Diversions
 - Product determinations and forecasting
 - Reviewing and Revising procurement documents
- Establishing procurement timeline



Procurement Planning

Food Services Department Procurement Planning Timeline 2014 - 2015



PREPARING THE BID SPECIFICATIONS (AKA BOILERPLATE-WHO, WHEN, WHERE AND HOW)

- Contract length – too short or too long?
- Intent of Procurement Activity/Background Information
- Vendor requirements
- Award criteria
- Ability or NOT to bid alternative brands
- Price escalations and decreases (tied to an index)
- Gas/Fuel/Paper/Packaging Surcharges/Late Charges
- New product additions
- Do I bid everything? (80/20 rule)
- Seamless flow between commodity processed and commercial product
- Allowing or NOT for substituted product


PREPARING THE BID SPECIFICATIONS (AKA BOILERPLATE-WHO, WHEN, WHERE AND HOW)

- Contract Provisions (Buy American, Lobbying Disclosure, Suspension and Debarment, Clean Air/Water Act, Non Collusion Statement)
- Delivery requirements (Time, days, vehicle conditions, dark drops, etc.)
- Contract termination and renewal rights
- Health & Safety requirements
- Audits and Inspections
- Protest procedures
- Record(s) retention
- Ethics statement
- Return of Discounts, Credits and Rebates statement



Food Safety Modernization Act (FSMA) of 2010

- Provides HARPC (Hazard Analysis and Risk Based Prevention Control)
- Applies to Global Food Supply
- Contains 7 Regulations, all required by 5/31/16, specific to:
 - Preventive Control Human Food
 - Preventive Control Animal Food
 - Produce Safety
 - Foreign Suppliers
 - Third Party Certification
 - Sanitary Transportation
 - Intentional Adulteration



Sanitary Transportation-Safe Food Transport Act (SFTA) effective 5/31/2016

- Safety of Food Transportation is now in the hands of FDA, not DOT
- All shippers, carriers, transporters of food with annual revenue over \$500,000
 - Temperature control and tracking of equipment
 - Cleanliness
 - Log of temperature conditions
 - Training
 - Data Retention



How do I get what I want?

Preapproved Brands on a Competitive Sealed Bid

- Brand decisions are made before issue the bid request
- Steps to take:
 1. Write product descriptions
 2. Screen brands for approval with documented evaluation criteria (i.e. student taste test, quality, delivery requirements, etc.)
 3. Notify potential bidders of screening results
 4. Allow potential bidders to submit additional brands if original was rejected (can be included as part of the issued bid document)
 5. Issue the bid request to potential bidders



What Should a Well Written Food Specification Include? (this will answer the ‘What’ of your document)

- Description of the product, brand possibly
- Minimum and maximum size & pieces; edible serving size
- Main Ingredient(s)
- Prohibited ingredients
- Nutritional Standards
- Meal Pattern Requirements
- Unit on which award is made
- Quality Indicators-Grade
- Product bid: Distributors’ Choice; Manufacturer’s Brand; Private Label
- Anticipated quantities

Vendor must be excluded from bidding on products when specifications are drafted by vendor



What Should a Well Written Equipment Specification Include?

- Description of the product, brand possibly
- Method of Power: Gas, Electric, Propane
- Water line connection
- Doors: Single; double; open left/right/top/down?
- Measurements or Opening to existing space
- Installation required?
- Any facility preparation needed: added power, water line?
- Does old equipment need to be hauled away?
- Is warranty included? Need to be added?
- Unit on which award is made
- Quality Indicators-Grade of stainless



Contract Pricing

- Fixed Price Contract and Maximum Allowable Costs
 - Price is firm or can be adjustable during term
- Cost Plus Percentage of Cost
 - Unallowable
- Cost Plus Fixed Fee
 - Expressed as Dollar or Percentage*
 - Cost fixed for term of contract
 - Ceiling or limits established



Contract Pricing

- Cost Reimbursable
 - Typically applied to Food Management Company contracts



Pricing Considerations

- Percent Mark Up Versus Margin

1) 20.00×1.10 (10% Markup) = \$22.00

2) $20.00 \div .90$ (10% Margin) = \$22.22

- Applying Mark Up to Net Off Invoice – Before or After

1) $20.00 - 3.50$ (Commodity Value) = \$16.50

$\$16.50 \times 1.10 = \underline{\$18.15}$

2) $20.00 \times 1.10 = \$22.00$

$\$22.00 - 3.50$ (Commodity Value) = \$18.50



Contract Award – Who is the winner(s)?

- Open bids
- Evaluate bids
- Award Bids
- Award Types
 - ✓ Line Item
 - ✓ All or Nothing (Prime Vendor)
 - ✓ Market Basket Award



Contract Administration –

Are they doing what they said they would?

- Verifying Contract Pricing versus Actual Invoices
 - ✓ Pricing Guide
 - ✓ Evaluation of return of rebates, discounts and credits
- Verifying Correct Commodity Pass Thru Values
 - Manufacturer Information (SEPDS)
 - Cooperative Website
- Delivery
 - ✓ Match what was ordered
 - ✓ Appropriate quality
 - ✓ On time and when expected



Multiple Vendor MYTHS

- Multiple Vendors increase competition
- There's money savings using multiple vendors
- In a crisis, multiple vendors provide security
- I am invincible and vendors will still want to do business with me, regardless of what I do



Are There Unseen Costs in the Lowest Price?

“When you buy on price alone, you never can be sure. It is unwise, of course, to pay too much. But it is much worse to pay too little. When you pay too much, you lose a little money, that’s all; but when you pay too little, you sometimes lose everything, because what you bought does not do the thing it was bought to do.”

~Dan Stiff, How to Sell the Brand

What Would Help Industry?

- Review and Update Your Bids Each Year
- Are your 'Conditions' Realistic
- Please allow ample TIME to process your bid
- TALK to us...we can provide insight that might save you money
- Commodities vs. Commercial Product
- Bid Timelines-bid period and bid duration
- The 11th Commandment - HONOR THY BID!

What Would Help Districts?

- Make sure you read and understand what we are looking for
- Pricing is important, but don't discount customer service
- Be realistic and forthright, don't over promise and under deliver.
- TALK to us...we hate surprises! If somethings not clear.....ask.
- Our needs are simple.....right product, good price, and when we need it. Help us achieve that.
- Provide supporting information that will help us in the evaluation
- The 11th Commandment - HONOR THY BID!



Resources

- Electronic Code of Federal Regulations

http://www.ecfr.gov/cgi-bin/text-idx?SID=fbda49c6c55b3252e3c58c4732c8c85f&mc=true&node=sg2.1.200_1316.sg3&rgn=div7

- California Department of Education

<http://www.cde.ca.gov/ls/nu/>

- USDA

http://www.fns.usda.gov/cnd/F2S/f2s-local_procurement.htm

- EPLS (New website)

<https://www.sam.gov/portal/public/SAM/>



Resources

- National Food Service Management Institute: Procurement in the 21st Century Instructors Manual
<http://www.nfsmi.org/documentlibraryfiles/PDF/20151009032945.pdf>
- Competitive Bidding and Public Contracting, June 2014
<http://www.ocde.us/LegalServices/Documents/Competitive-Bidding-Workbook-June-2014.pdf>
- California Codes
<http://www.leginfo.ca.gov/calaw.html>

Thank You!