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NYS Public Schools and BOCES Purchasing

Presented by: Karen Beck, MBA & John Flynn, NIGP-CPP, CPPO, CPPB

Authored By: Lorraine Hein, NIGP-CPP, CPPB & Laurie Conley, CPPB



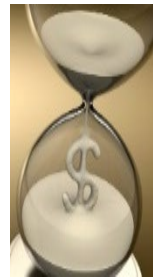
May 4 & 5, 2022



The Magical World of Procurement

Program Topics

- Purchasing Rules for NY School Districts and BOCES may vary from Local Governments but there are a lot of practices and procedures that are the same.
- Learn about BOCES, formal bidding, including planning, advertising, terms and conditions, specifications, legal requirements and more.
- We will also cover some of the challenges you face such as emergencies, sole source, and protests.
- This is the right place to ask all of your questions





**You are value-
driven
magicians...**

What is a BOCES?



Statutory Authorization

- Education Law Section 1950 established Boards of Cooperative Educational Services (BOCES) "for the purpose of carrying out a program of shared educational services in the schools of the supervisory district..." (1950, (1)). At the request of component school districts and with the approval of the Commissioner of Education, educational services may be provided by BOCES on a cooperative basis (Education Law, Section 1950, (4) (d)).

Requirements of Law and Regulation

- Each service must be provided on a cooperative basis.
- Services must be provided at the request of component school districts.
- BOCES services are considered an arm of the local school district to supplement, advise and support the activities and services operated by districts.
- Component districts (users) should be directly involved in the planning and decision making leading to the establishment and operation of shared service programs.
- A new service should be initiated on the basis of established need, after component districts have indicated interest in, acceptance of and commitment to support the service.

Policy Requirement Highlights

- When a Program is so specialized and the district lacks the facilities or staff, operation by BOCES will result in a lower total cost to the district
- Operation by BOCES will result in improved service to pupils
- BOCES must meet all the applicable requirements Education Law and must offer a response to a formal request by one or more eligible recipients
- Each service is approved for one year only and acted on annually by the Office of the District Superintendents and BOCES with advice from appropriate program units as needed.

BOCES Services - No Aid

The BOCES may request approval of services for which no BOCES aid is claimed. To be approved, such service shall:

- A. Meet all applicable requirements of the Education Law and requirements.
- B. Be part of a program of services created in response to a formal request by one or more eligible recipients; and
- C. Be more effective than services provided by an individual component or other eligible recipient.

BOCES Aid

- A. Each aided service must be operated on a shared basis.
- B. To justify approval for BOCES aid, services provided must meet or exceed instructional or budgetary standards.
- C. Services provided by itinerant or other district-based personnel must meet the following criteria to be eligible for aid:
 - i. A single district is limited to aid on three-fifths (60 percent) of a person's time.
 - ii. The program must be shared by two or more districts or a district and BOCES.
 - iii. Any exception to sharing of staff by two or more districts or a district and BOCES requires submission of a rationale for BOCES providing the service, and special approval, based on the rationale.
 - iv. BOCES staff provided to districts on an itinerant basis are to:
 - Be certified; and/or
 - Possesses training/experience not easily duplicated; and/or
 - Be used as coordinators or managers

BOCES Aid

D. If a district receives more than 60 percent of a central or area service, the circumstances will be reviewed on a case-by-case basis.

E. Aid on BOCES services is authorized by an approved, aided service application (CO-SER) for service to component districts.

1. Cross Contract

F. Contract with public agencies & Independent Colleges (may only be done with prior approval from the State Education Department and require submission of a rationale by the District Superintendent)

G. Use of consultants

H. BOCES services which have as a primary purpose the provision of equipment or supplies for district use

I. BOCES services which provide equipment or supplies for district use in support of a service

J. Pilot activities to one district

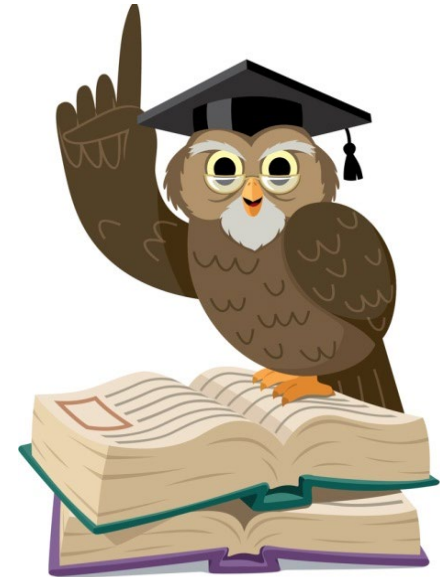




To justify approval for BOCES aid, services provided must meet or exceed instructional or budgetary standards. It is particularly important that teachers & other professional employees of BOCES be subject to the same requirements for certification as if they were employed by school districts. Also, physical facilities essential to providing a satisfactory environment for the proposed service must be available & meet Department standards & requirements.

Purchasing from Beginner to Intermediate – Today's Agenda

- Nature of Purchasing Function
- Procurement Objectives
- Formal Bidding
- Public Works
- Elements of a Bid
- Bid Specifications
- Uniform Federal Guidance
- Awarding Contracts
- Exceptions to Bidding
- Problems/Issues
- GML 104b
- Purchas Orders
- Purchasing Manual
- Questions



Nature of Purchasing Function

- To ensure the purchase of goods and services are procured efficiently, in accordance with General Municipal Law; Purchasing Guidelines; Policies, etc. and at the best cost available (or Best Value)
- To prepare bids, RFPs and quotes. Process requisitions for necessary goods and services ensuring proper backup documentation is included for auditing purposes
- Source supplies and services for your municipality
- Manage relationships within your municipality and with vendors
- To furnish members of management with timely information and to advise them about how market conditions and trends that may affect bids and pricing. Provide Usage and Cost Containment figures



Procurement Objectives

- Prevent favoritism, improvidence, extravagance, fraud and corruption
- Foster honest competition; get best goods or services at lowest price
- Right Quality/Quantity/Source/Price
- Purpose is to protect public monies
- **Focus: Benefit Taxpayers, NOT Bidders**





Things
**Magically
Appear**

Formal Bidding

- Formal bids and competitive bidding are terms that are used to describe the competitive sealed bidding process.
- No matter what term you use, competitive bidding is a statutory requirement in New York State and a standard method of procurement.
- Formal bidding is required by General Municipal Law 103 when purchases of a single commodity, or “like” commodities, can reasonably be expected in the aggregate amount to exceed \$20,000, or when the aggregate amount to be spent on a single public works contract will exceed \$35,000 in the 12 months from the date of the purchase.
- “Like” commodities are those items of a substantially similar nature, which may be handled by one or more vendors (e.g., cleaning supplies, office supplies) and should be grouped together for the purpose of determining whether you will exceed the \$20,000 bidding threshold.

Public Works - Article 8 of the Labor Law

- The Department of Labor, Bureau of Public Work administers Article 8 and Article 9 of the New York State Labor Law. Article 8 covers the payment of prevailing wages and supplements on public construction jobs and projects.
- Article 8 applies to projects for construction or reconstruction done on behalf of a public agency (entity).



Article 8 of the Labor Law

1. Covers New Construction, Re-Construction, Repair and Maintenance
2. Agency/Owner must request wage schedule prior to offering
3. No dollar limit on the work to be done
4. Collection of “certified payrolls” is Mandatory by Law
5. Review of payrolls mandatory by law
6. Certified Payroll collections are tied to payment “no certified payrolls, DON'T PAY”
7. Agency/Owner must name person in charge of collection of certified payrolls

Article 9 of the Labor Law

1. Applies to building service contracts involving the following:
 - a. **the care or maintenance** of an existing building,
 - b. **the transportation of office furniture** or equipment to or from such a building,
 - c. **the transportation and delivery** of fossil fuel to such a building, or
 - d. **for a contractor under a contract** with a public agency for more than \$1,500 to furnish services through the use of building service employees.
2. Agency/Owner must request wage schedule prior to offering
3. \$1,500.00 or more on each offering
4. No collection of certified payroll is required

- NOTE: Only certain work is covered.

Elements of a Bid

- Planning
- Preparation: Working with departmental heads to build specifications
- Advertising
- Bid Security
- Specifications
- General Terms and Conditions
- Prevailing Wage
- Submission of Bids



Elements of a Bid

- Late Bids
- Modification and Withdrawal of Bids: Clerical mistake & withdrawal
- Only one bid received
- Analysis
- Evaluation (responsive & responsible bidder)
- Negotiation
- Recommendation to your governing body (Board)
- Award and Non-Award Letters



Bid Specifications



- Preparing: Include general terms and conditions suitable to your municipality and within the law. Provide specification standard, allowing vendors supplying equivalent items/work to compete on an equal basis.
- Municipalities have broad discretion to prepare reasonable standards and requirements.
- Specifications must describe in precise terms the basis upon which the contract will be awarded, state the nature of the goods or services as definitively as practicable, and contain all the information necessary to enable vendors to prepare their bid submission.
- Standardization - Unless you have a current standardization resolution on file you must accept and consider equals. – even with Standardization, a bid must be prepared.

Impermissible Specifications – Equally as Important!!

- Do not favor award to a particular bidder
- Do not allow unduly restrictive specifications that may shut out competition, permit advantage
- Be aware that any specification excluding certifications and license requirements, etc. must be based upon a rational basis and not considered arbitrary
- Do not be vague/indefinite. Bidders must have enough proper information to submit a valid bid
- Example of a restrictive specification:

Requiring bidders supplying blacktop to have plant in boundaries of municipality –local preferences



GML 103-g Iranian Energy Sector Divestment

- All bids and RFPs must contain the statement of non-investment in the Iranian energy sector
- A signed affirmation must be provided by each proposer/bidder
- Effective April 12, 2012

NY State Finance Law § 139-L (Sexual Harassment)

- Effective January 1, 2019, each state contractor shall be required to submit a certification with all bids, under penalty of perjury, that the bidder has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment training to all of its employees.
- The sexual harassment policy and annual training must meet the newly imposed requirements under section 201-g of the New York State Labor Law. Any bid that does not meet this requirement will not be considered. It is in the discretion of the state department or agency to require the certification of contracts for services that are not subject to competitive bidding.

NY State Finance Law § 139-L (Sexual Harassment)

- The following is an excerpt from the law of what is required: “By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.”

Part 121 of the Commissioner's Regulation & Section 3 of Education Law 2-d

- 2014 introduced and working with it; Jan 2019 Board of Regents Updated
- By July 1st 2020– Board needs to adopt and post a policy on data security and privacy policy that includes adherence to the NIST cybersecurity framework to protect PII . Educational agencies must ensure PII is not included in public reports or other documents.

Part 121 of the Commissioner's Regulation & Section 3 of Education Law 2-d

- Parents Bill of Rights – 5 things included –
 - Data will not be sold and will not be released for commercial purposes
 - Inspecting Record – right to review child's education record
 - Data is protected – by law and safeguards must be in place
 - NYSED Collected data – link to department listing of collected data elements
 - Breach Complaint – contact person for parents
- Educational Agencies are required to post information about third-party contracts on the agency's website with the Bill of Rights.
- Need local contact listed on Parents Bill of Rights on website

Uniform Federal Guidance

- The Uniformed Federal Guidance are the guidelines to follow for procurement involving federal grants.
- The Federal Government established one guidance consistent to all federal agencies and the grants provided.
- The guidance is centered around Internal Controls.
- CFR Part 200 (subparts A-F) “Uniform Administrative Requirements, Cost Principals, and Audit Requirements for Federal Awards.”

Uniform Federal Guidance

- What are Procurement's Responsibilities:
 - Non-Federal entities will need to exercise judgment in determining the most appropriate and cost-effective internal control in each circumstance.
 - Non-Federal entities must make changes to the entity-wide policies (i.e., procurement policies and systems)
 - Read the grant documents to be sure you follow any listed requirements.

Awarding a Contract

- A Bid is an offer, binding until withdrawn, rejected or accepted within 45 days of opening (you MAY ask that the vendor hold offer longer)
- Lowest bid does not = entitlement to award
- Contract award creates binding contract per specifications; not the bid received



Award to Lowest Responsive, Responsible Bidder after Advertisement for Sealed Bids

- **Responsive (BID)**: complies in all material respects with terms, conditions, and specifications of the bid documents
- **Responsible (BIDDER)**: must demonstrate the ability to perform successfully under the terms of the proposed contract, taking into account technical and financial capability, and previous work history

Problems/Issues

- Late bid
- Identical Bids?
- Sole bidder?
- Post-bid modifications or negotiations
- Rejecting low bidder
- Responsibility is an elastic word encompassing financial ability to complete contract, accountability, reliability, skill, sufficiency of capital resources, judgment, integrity and moral worth
- Finding of non-responsibility does not authorize awarding body to prospectively debar or suspend contractors from future contracts
- Bid Mistake and Withdrawal
- Rejection and re-advertisement with a rational basis, cannot be arbitrary and capricious

Protests – How to Avoid Them

- AVOID using vendor specifications
 - Use accurate specifications that are not restrictive to any one vendor
 - Look at different manufacturer specifications
- **Be Consistent In Your Treatment Of Vendors**
 - Don't play favorites
 - Don't change your rules after the bids are opened
 - Be consistent with your process and have written procedures
 - Reject any sealed bid delivered after the deadline



Exceptions to Bidding

- True Leases - Exception School Districts
- Professional Services
- State/County or other political subdivision contracts
- Federal and State Surplus
- Preferred Sources were established by State Finance Law §162
- **Preferred sources consist of the following:**
 - ❖ Corcraft – NYS Dept. of Corrections and Community Supervision
www.corcraft.org
 - ❖ NYS Preferred Program for People who are Blind (NYSPSP)
www.nyspsp.org
 - ❖ Industries for the Disabled (NYSID) www.nysid.org



Exceptions to Bidding

- Sole Source - Program often confuses sole source with single source.
- Municipal Cooperation
- Emergencies
 - Suspend requirements if accident or unforeseen occurrence
 - Circumstances must affect public buildings/property or the life, health, safety or property of residents
 - Situation requires immediate action which cannot wait for bidding

YOU CANNOT CREATE AN EMERGENCY!!

An emergency must be "declared " and reported to your Board by the Department head in which the emergency occurred and/or a designated person within your municipality



Exceptions to Bidding

- GSA Contracts –Only contracts that are currently approved for use by school districts and BOCES are IT Schedule 70 and Security Services and Systems Schedule 84
- Other New York State agency contracts where the language is included in the original bid specifications to allow other government entities to utilize the bid
- GML103, Section 16 – Piggybacking Legislation
- **Cooperative & Piggybacking Contracts**

General Municipal Law 104b

- What is it?
 - Section 104-b of the General Municipal Law requires municipalities to adopt internal policies and procedures governing all purchases of supplies and services not required to be competitively bid under General Municipal Law Section 103
- As of January of 2009 you must identify the individual responsible, and title, that does the purchasing for your municipality
- These policies and procedures shall contain the following provisions:
 - Describe the procedures for determining whether a procurement is subject to competitive bidding and, if it is not, document the basis for such a determination
 - When competitive bidding is not required by law, alternative proposals or quotations will be secured by requests for proposals, written or verbal quotations



General Municipal Law 104b Provisions

- Set forth the method of procurement that will be used
- Require adequate documentation
- If a contract is awarded to other than the lowest responsible dollar offeror, require justification and documentation of the reasons for such award
- Set forth any circumstances when, or the types of procurements for which, the solicitation of alternative proposals or quotations will not be in the best interest of the municipality. The governing board must solicit comments on the policies and procedures from officers involved in the procurement process and annually review its policies and procedures
- This should be part of your Purchasing Policy and Procedures Manual



Purchase Orders – Multiple Types

- Standard Purchase Orders – Itemized, supporting documentation attached.
- Blanket Purchase Orders are normally associated with Open or Anticipated Purchase Orders - Not a one time purchase
- Estimated Expenses – Estimated cost that will be paid throughout the year such as monthly utilities, postage, etc.
- Annual Expenses – Fixed amounts, such as networked copiers, subscriptions, memberships, etc. There is not always a bid involved.
- Emergency Purchase Orders
- Confirming Purchase Orders



Cooperative Contracts: What to Consider?

- 1) That bids are solicited competitively by a government agency through a public solicitation process like advertising in official newspapers or websites, etc.
- 2) That bids are sealed to guard against fraud, favoritism or collusion.
- 3) That bid specifications must be fair/open and not skewed toward particular vendors (i.e., that the system fosters open competition).
- 4) That the bid is awarded to the lowest bidder or best offeror and that there is no process in which other bidders who are not the lowest bidders or the best offeror are "encouraged" to drop their prices for purposes of being awarded the bid.



Best Value

Best value" means the basis for awarding purchase contracts to the offeror which optimizes quality, cost and efficiency, among responsive and responsible offerors. The term "purchase contract" includes contracts for service work but excludes contracts necessary for the completion of a public works contract covered by the prevailing wage provisions of Article 8 of the Labor Law, such as for building construction



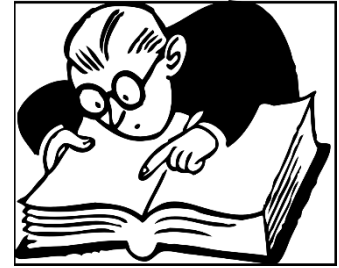
Such basis shall reflect, wherever possible, objective and quantifiable analysis.

Such basis may also identify a quantitative factor for offerors that are small businesses or certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of section three hundred ten of the executive law to be used in evaluation of offers for awarding of contracts for services.

State Finance Law, Section 163.1(J)

What Should Be Included in Your Purchasing Manual?

EVERYTHING!



- If it involves any aspect of purchasing that your department is responsible for, it should be covered in your Purchasing Manual.
- This can include both your internal or external customers.
- A complete list of all internal policies and procedures describing how all goods and services are procured. Address items that do not require competitive bidding as well as the bidding thresholds and RFP requirements for items that do require a competitive process.
- Included in your internal policies should be a list of who is responsible for what portions of supplying specifications, to whom and at what point in the process.

What is Required?

- A copy or reference to the resolution that has been adopted by your governing Board accepting the Purchasing Manual. (check with your Business official)
- This resolution must be done on an annual basis. WHY?
- A complete list of all internal policies describing how all goods and services not covered under GML 103 are to be acquired.
- A description of the process to determine if a particular purchase or service is required to be competitively bid.
- A copy of GML 104b explaining all of its requirements

Other Info to Include

1. All necessary Telephone numbers and addresses required for contacting your Purchasing Department.
2. A description of your mission.
3. A section informing your entity to purchase all goods and services by any means legally available within New York State. (Piggybacking, OGS, Cooperatives, County contracts, etc.)
4. A description of the difference between quotes, sealed bids, RFP's, how each works and when each should be used.



Other Info to Include

5. A schedule indicating what type of solicitation is used, when and who does it.
6. A complete description of the bidding process from request of goods or services to the completion of the of the resulting Purchase Order.
7. A timeline for how long people need to allow for bids, quotes, etc.
8. A description of emergencies, requisitions, purchase orders, blankets, sole sources, standardization, preferred sources and prevailing wages etc. what each is, when it applies and when it doesn't.



Thank You for Attending!

Any questions contact the authors of this presentation:

- Lorraine Hein, NIGP-CPP, CPPB, lhein@wsboces.org
- Laurie Conley, CPPB, lconley@esboces.org
- Karen Beck, MBA, kbeck@nscsd.org
- John Flynn, NIGP-CPP, CPPO, CPPB, john.flynn.sampo@gmail.com

