

Building Better Bid and RFP Documents

Wednesday, April 24, 2024



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Introductions

Nicole Hansen: Moderator
Accounting Supervisor
Mundelein High School District 120



MUNDELEIN
HIGH SCHOOL

Kenneth Florey: Speaker
Partner, Robbins Schwartz



Howard Metz: Speaker
Partner, Robbins Schwartz



Tim Keeley: Speaker
Associate Superintendent for Business Services/CSBO
Township High School District 214



Nicole Kennedy, CPP, CPPM: Speaker
Purchasing Manager
Community Unit School District 300



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Bid v. RFP v. RFQ

- Bid – Required by Section 10-20.21 of the School Code
 - Publication Required
 - Detailed Specifications Required
 - Awarded to Lowest, Responsive, Responsible Bidder
- RFP – Contracts Either Exempt from Bidding Requirements or Below Dollar Threshold
 - Publication Optional
 - Ability to Negotiate Contract Terms
- RFQ – Required by Local Government Professional Services Selection Act
 - Notice by Publication, Website Posting, or Sending Request to Firms on Record
 - Must Rank Firms and Negotiate with Top Firm First



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Who is Responsible for Preparing the Bid or RFP?

- Centralized Bid/RFP Processing
 - CSBO or Purchasing Agent
 - Specifications are created in collaboration with originator
 - Contracting Authorization???
 - Compliance with legal procedures



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Quality

- Good Bid
 - Many responses
 - Fair competition
 - Efficiency
- Unfavorable Bid
 - BOE confusion
 - Too complicated
 - “Nobody knew we were bidding!?!?!?”
 - “That isn’t what we wanted...”



Preparing Bid Specifications

- Learn from past District and peer bidding experience
- Certainty Required
 - You may only get what you ask, even if you meant something else!
 - Beware of “Boilerplate” Documents
- Sole Sourcing
 - Be Careful of Using “Or Equal” in Your Bid Documents!



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Preparing Bid Specifications

- Contract is Part of Bid Documents and Non-Negotiable
- Getting Assistance in Preparation of Bid Specifications
 - Outside Professionals/Consultants
 - Potential Bidders?
- Bid Bond?



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Preparing RFP Documents



- More Flexibility
- Ability to Request Alternate Options
- Contract is Negotiable



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Pre-Bid Meeting?



- Mandatory v. Optional
- In Person or Remote
- Individual Site Tours
 - Keep Questions to a Minimum
- Keep a Level Playing Field!



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Pre-Qualification of Bidders?

- Allowed, But May Lead to Unnecessary Challenges
- Advisable Where Time Between Bid Opening and Award is Short
 - Pre-Qualification Round Takes Place Well In Advance
- Pre-Qualification Criteria Must be Established and be Reasonable



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Responding to Questions/Bid Addenda

- Bidders list
- Addendums to be released to ALL bid holders
- Bids submission must include acknowledgement of addendums



Contract Language and Critical Clauses

- Prevailing Wage Act Compliance
 - Applies to contracts for “public works” which are defined as “fixed works constructed or demolished by any public body, or paid for wholly or in part out of public funds.” 820 ILCS 130/2. This includes “any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.” *Id.*



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Contract Language and Critical Clauses

- Prevailing Wage Act Compliance
 - If your District has a contract for “public works”, District should require the contractor to comply with all requirements of the Prevailing Wage Act.
 - A recent change in the Act now requires contractors to submit certified payrolls to public bodies on a monthly basis directly to the Dept. of Labor.



Contract Language and Critical Clauses

- Payment and Performance Bonds (30 ILCS 550/1)
 - Each contract for public work in Illinois exceeding \$150,000 requires the contractor to furnish performance and payment bonds in the full amount of the contract.
- Different Than Bid Bonds



Contract Language and Critical Clauses

- A Performance Bond is:
 - A surety company's guarantee to the owner that the contractor will complete the project in accordance with the contract, and defines the duty of the surety to the owner in the event of the contractor's default.
- A Payment Bond is:
 - A surety company's guarantee to the owner that the contractor will pay all contractors furnishing material and/or labor on the project, in accordance with the contract.



Contract Language and Critical Clauses

- Contract Bond Requirements:
 - Districts should require each contractor having a contract with the District to have the bonds required by the Public Construction Bond Act, 30 ILCS 550/1, *et seq.*
 - Contracts over \$150,000 must have Performance and Payment Bonds.
 - If District is paying subcontractors directly (if using a construction manager), the subcontractors may be required to provide the bond.



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Contract Language and Critical Clauses

- Performance and Payment Bond Safe Practice Pointer:
 - Confirm that bonds are valid before work on the project begins, and promptly get surety involved if dispute arises concerning performance.



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Contract Language and Critical Clauses



- Insurance
 - The contract should require the vendor to maintain commercial general liability insurance, automobile liability insurance, worker's compensation insurance, as well as an umbrella insurance policy with minimum coverage amounts acceptable to the District.
 - In some contracts, it is also advisable to require professional liability coverage.



Contract Language and Critical Clauses

- Insurance
 - The school board, its officers, employees and agents should be named as additional insureds on the commercial general liability, automotive liability and umbrella policies.
 - Broker review of insurance including all coverages
 - Cyber coverage
 - Sexual abuse coverage



Contract Language and Critical Clauses

- Indemnification
 - Contracts should contain an indemnification provision requiring the vendor to indemnify and hold the School District harmless against any liabilities the District might incur as a result of the vendor's negligence or breach of contract.



Contract Language and Critical Clauses

Warranties

- Contract documents should include an express warranty where applicable
- Implied Warranties
 - Merchantability
 - Fitness for Particular Purpose
- Warranty Disclaimers
 - Must be conspicuous



Contract Language and Critical Clauses

- Dispute Resolution
 - Arbitration
 - Mediation
 - Attorney Fees
 - Choice of Law & Venue



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Contract Language and Critical Clauses

- Contract Term and Renewal Options
 - Bid documents should clearly specify term length of Agreement
 - Number and length of renewal options should also be specified
- Automatic Renewals?
 - NO! (Unless there is an acceptable early termination option)



Contract Language and Critical Clauses

- Termination for Convenience
 - It is advisable in most longer-term service contracts that the District maintain the right to terminate the contract with an agreed upon notice period.



Contract Language and Critical Clauses

- Force Majeure Clause
 - Addresses situations where either party is unable to perform due to circumstances beyond their control.



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Questions and Answers

We thank you for your time!



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