

Education Law Certification



Procurement and Bid Protests

Introduction

- Procurement and Bid Protests
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Goals for Presentation

- Help Pass Test
- Issue Spotting
- Florida Administrative Code § 6A-1.012 (2/25/2009) – purchasing rule
- Fla. Stat. § 255.0516 (2018) – opt in for bid protest
- Fla. Stat. § 120.57(3) (2018) – bid protest procedures

Background

- Requirement and Rules for Competition
- 3 Types of Procurements
 - Invitation for Bids (IFB)
 - Request for Proposals (RFP)
 - Invitation to Negotiate (ITN)
- Bid Protests
- Detailed Written Materials

Basic Public Procurement Concepts

- No Common Law Requirement – No Constitutional Requirement
- Nearly All Government Has Requirements
 - Purpose – prevent favoritism and inspire public confidence in public spending
 - Fair and Open
 - Document decisions

Government has Broad Discretion

- Honest Discretion – even if reasonable people may disagree
- Arbitrary or Capricious – without facts or logic
- Even greater discretion to reject all bids

Chapter 287 Rules Do Not Apply

- State Agencies Only
- Executive Level
- Does Not Include Schools or Universities.
Dunbar Elec. Supply, Inc. v. School Bd. of Dade County, 690 So.2d 1339, 1340 (Fla. 3rd DCA 1997)
- CCNA, 287.055(2018) - applies

Educational Institutions

- Law and Rules of State Board of Education or Board of Governors
- Fla. Stat. § 1010.04(1) (2016)
- District school board responsible for use of internal funds and shall develop principles and procedures consistent with State rules
- Fla. Stat. § 1011.07(1) (2016)

Educational Facilities

- Fla. Stat. §§ 1013.45 – 1013.51 (2018)
- School Districts - FAC § 6A-1.012(7) – above \$50,000
- Solicit from three or more sources

Universities

- Board of Governors Regulations, Chapter 18
- Competitive solicitations for the purchase of all goods and services greater than \$75,000. BOG Regulation 18.001(2) (11/3/2016)
- If only one response received, re-procure or continue if second procurement will not serve a useful purpose

Colleges

- Fla. Stat. § 1010.04(1)(a) (2064)
("Purchases and leases of the Florida College System shall comply with the requirements of law and rules of the State Board of Education.")
- FAC 6A-14.0734(1) (6/20/07) - compete among three sources above \$65,000

Exceptions to Competition

- Fla. Stat. § 1010.04(4) (2016) (authorizes rule where impractical)
- FAC § 6A-1.012(11)
 - Legal Services
 - Academic Program Reviews
- Single or Sole Source – post for 7 days
- Emergencies – agency cannot create – limited competition
- Piggybacking – State/Term or Others – must be competitive (implied)

State Term Contracts

- No need to redo the wheel
- Added specific requirement in 2016 – 1010.04(1)(b)
- Nonacademic goods and services
- Whether it is in economic advantage to use pre-existing purchasing agreements or state term contract under 287.056 before letting procurement

Competitive Solicitations

- Three Types: IFB, RFP, ITN
- Bids (IFB) – low price, responsive and responsible

Common Elements

- Responsiveness – conform with instructions
 - Minor Irregularities v. material deviation
- Responsibility – integrity and capability to perform
 - Not most responsible
 - Litigation History
 - Definitive Responsibility
- Late Bids – have consistent practice

More Complex Methods

- Proposals (RFP)
 - Responsive and Responsible
 - Best Value: Price and Technical
 - Low Price, Technically Acceptable (LPTA)
- Negotiation (ITN)
 - Responsive and Responsible
 - Best Value: Price and Technical
 - Best and Final Offers
 - Negotiation

Common Issues

- Make Available to all through public posting
- Clear and Fair Specifications
- Reject All

Bid Protests

- School Board Not State Agency for Bid Protest
- For purposes of this subsection, the definitions in s. [287.012](#) apply. Fla. Stat. § 120.57(3)(g)
- So Not Mandatory Under Chapter 120
- Fla. Stat. § 255.0516 (2018) – opt in

Bid Protest Bond

- Bond –
- 25k or 2% lowest bid, the greater (500K+ projects)
- 5% all other projects
- Opportunity to Cure
 - should be yes

General Procedural Rules

- Notice of Protest – 72 hours
- Formal Written Protest – 10 days
- Bid Protest Bond

Standard of Review/Proof

- Award Decisions - clearly erroneous, contrary to competition, arbitrary, or capricious.
- Reject All - whether the agency's intended action is illegal, arbitrary, dishonest, or fraudulent.

Attorney's Fees

- If at the hearing the agency prevails, it shall recover all costs and attorney's fees from the protestor
- Bid Protest Bond Protects Agency
- If the protestor prevails, the protestor shall recover from the agency all costs and attorney's fees