



Session Code: CF

## **Purchasing Services in the Public Sector**

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# PURCHASING OF SERVICES IN THE PUBLIC SECTOR

By :

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“To Bid or Not to Bid...”

That is the question...

Professional Services :

Doctors

Lawyers

Architects

Engineers

Generally ARE NOT BID...but are competitively negotiated.

Sometimes delineated by Statute

Sometimes determined by policy

# To Bid or Not to Bid... (cont.)

Other services such as

Consultants            Educators            Arbitrators

Temporary Workers    Janitors

Generally are Biddable...

by Invitation to Bid

by Request for Proposal

by Request for Quotation

Method determined by :

Statute                    Policy                    Dollar Amount

Availability            Political Considerations

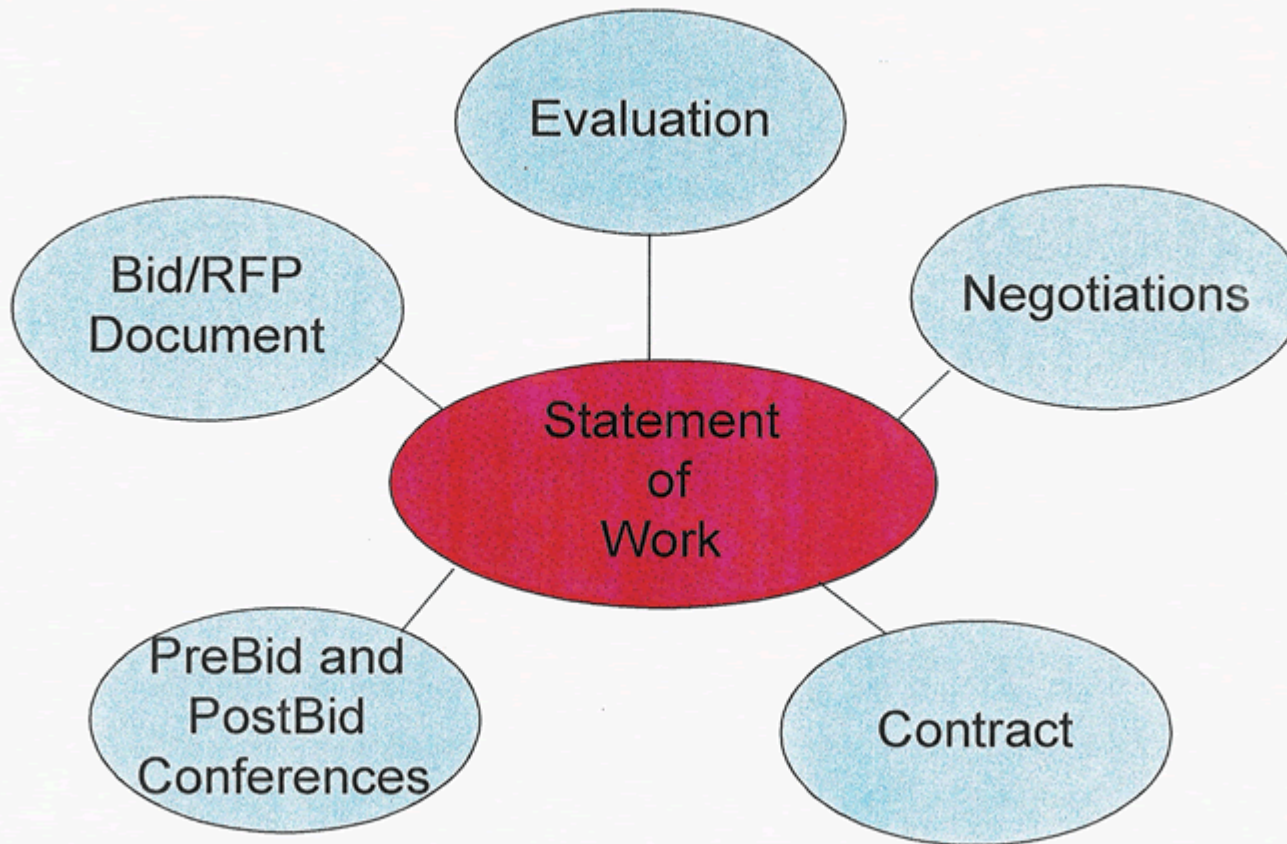
# Four Major Components to the Purchasing of Services :

Clear, complete specifications –”Statement of Work”...with appropriate remedies for non-performance.

Take full advantage of competitive marketplace that exists for most services.

Make selected contractor(s) aware that good performance will be expected and demanded.

Proactive contract administration throughout the life of the contract.



J.L. Balentine - Washoe County - 1996

# The Statement of Work...

Do's and Don'ts

## Do :

Use simple language and short sentences. Use active verbs. Avoid “Legaleese”.

Use mandatory language when stating a work requirement, i.e. “shall”; “will”; “must”.

Describe specifically the supplier’s obligations.

Describe fully the extent of the requirement or the minimum / maximum acceptable.

## Do (cont.) :

Include only necessary, essential requirements.

Be consistent. Use the same descriptive terminology throughout all of the documents.

Write in a manner that encourages competition.

Avoid unnecessarily restrictive requirements.

Avoid proprietary requirements.

Avoid “jargon”.

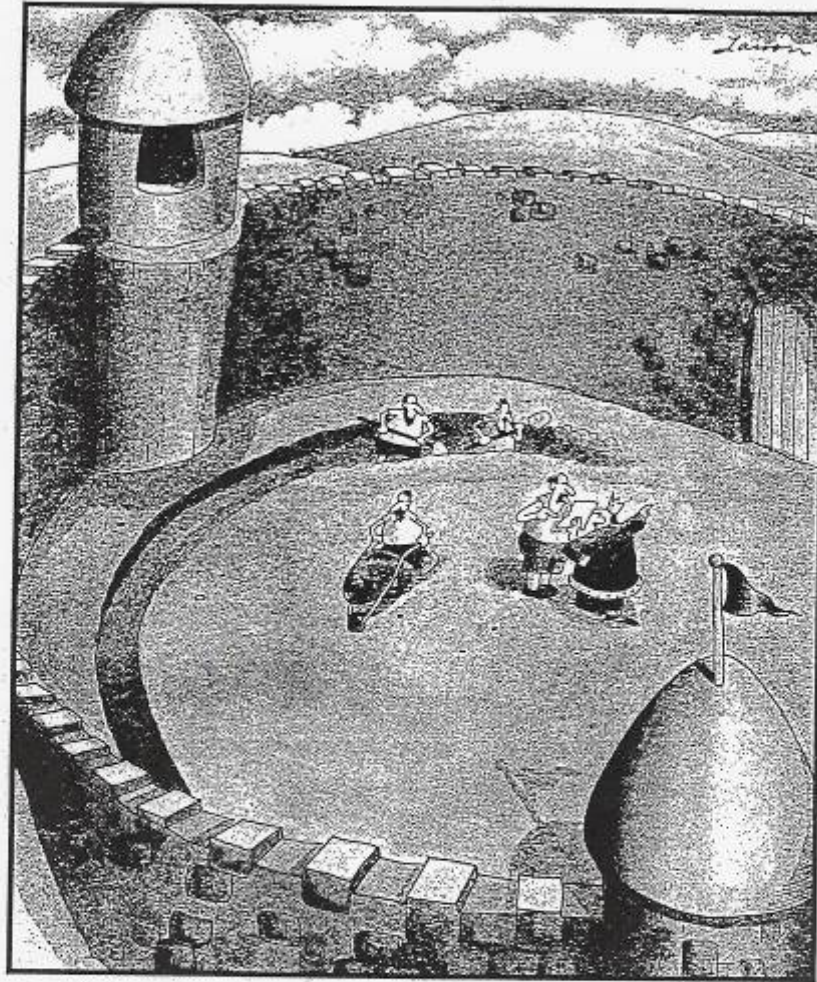
# Don't :

Use ambiguous words and statements with multiple meanings. i.e. “adequate”; “good”; “as required”; “to the extent necessary”.

Expect a supplier to infer requirements. They may not be included in their response. Be thorough.

Repeat requirements described in other documents, drawings, illustrations, diagrams or attachments...reference them.

Tell the supplier(s) how to do the work. Doing so relieves the supplier of responsibility for the results (Design Specification).



Suddenly, a heated exchange took place between the king and the moat contractor.

# Terms to Avoid :

Workman like manner...Timely manner...

Thorough...Good...As soon as possible...

Approximately...Adequate...As necessary...

To the extent necessary...As required...

As applicable...Appropriate...and / or...

# Preventative Medicine...

## Clauses that Prevent Trouble

Control the Responses : Unnecessarily elaborate responses beyond that sufficient to present a complete and effective response to the solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Unless specifically requested in the solicitation, elaborate art work, corporate brochures, lengthy narratives, expensive paper, specialized binding and other extraneous presentation materials are neither necessary nor desired.

# Preventative Medicine...

## Clauses that Prevent Trouble

### Faulty Information to Prospective Bidders:

Representations: If any questions or responses require revisions to the solicitation as originally published, such revisions will be by formal amendment only. If the solicitation includes a contact person for technical information, offerors are cautioned that any oral or written representations made by this or any person that appears to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written amendment to this solicitation issued by the purchasing office. For determination as to whether any representation made requires that an amendment be issued, contact the purchasing office.

# Preventive Medicine...

## Clauses that Prevent Trouble

Copyright: The contractor shall irrevocably transfer, assign, set over, and convey to the...all rights, title and interest, including the sole exclusive and complete copyright interest in any and all copyrightable works created pursuant to this contract. The Contractor further agrees to execute such documents as the ...may request to effect such transfer or assignment. Further, the Contractor agrees that the rights granted to the ...by this paragraph are irrevocable. The Contractor's remedy in the event of termination of, or dispute over, any agreement entered into as a result of this solicitation shall not include any right to rescind, terminate, or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of any agreement entered into as a result of this solicitation shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this paragraph.

# Preventive Medicine...

## Clauses that Prevent Trouble

Corrections to Work Produced :

Report Standards : Reports or written materials prepared by the Contractor in response to the requirements of this contract, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved, in advance, by the Project Officer and shall be submitted in draft form for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, correcting spelling errors or other revisions required to bring the report or written materials into compliance with the contract requirements shall be borne by the contractor.

# Pitfalls to Avoid :

- Consultants charging billable hours and fees without a measurement of progress toward the goal(s) of their contract.
- Assignment of new and / or untrained persons to the contract, thus degrading the quality of the service(s).
- Not verifying the amount(s) due under revenue generating contracts.
- Substitution of specified products with lower quality, less expensive products.

Will be avoided by a structured (Pro-Active) approach to contract administration

# Pitfalls to Avoid :

- Don't get entangled in long term contracts. Rapidly changing technologies argue for shorter contract periods. Long term contracts may act as a disincentive for good service.
- Have Definitive Measurements for Success. Set clear and concise “Performance Measures” in the contract.
- Set up a well-defined “problem resolution” structure in the contract.

# Pitfalls to Avoid :

- Don't let your responsibilities conflict with those of the contractor. Delineate specific responsibilities in the "Statement of Work" in the contract
- Do not attempt to retain control of *how* the particulars are carried out...LET GO ! Let the contractor(s) do what they do best. Your job becomes to measure and evaluate the outcome(s).

# Pitfalls to Avoid :

- Select a contractor with a proven track record. Don't be “taken in” by an alluringly low price.
- Be sure that the contracting company is stable, adequately funded and well managed.
- Check references thoroughly.
- Do not assume that the contractor has all of the answers. Find out for yourself. Ask questions !

# Problem Areas...

## General

- **APPLICABLE LAW** : Enforcement and interpretation may be according to the laws and in the courts of another state.
- **ARBITRATION** : A clause may require contract disputes to be submitted for arbitration. This procedure could deny the governing body its right to settle contract disputes without third-party intervention.
- **TERMINATION** : Renewal or termination clauses may be included that conflict with the solicitation document or which allow the contractor to terminate at its convenience or with a too short notice.

# Problem Areas...

## Liability

- **INDEMINIFICATION** : The local government may be required to indemnify the contractor for acts or omissions of the local government, pay attorney's fees, costs of collection, reimburse expenses or pay damages to the contractor for cancellation of termination by the local government, even if the termination was the result of an action of the contractor.

# Problem Areas...

## Liability (cont.)

- **INSURANCE** : The contract may require that the local government purchase “builder’s risk”, “contractor’s liability” or other insurance at its own expense, instead of having it provided by the contractor.
- **LIMITED LIABILITY** : The contract may limit the contractor’s exposure to liability for damages directly caused by the contractor.

# Problem Areas...

## Liability (cont.)

- **LIMITATION OF LIABILITY (cont.) :**

The contractor's liability for damages could be lower than acceptable. Some provisions may prohibit consequential damages of any kind, however caused.

Other clauses may limit the total financial liability of the contractor to an amount equivalent only to the dollar value of the contract.

Calvin and Hobbes/by Bill Watterson



# Five Point Approach to Structured (Pro-Active) Contract Administration

1. Each contract should have a designated “contract administrator”.

A Purchasing Department employee

or

An employee of the principal contract  
user

# Five Point Approach (cont.)...

2. Clearly delineate the duties and responsibilities of the contract administrator... Sample of duties :

Obtain specific knowledge of the contract and performance requirements.

Develop a specific “contract administration plan” for the contract.

Include :

- Post award conference

- Performance checklists with clear and concise “performance measures”

- List of deliverables with due dates

- Inspections and / or surveys

- Follow-up procedures for non-compliance with a well-defined “problem resolution” structure

- Periodic progress review meetings

- Closeout / termination process and procedures

- Final Evaluation(s)

# Five Point Approach (cont.)

3. Be pro-active. A reactive or passive, (“by exception”) approach will only tempt contractors to “cut corners” or employ other “cost saving” efforts which will have a negative effect on contract performance.

Be prepared to :

Maintain working files

Documentation of actions

Review contract changes (Change Orders)

Coordinate required audits

Provide progress and performance reports

Provide required information for contract renewal, close-out or termination

# Five Point Approach (cont.)

4. Ensure good communications throughout the life of the contract...

- Be open

- Be positive

- Ask questions (then LISTEN to the answers)

- Respond to questions and requests for action(s) in a timely manner

- Be persistent with follow-up

## Five Point Approach (cont.)

5. Be prepared to participate in the contract renewal, close-out / rebid or termination decision.



# Pro-Active Contract Administration...

Prevents problems from developing.

Improves or optimizes contractor performance.

Results in synergism throughout the contract performance period.

**Thank You !**