

BOARD OF CONTRIBUTORS A move toward privatization

Competing in the booming business of government contracts

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State and local governments already spend billions of dollars on goods and services — from office supplies and computer parts to medical staffing and food service. Now Florida's Gov. Rick Scott promises even more outsourcing of state government functions in his effort to reduce the size of government.



The governor, for example, wants to send some state prisoners to privately run prisons and privatize Florida's three remaining public mental hospitals, three centers for the developmentally disabled and six homes for veterans, according to news reports. In addition, Florida House and Senate budget proposals are expected to shift medical, dental and mental health services for the entire prison system to private firms. This trend is also being seen in local government procurement.

Whether you agree or disagree with the concept of privatization, businesses can reap tremendous benefit from government contracts. But as you can imagine, there is a catch. The governmental bidding and selection process is enigmatic at best, including a complex maze of strict deadlines, difficult requirements and opaque procedures. Not an ideal set of conditions for most businesses. However, in these difficult economic times, businesses are doing what it takes to stay afloat.

While privatization of traditionally government-run functions is not new, more and more businesses today recognize the opportunities in securing government contracts, and that has heightened competition for contracts of all sizes. Additionally, dissatisfied bidders, typically businesses that are second- and third-place finishers, are increasingly filing bid protests to appeal a government's purchasing decision.

As opportunities for businesses in the public arena grow, specialized knowledge is required in order for businesses to successfully compete.

It is generally agreed that government's goal in procuring a product or service is to get the most advantageous contract while ensuring a fair and equitable process. Generally, governmental agencies are required by law to advertise their procurements. Usually these advertisements appear in the public notice section of local newspapers and on government websites. There are also online services that compile this information, like the Florida Bid Reporting Service.

As with most government programs, purchasing or procurement is an alphabet soup of acronyms. The three most common types of procurements: Invitations to Bid (ITB), Requests for Proposals (RFP) and Request for Letters of Interest/Request for Qualifications (RLI/RFQ).

Each of these procurements will usually require a bid proposer to meet "minimum qualifications." An Invitation to Bid is a straight bid; a business submitting a

bid is required to submit its best price for a certain job or project and the lowest price submitted by a responsive and responsible bidder wins. A Request for Proposal indicates that a scoring matrix may be used to evaluate proposals. Typical categories for which points would be awarded include experience, project approach and price. Oral presentations are sometimes used to assist the selection committee in evaluating each proposal. A Request for Letters of Interest or a Request for Qualifications is a more subjective type of procurement. Proposals are typically evaluated by a selection committee based on criteria set forth in the requests.

While each procurement method has its own advantages and disadvantages, it is important to note that all public agencies have their own set of rules and procedures that businesses should be aware of and well versed in before submitting a bid proposal.

One of the most important aspects of competing for a government contract is paying close attention to deadlines. The deadlines to submit a bid or proposal may be found in the advertised terms and conditions for the procurement. If you are even a minute late in submitting your proposal, you can be rejected with little, if any, recourse. Precision and responsiveness are critical for success in every aspect of the submission and procurement process.

Once a proposal is submitted, a formal bid protest may be the only recourse for a business that believes that procurement documents, processes and/or decisions were unfair or that procedures were not followed correctly. Beware, however, that bid protests have very tight deadlines in which to be filed. These deadlines vary by jurisdiction, with some being as short as 72 hours. Usually the "clock" begins to run when the advertisement and/or notice of award are posted on the government's website or when businesses proposing bids are notified.

The protest process typically includes a recommendation on the validity of the protest by the purchasing director, a hearing before the jurisdiction's governing board, and/or a hearing before a hearing officer. If the business making a bid is still not satisfied, there may be an option of challenging the award in court to ensure the bidder received fair and equitable treatment with respect to the evaluation of bids and award decisions.

With the dramatic increase in activity for government contracts in the last few years and the current push toward more privatization, businesses vying for government contracts must be prepared for greater scrutiny and the potential for more bid protests. Sharpen your pencils, cross your t's, dot your i's and let's get to work.

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