

Purchasing Advanced: Post Award Procedures

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- Documents required
- Monitor contractor's performance
- Confirm receipt of correct items
- Dealing with errors
- Communicating & resolving issues
- Payment authorization
- Contract wrap up

Plan Ahead

- Receive All Post-bid Documents *before* Work is Started
 - Contract signed by district & vendor
 - Performance & payments bonds received and verified
 - Insurance certificates received and verified
 - Warranty information received and confirmed with bidder's response
 - W-9 to set up vendor for payment
 - CHRI (criminal history record information) of contractor employees if contract is subject to School Safety Legislation

Documentation

- Communicate Award to All Bidders
 - Send letters to all bidders
 - To the awarded bidder – include required documentation and next steps
 - To the non-awarded bidders – include who was awarded the contract
 - The letter allows bidders to have their bid bond released to use for other bids
 - Return any bid checks to the address in their proposal
 - Keep copy of letters & bid checks in bid file

Documentation

▪ Bidder Debrief

- Only responsive bidders can request a debrief
- Issues about the solicitation (RFP, IFB, etc.) should have been raised and addressed before bids were due
 - Be sure to have language in the solicitation to address Q & A procedures
- Remember that the district can choose the bidder that is in the district's best interest
 - Concerns from the bidder(s) about specifications or how their bid was a better fit are not relevant
 - Best practice - if the bidder chosen by the district was not the lowest bidder, include brief, factual reasons for choosing them and keep it in the bid file

Documentation

- Bidder Debrief, continued
 - Include procedural language on handling debriefs in your solicitation documents
 - Follow the procedure and any deadlines
 - Address only the issues brought up by the bidder
 - Provide a written response
 - Schedule an informal meeting if helpful
 - Best practice - conduct any debriefs before a contract is signed

Documentation

- Bidder Debrief, continued
 - Keep in mind the integrity of the solicitation process
 - If something is waived for one bid, it can create a consistency issue with future bids
 - Some debrief requests do not have any standing:
 - Not following the submission instructions
 - Not submitting in the requested format
 - Not including all of the required documents
 - Not including the bid bond or certified check

Documentation

- Communication with Non-Bidders
 - Talk to companies that you had expected to bid but did not submit a bid
 - This information can help you with planning future bids e.g. schedule/timing, risks, complexity, other company work, requirements, price duration, sending bid reminders again before the due date
 - This communication can keep the company bidding on other projects

Documentation

- **Contracts**

- Make sure the type of contract matches the solicitation type, e.g. service, construction, volume purchases over a time period
- Be sure that both the district and vendor sign and date the contract
- If using a vendor's contract, have your attorney review it
- Without a separate contract, the district's solicitation document(s), bidder's response and PO are considered the basis of a contract

Documentation

- Communication During the Project
 - Set up contacts for issues on both the district and bidder sides
 - Non-urgent/daily issues
 - Urgent/critical issues
 - Billing/invoice issues

Communication

- Paying the Invoices
 - Confirm the items were all delivered, received, and/or installed as per solicitation specifications
 - Confirm the pricing with the bid documents
 - Do not pay in advance, unless explicitly stated in the executed contract documents
 - Included backup with the invoice to confirm items were received and pricing was confirmed in-house

Communication

- Warranty Information
 - Who is in charge of tracking warranties?
 - They should communicate with the building who received/is using the items the warranty specifics (covered items and period)
 - Track usage of warranty repairs/replacements for feedback on future solicitations

Communication

- Evaluate Bidder's Performance
 - Survey users of the product/service
 - How the receipt of the items or implementation went
 - How the use matches the expectation
 - Changes for future solicitations
 - Ask about interactions with bidder's employees during the process
 - Problems not discussed cannot be fixed

Communication

- Monitoring the Contract
 - Determine
 - The important elements to measure
 - An appropriate method of measure
 - How to collect data for measurement
 - Who will collect the data?
 - Who will analyze the data and compare it to the contract requirements?
 - Who will take the appropriate action on any issue or deficiencies?

Communication

- Progress Meetings with the Contractor
 - Determine appropriate frequency for meetings
 - Talk about planned versus actual progress
 - Discuss what is going right and what is going wrong
 - Does anything need to be changed or improved in the process to get to a satisfactory finish?
 - Are market conditions now or in the future impacting the progress?
 - Communicate any additional work or opportunities to the contractor related to the project

Communication

- Document Process for Future Solicitations
 - Mark up any changes to the solicitation document (save as a new e-file) from issues, concerns or changes from the current solicitation process
 - Review addendums and determine if the information needs to be included in the next solicitation document
 - Review bids for any comments and/or exceptions and determine if they need to be addressed in the next solicitation document
 - Update your vendor files for new bidders, or updated contact information

Planning

- Contract Amendments

- May be necessary to amend the contract to reflect natural changes in the project
- Determine whether a change really requires an amendment or a new contract/solicitation
- Make sure amendments reference the solicitation and the original bid unless it is expressly superseded by the amendment
- Date and number each amendment

Planning

- Contract Extensions
 - Are there options in the contract for extensions?
 - What are your Board policies on extensions?
 - Do you want to extend the contract?
 - Review if the contract went well and if the pricing is still competitive
 - Confirm price options in the solicitation and/or contract
 - Negotiate pricing
 - Know when you will walk away

Planning

- Breach of Contracts - Remedies
 - Common law – monetary payment for liquidated damages express as a reasonable approximation of actual damages
 - Uniform Commercial Code (UCC) – monetary payment for damages is calculated as the difference between contract price and the market price
- Warranties under UCC
 - Express – written or oral promise that good will satisfy needs
 - Implied – no written or oral promise
 - Merchantability - item is fit for ordinary purpose
 - Fitness for a Particular Purpose – buyer relies on seller's expertise that item will fit a particular need or purpose

Issues

- Other Statutory Laws

- False claims – false payment request, inflated claims costs
- Administrative Procedure Act (APA) – procurement rules and process for bid protests, etc.
- Business/Finance laws – prohibit government from spending funds in excess of appropriations
- Freedom of Information Act (FOIA) – public can view government records

Issues

- Contract Termination

- Document everything, including why (stay factual)
- Review PO and contract for termination clauses
- Possible termination of contract should have already come up during progress meetings
- Notify contractor in writing of contract performance issue(s), what you want them to do to fix (cure) the issue(s) how long they have to fix (cure) the issues with a specific deadline stated
- Verify whether they have fixed the problem on the deadline date – do not wait
- Review performance and payment bonds
- Terminate contract in accordance with contract language

Issues

- Contract Termination – Other Reasons
 - Loss of funding
 - grant or budget reductions for a specific projects
 - Business dissolution or change in business ownership
 - make sure the solicitation and/or contract addresses these issues
 - New or amended laws or governmental mandates that affect the contract

Issues

- Third Party Dispute Resolution
 - If you can not come to a resolution on your issues with the contractor
 - Arbitrator – third party listens to both sides and makes sole decision
 - Mediator – third party tries to resolve differences but does not make the decision
 - This should be included in the contract

Issues

- Incentive Clause versus Liquidated Damages
 - Incentive Clause – rewards the contractor by paying them to finish early (construction)
 - Liquidated Damages – punishes the contractor by reducing their payment for late completion (construction)
 - Covers district direct costs (storage fess, temporary security, regulatory or financial penalties to district)
 - Will need to prove delay is contractor's fault
 - May discourage vendors from bidding
 - This should be included in the solicitation document

Issues

- Contract Close-Out Procedure
 - Settle all contractual issues with bidder
 - Confirm all items have been delivered (drawings, reports)
 - All classified documents must be returned
 - All online access and/or keycards must be inactivated
 - Final payment must be made (zero out retainage)
 - Bonds must be returned to the bidder

Finishing

- Disposal of Surplus Property
 - This may be from the project, or at the end of life of the items purchased from the bid
 - Check Board policy for allowable methods
 - Move to another district building
 - Trade in with purchase of replacement
 - Auction off to public
 - Consider whether to include removal and proper disposition of old items in the solicitation document
 - Be sure to include appropriate disclaimers on the property being sold such as “sold as is” and without warranties

Finishing

- Questions?
- Contact information:
 - elizabeth.junek@oakland.k12.mi.us
 - (248)209-2507

Finished – *Thank You!*