

Gavel to Gavel: Contracting with public entities

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By Joe Walters



Private persons can generally contract with each other as they please. They can pay too much for goods or services, of whatever quality they choose. However, public entities such as federal agencies, state agencies, counties and municipalities pay for goods and services with public funds. Therefore, Congress, state legislatures, city councils and boards of county commissioners have enacted statutes, ordinances and rules governing how contracts are made. The intent is protecting public funds by obtaining quality goods and services at good prices. Public entities also establish fair procedures for choosing contractors, thereby encouraging a variety of vendors to participate in the process. Sometimes, there is tension among public contracting officers, elected officials who favor their local constituents and vendors.

In Oklahoma, there are differences between the methods for awarding construction contracts and contracts for goods and/or services. Usually, the public entity publishes uniform plans and specifications for construction contracts. Because everyone is bidding on the same thing, the standard for awarding a construction contract is the "lowest responsible bidder." The "lowest" standard is simply which bidder submitted the lowest price. A "responsible bidder" has the people, finances and equipment to complete the project. All Oklahoma public entities (state agencies, counties, municipalities, school districts, etc.) must follow a state statute, the Public Competitive Bidding Act, in awarding construction contracts more than \$50,000.

When purchasing goods or services, the rules are not uniform. There may be no ordinances or other rules regulating a municipality's purchase of goods or services, except the criminal code that prohibits bribes and kickbacks. State agencies generally follow the Central Purchasing Act and their own rules. The standards for choosing vendors for goods and services are more flexible. These standards include "lowest and best," which requires strong consideration of price, but also allows consideration of quality. Another standard is "best value" analysis, which involves weighing a number of factors, including price and quality, seller's reliability, and warranties, and other factors, in awarding a contract.

Contracting with the U.S. government is according to the Federal Acquisition Regulation, a detailed set of rules that is beyond the scope of this column.

Most public entities, including federal agencies, provide clear instructions on how to submit a proposal. It is important to follow these instructions precisely. Failure to include required documents, such as bonds and affidavits, could disqualify a superior proposal. Public contracting officers are usually very helpful and welcome questions about the process.

When private persons solicit business from each other, there is usually no remedy if a contract

is not made. However, because public contracting is usually subject to statutes, rules or ordinances, a prospective vendor who is not chosen may have the right to review of the contracting decision through informal processes, or judicial review within the agency or in court. Because profit margins are often low, careful economic and legal analysis is required before deciding to seek review of or "protest" a contract award.

LINKS

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