



E-Government for Government

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Distribution: All Local Unit Chief Administrative Officers, Chief Finance Officers, School Business Administrators, County School Business Administrators, and Purchasing Agents.

Local Unit E-Procurement Practices

Advances in electronic technology provide many promising opportunities to local governments to enhance government purchasing activities. Despite the changes in the economy, the type and number of "dot com" businesses are steadily increasing and enhancing available services. This Local Finance Notice provides guidance to local governments and public school districts (hereafter, local units) that wish to "test the waters" and take advantage of existing and new State laws to use some of these new technologies. More specifically, this notice affects all agencies covered under the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.).

Purchasing Below the Bid Threshold

Under existing public contracts laws, a local unit may solicit quotations for purchases under their bid threshold by telephone, mail, or fax, etc. Technology has provided a new option, the e-quote service. E-quote is a service provided by a company using the Internet as a way to match buyers and sellers of goods through various pricing models. Like traditional quote seeking, a local unit may use any number of traditional or alternative approaches, such as the Internet, to obtain quotes, and may combine them as local needs may dictate.

An e-quote operator provides a service to vendors by recruiting local units to post their quotes on its website, with the expectation (but not a requirement) that the local unit will award a contract to a vendor that provides pricing through the operator's site. In some cases, the site operator may charge subscription fees, or assess a percentage of the value of the transactions, but in most cases, the service is free to the local unit.

In addition, e-quote service providers offer different pricing mechanisms: some use a traditional quote submission (where competitors do not see each others' prices) and some use the "reverse auction" method where competitors can see and respond to competition as a time limit to submit quotes runs out. Both of these models are permissible for purchases under the bid threshold.

As in any procurement for which quotations are sought, the contracting agent must provide potential vendors with all terms and conditions of the contract that would bear upon the quotation. These terms and conditions might include pertinent purchase specifications, such as quantity and general descriptions, as well as other appropriate provisions, such as warranties. If an e-quote service is used, this information should be provided on the site.

Additionally, any potential vendor who became aware of a local unit's interest in procuring a particular good or service would be free to contact the local unit directly rather than through the e-quote site. The local unit that chooses to use e-quotes to solicit quotations is not legally obligated to award a contract to the Internet vendor if another vendor (non-internet) is the most advantageous, price and other factors considered. However, a local unit may adopt a policy to only use e-quotes if it finds that it is in their best interest.

As there is usually no charge to the local unit for e-quote services, the selection of a service provider can be considered as a concession. Driving the procurement model would be the value of the contract to the service provider, usually based on service fees charged to the local unit or member vendors.

A full fledged concession procurement (by public bid or competitive contracting) would be required in those cases where the service provider charges the local unit or its member vendors or both a service charge for each successful contract or quote submission and the estimated value of the service charges exceeds the bid threshold. To make this calculation, the local unit should ascertain the fee structure of the service provider's business and develop an appropriate estimate.

Otherwise, the cost of the service itself can be regarded as a purchase under the bid threshold, therefore, leaving the choice of vendor to the local unit based on the services, the contracting or purchasing agent's preferences, and if necessary or desired, the solicitation of quotations or proposals, if practicable. This provision would also apply in the case where the service provider charges a membership fee (instead of a 'service fee') that is not related to the actual quotes that are posted by a single local

unit and may cover quotation opportunities for many local units.

In the end, a local unit should carefully consider the different e-quote services and use the appropriate procurement method to obtain the services that best meets the local unit's needs.

Regardless of how the award of a contract is made, local units must still follow normal procedures of issuing purchase orders and use of vouchers with a claimant's certification.

Finally, it is important to note the conundrum that e-quote services present to local units. Being a new use of technology, there may be hesitation on the part of many local units to participate; many would rather let "someone else" do the testing, see how it goes, and if it seems to work, then sign up. The problem is that if everyone does that, and there is an insufficient number of "early adopters," the service providers may run out of capital (after all, they are a business) and cease operating. If that happens, all local units lose the potential benefit these services can provide.

This concern also extends to how the services are used. Because there may not be charges to local units, it will be vendors who are paying the costs. If there is no business transacted through the system vendors stop paying, and the business fails. Thus, in order for the service providers to remain in business, there must be contracting activity going through the service.

This concern also extends to policies of placing online quotes against traditional models, and then "shopping" prices from one approach against the other. This may result in short-term price advantages. This advantage may be short-lived if the portals are not used and they go out of business, then there will not be anyone to compete

against traditional vendors, and the potential value of e-quotes will be lost. We encourage local officials to make careful and prudent decisions in assessing their needs and practices and careful consideration of decisions to mix "offline" and "online" purchasing practices.

E-Procurement Pilot Program

Earlier this year, Acting Governor Di-Francesco enacted Chapter 30 of the laws of 2001. This law permits the Division to run a pilot program for Internet-based public bidding and sale of surplus property over the 15% limit, by waiving procedural aspects of the Local and Public School Contracts Laws. Additional information on this program is contained in separate Notices.

Advertising of Bids

With the exception of the E-Procurement Pilot Program, the publication of a bid advertisement through an Internet-based service as the **sole** method to advertise for receipt of bids is not permitted under existing law. However, bid notices may be advertised on the Internet through any means (local web site, e-quote site, or other Internet service) as a **supplement** to the printed legal advertisement. When using this method, the advertisement cannot appear prior to the advertisement in the official newspaper.

In addition, some Internet companies provide the capability for bid specifications (posted by the local unit) to be downloaded as a service to their members. In these cases, if the local unit advertises a bid notice on the site, the company will also post the bid specifications. The Attorney General's Office has advised the Division that local units may allow their bid specifications and bid documents to be downloaded from a web site, as long as the bid specifications

and bid documents are available in-person at the same time.

Downloadable bid specifications should be posted in a "read-only" format, so that the integrity of the bid documents is secure. The companies that provide these services may also provide the means to convert the printed (or word processing) files to the downloadable format. Local units are cautioned to make certain that there are no errors in the bid specifications or bid documents that have been converted or posted on the Internet. In these cases, bid addenda or changes must be posted and made available to those who receive them in accordance with laws regulating making changes available to bidders. N.J.S.A. 40A:11-23c(1)(2)(3) and 18A:18A-21c(1)(2).

Subject to the exception of the E-Procurement pilot program, at this time bids cannot be accepted over the Internet. Bids must still be advertised and received in accordance with the law – sealed and opened in public at a fixed time and place, with original signatures, and original documents.

Sale of Surplus Property

When authorized by resolution of the governing body, public personal property with an aggregate value of 15% of the bid threshold or below can be sold over the Internet on such sites as E-bay or Yahoo! Auctions.

In the description of the goods for sale on the Internet the local unit should stress that they are sold 'as is' and that there are no guarantees. When selling over the Internet, the bid price should not include the price of shipping and handling. The successful bidder should pay the price of

shipping, handling, and any insurance in addition to the sale price.

Sales of personal property that exceed 15% of the bid threshold are covered under the E-Procurement Pilot Program.

Other Division E-Government Activities

The Division is engaging in a number of other E-Government efforts, including a study of e-government generally, cooperating with several professional organizations on surveying how e-government affects government and school business operations, and the planned Fall roll-out of the "GovConnect" program for municipal clerks and finance officers. This is an important area of concern and we look forward to working with local officials over the next few years as we move deeper and deeper into these areas.

In the meantime, if you have specific interests in these E-Procurement services, please let us know by e-mailing us at lpcl@dca.state.nj.us

