

Contracts Basics Presentation



December 14, 2009

Anne Shaw, AAG Education Division

and

Linda Sullivan-Colglazier, AAG
Government Operations Division

In the beginning



- **Preliminary Questions to ask:**
 - What is the agency purchasing?
 - Does it have authority to purchase this?
 - What are the requirements/restrictions for this type of purchase?

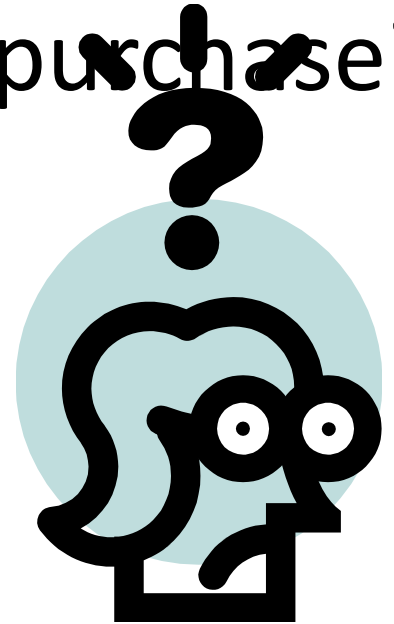
What is the agency purchasing?

- Services – what kind
 - Personal or client services
 - Purchased services
- Goods – what kind
- “Information Technology”
- Combination



Who has authority over this purchase?

- OFM (Personal Services)
 - RCW 39.29
- OFM (Client Services)
 - RCW 39.29
- GA (Purchased Services and Goods)
 - RCW 43.19
- DIS (Information Technology)
 - RCW 43.105



Does the agency have independent statutory or delegated authority?

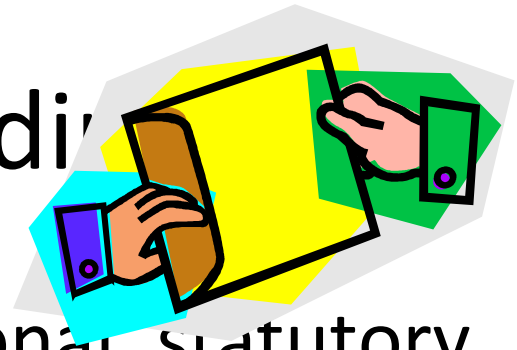
- Some agencies have independent statutory authority for specific purchases
 - What scope, limitations, or requirements?
- Agencies may have delegated authority from GA, OFM or DIS
 - Dollar limitations
 - Specific type of purchase
 - Must still comply with all applicable laws & rules

So you've decided to buy it –
now what?

- Competitive bidding
- Solicitation development
- Invitation for Bids or Request for Proposals/Qualifications and Quotes
- Evaluating responses
- Award
- Protests



Competitive Bidding



- Not required unless constitutional, statutory or charter provision mandating
- But strong public policy in Washington State favoring competitive bidding
 - Especially solicitations involving large dollar amount, long duration, or complexity of services
- Dual purposes
 - Primary - Protection of taxpayer & public funds
 - Secondary - Fair forum to bidders

Caution:



- Public contract entered into in violation of public bidding law is illegal and void

Solicitation Development:



- Agency needs to do sufficient research
 - Check:
 - industry publications, standards and other resources
 - Other Washington contracts
 - Other States' contracts
 - Can do Request for Information (RFI) from the vendor community

Solicitation Development



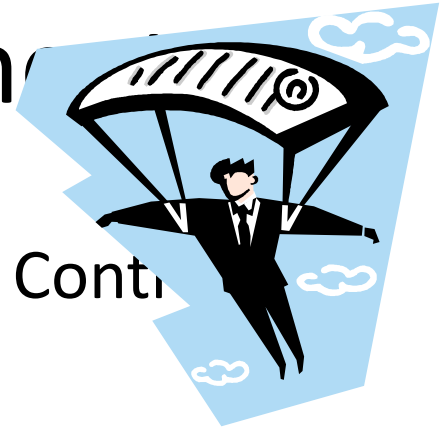
- Preparation of specifications:
 - Must have a sufficient degree of specificity
 - “Sufficiently certain and definite to form a fair basis for competitive bidding”
- Required qualifications must be relevant to performance of contract
 - Cannot limit competition or favor one bidder

Solicitation Development: Specific to Performance Based Contracts

- Differs from Traditional Contracts
 - Emphasizes results, not work performed
 - Outcome oriented
 - Clearly defined objectives
 - Measures performance standards
 - Contains quality assurance plans
 - Contains performance incentives

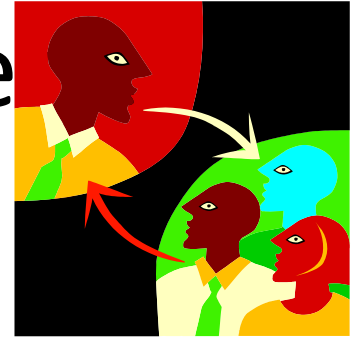


Solicitation Development



- Potential Benefits of Performance Based Contracting
 - Encourages Innovation
 - Results in better prices and performance
 - Contractor has more flexibility
 - Shifts risk to contractor so they are responsible for achieving outcomes
 - Provides incentives

Solicitation Development



- Potential Issues of Performance Based Contracts
 - Need adequate management information systems to correctly interpret data
 - Outcomes may be contingent on factors outside contractor's control
 - Contractors may have limited resources to assume risk
 - Contractor may provide reduced care to vulnerable clients to achieve outcome or goal.

Types of procurements:



- Invitation for Bids (IFB)
- Request for Proposals (RFP)
- Request for Quotes (RFQ)
- Request for Qualifications and Quotes (RFQQ)

How to Get the Word Out – Publicize Opportunity to Contract

- Send announcement of opportunity to bid to compiled vendor list
- Publish in established business or vendor publications
- Post on WEBS–RCW 43.19.1908
- Post on agency website



Evaluating the Response



- Responsiveness
 - Bid meets all the material terms of the solicitation
- Responsibility
 - Bidder is capable of performing the contract
- Lowest price

Other Evaluation Considerations

- Must use evaluation criteria set out in solicitation document
- Must treat all bidders equally
- Other factors than lowest price may be considered if established in solicitation
 - Non-cost factors such as service, quality, or delivery



Award of the Contract



- General Rule – Can NOT negotiate
- But, may be able to negotiate:
 - with lowest bidder
 - proposed alternative terms and conditions in some types of contracts

More Award Considerations:

- Give notice of the award to all bidders not awarded the contract
 - May want to give notice of intent to award
- Debriefing session may be a requirement prior to award protest
 - Strongly recommended!



Public Disclosure Requests



- Bids/proposals may be subject to public disclosure
- Proprietary information
 - Information identified by bidder as proprietary or trade secret may be exempt
 - Give notice to bidder of request and give reasonable time to obtain protective order

Protests and Appeals



- Administrative protests
 - Set out in regulations or solicitation document
 - Time limited
 - Specific protest criteria
- Disappointed bidders may have the right to administratively appeal the protest decision

Litigation



- Once all administrative remedies are exhausted the disappointed bidder may file a protest action in Superior Court
 - Pre-award as disappointed bidder
 - Injunctive relief only; no damages
 - Post-award: taxpayer suit only
 - Must establish standing
 - Bidder may file TRO to prevent award and preserve status as disappointed bidder