



# 2022 OISBF

## Purchasing Workshops

The Purchasing Cycle: Begin with the End in Mind

# SOURCING TO CONTRACTING

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# 2022 Purchasing Workshops Focus

- Focus on information pertaining to a segment of the purchasing cycle
- Work through the purchasing cycle in sequential order
- Connect purchasing cycle segments to relatable school experiences, tasks, and statutory requirements
- Cover aspects of contracting as related to the purchasing cycle.



# Review of the Five (5) R's of Purchasing

- Right Quantity
- Right Quality
- Right Price
- Right time and place
- Right Supplier

# Awarding & Contracting

- Post evaluation of bids/proposals
- Do what your solicitation says you will do?
  - Does it allow for negotiations?
- Proposals involving negotiations
  - Win/Win
  - BAFO – Best and Final Offer
  - BATNA – Best Alternative to Negotiated Agreement
    - What if negotiations fail?
    - What is your back up plan?

# Not negotiable

- Oklahoma Competitive Bidding Act bids
- School bus bids
- Federal funded projects bid under the sealed bid type.
- Awarding to lowest responsible and lowest responsive excludes prohibits negotiations

# Negotiations team & tips

- Leader must have authority to negotiate on behalf of the school district.
- Other party's leader must have authority as well.
- Team members
  - Subject matter experts
  - Stakeholders
  - End-user contract administrator
- Preparedness is key
  - Clearly identified scope of work and desired deliverables (begin with the end in mind)
    - Both parties need to be clear on the SOW, deliverables and expectations

# Negotiations team & tips

- Preparedness is key
  - Single spokesperson / leader
  - Team members consensus
  - Coaching & plan
  - Have a BATNA plan ready
  - The goal should be win/win.
    - To get the desired outcome(s) and service from a supplier, you may have provide training, support and empowerment to help the supplier be successful. If the supplier is successful, you should be successful.
- Good faith negotiations – no hidden agendas



# Supplier Success

- What does the supplier need from you to be successful?
  - Clear knowledge and understanding of your expectations
  - May need help understanding school district's business culture, e.g.. how to get paid expediently.
  - Safety and environmental training requirements
  - “Red tape” issues
  - Resources
  - Supplier relationship management
    - Regular and consistent performance meetings
  - Other ideas?

# Elements of a Contract

- Offer and acceptance
  - Meeting of the minds (agree upon the terms)
  - Definitiveness of term (beginning & end)
- Consideration – Money or value exchange
  - “Quid pro quo” – This for that...
- Competent parties
- Reality of Consent
- Legality of purpose

# Type of Price Contracts

- Fixed-Price Contracts

- Firm Fixed Price

- Fixed-price with escalation

- Quantity of labor and materials known.
    - Commodities – Dairy & dairy fat indices

- Fixed-price with redetermination

- Quantity of labor and materials are unknown

- Fixed-price with incentive

- Agreed upon ceiling price.
    - Shared profit for producing the product under the ceiling

# Type of Price Contracts

- Cost Contracts - Purchaser assumes most of the financial risk.

- Cost plus a percentage of cost
  - Supplier cost + a percentage, e.g. 10%
  - Prohibited for federally funded projects
- Cost plus fixed fee
  - Child nutrition procurement could use this.

# Type of Price Contracts

- Cost without a fee
- Cost sharing
- Time and materials
  - Maintenance Repair Operations (MRO) contracts
  - Technology, e.g., network drops
  - Labor is agreed upon at a set rate, materials could be billed at cost.
- Construction in Oklahoma
  - Construction management at risk - Guaranteed maximum price

# Forms of Agreement/Contracts

- Verbal

- Purchase of goods under \$500
- Covered by Uniform Commercial Code (UCC)
- Ill-advised for schools (Encumbrance and PO)

- Written

- Required by school law for all contracts over \$500
- If under \$500 for purchase of goods, the agreement is unenforceable if not in writing, per UCC.

# Forms of Agreement/Contract

- Written

- Supplier proposals
- Supplier quotes



- **School district's form**

- Purchase order
- Battle of the forms – conflicts with supplier's terms

- Other written & most common

- Contract – All elements of a contract
- Agreement

# Memorandums and Letters of Intent

- Memorandums of Understanding
  - May not have all elements of a contract
  - Could be a non-binding unilateral agreement
  - Often used for services or in-kind exchange
  - Agreements that may not have clear consideration
- Letters of Intent
  - Intent to contract



# Authority to contract

- Authority to contract/purchase is expressly given to school board
  - Local school board policy governs
- Who has expressed authority
  - Case law
    - Haskell Lemon Const. Co. v. ISD No. 12, 589 P.2d 677 (Okla. 1979)
    - Superintendent obligated district, but “lacked authority to bind school district...”
- Check supplier’s authority
  - Authorization affidavit on bid

# Contract form and terms

- Next session

# References

- General Public Purchasing, National Institute of Governmental Purchasing, 2<sup>nd</sup> Printing, 1993.
- 2021 Oklahoma School Law Book, Oklahoma School Boards Association, [Oklahoma State School Boards Association \(ossba.org\)](https://ossba.org), 2021.
- Barnes, James, A., Bowers, Thomas, Langvardt, Arlen W., Mallor, Jane P., Phillips, Michael J., Business Law and the Regulatory Environment, *Concepts and Cases*, Irwin/McGraw-Hill, 1998.