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PLUS:

- 7 benefits of collaborative spend analysis
- New alternative to reference checks
- Legalities of discussions in RFPs
- Energy procurement survey results

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Here is a response to the last issue’s Procurement Ponderable. The scenario, provided by a group of graduate students in a procurement and ethics course at Old Dominion University, described a hypothetical City Manager of a medium-sized local government. The City Manager directs the Chief Procurement Officer to execute a sole-source, long-term contract for vehicle emissions testing with a firm he often used in the past. On the job for only two weeks, the Chief Procurement Officer has more than 10 years of experience in procurement, although this is his first job at the director level. He learns through research that there are many firms capable of performing the vehicle emissions testing service just as well, and that the “suggested” firm has a less-than-stellar record of performance going back several years.

The following response comes from Phillip Ellison, MBA, C.P.M., CPSM, RTSBA, an NIGP member and Board Member of the National Procurement Institute (NPI). After practicing procurement for six years in multiple industries in the private sector, he spent nine years in higher education and healthcare and the last four as Executive Director of Supply Chain Services at Spring Independent School District in Texas.

I have been approached too many times lately regarding similar circumstances. In fact, there are only two options – break the law or don’t break the law.

After my first couple of years of floundering in the public sector, it became quite evident [to me] that we, as agents of our public entity, have a fiduciary responsibility to follow the laws we have been hired to maintain. There are few things more comfortable than the reassurance that laws, or policies, are on our side.

I believe the question stems from a much larger issue: Is this job worth me breaking the law or, at the very least, sacrificing my ethics? When approached with the original question, the conversation usually boils down to my mantra regarding employment: I’d much rather work for a horrible company with a fantastic supervisor, than for a fantastic company with a horrible supervisor. (Actually, rarely does either happen, as great supervisors/leaders are usually attracted to great companies.) Also, I remind them of the three pillars of my Supply Chain Services organization – Compliance, Customer Service, and Value Creation, in that order.

Many times, our internal customers want what they want, when they want it. And, they don’t really care how we get it. Our job, as professional public procurement officers, is to ensure we follow the requirements placed on us as agents for our entity. This means we must be concerned with how our customers get what they want. Also, as liaisons between our internal customers and our vendor community, we must protect both, ensuring we procure what we need at the best value for our entity, without “beating up” our vendor, or driving them out of business by forcing them to sell at no margin, or below cost, in order for them to keep our business.

In order to do this we must level-set the expectations of our customers by educating them on our procedures, lead times, and processing times. In doing so, we reduce their false expectations and reduce the image of the procurement team as being a roadblock rather than a facilitator. That level-setting of expectations should begin with a sobering conversation with any new supervisor.

Whether it’s an interview for a purchasing manager position, or the first meeting between the existing purchasing manager and a new

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Continued on page 4
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procurement ponderable

Continued from page 2

supervisor, groundwork must be established regarding the roles of each when it comes to procurement. The purchasing manager must have the full support of the supervisor in order to carry the weight and have the credibility of his or her responsibility. If customer service must be compromised or monetary savings forfeited in order to meet a compliance requirement, the supervisor must support such decisions. Of course, the purchasing manager also has a responsibility to notify the supervisor of such incidents should issues be elevated to the supervisor, so he or she is not caught off guard.

Anyone who supervises the purchasing and contracts function of a public entity must have a firm trust in the abilities of the procurement manager and that they are competent in their duties. This can either be attained by knowing their background or through training and professional development. The supervisor must support the actions of the purchasing team. That includes not asking the team to do anything that conflicts with their charge, or siding with an internal customer who is asking the same.

Bottom line: Procurement professionals must be willing to face the sometimes cold, hard truths of their profession. If they lack the support of their supervisor and must decide whether to sacrifice their ethics or break the law in order to do their job, is that a job worth having? If not, change jobs. If so, then seek legal means to address the improprieties to which you are being subjected.

share your story

Government Procurement magazine publishes articles about successes in the practice of public procurement. We are especially interested in topics such as green purchasing, strategic sourcing, spend management and innovative approaches to the practice of procurement. What is your procurement entity doing that is innovative and would be interesting to Government Procurement readers?

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The object is simplicity.
Investment in the NIGP Code provides for its advancement and lays a foundation for stronger public procurement processes overall. We at Periscope Holdings are excited about both the progress made over the past year and the potential expansion opportunities ahead. This article provides an overview of activities conducted in 2012, including ongoing efforts and successes associated with the NIGP Code.

The NIGP Code remains a widely adopted classification taxonomy for state and local government procurement, and serves as a mechanism for managing master data – the vendors, inventory, and catalogs that are core to our public entities. The Code’s growth and success are fully dependent on the community of public purchasing professionals who utilize it. As we move forward, our attention will increasingly turn to leveraging the Code to help subscribers execute on strategic sourcing initiatives and empower greater transparency and decision-making.

KEY ACCOMPLISHMENTS FOR 2012

New Users (31): Boise State University; Sioux Falls, S.D.; Denver Public Schools; Olathe Unified School District, Kan.; St. Paul, Minn.; Omnitrans (Calif.); Santa Fe, N.M.; Dayton, Ohio; Baton Rouge, La.; Black Sheep Ventures; Miramar, Fla.; Aiken County, S.C.; Seminole Tribe of Florida; Boulder Valley School District (Colo.); Washoe County School District (Nev.); State of Illinois; Ukiah, Calif.; Boise, Idaho; Placer County Water Agency (Calif.); Smyrna, Ga.; Lewiston, Idaho; NEON, Inc.; Multnomah County, Ore.; Frederick County Public Schools (Md.); Yonkers, N.Y.; Kennesaw State University (Ga.); Miami Lakes, Fla.; Muskegon County, Mich.; Jupiter, Fla.; Ontario County, N.Y.; and Milwaukee Metropolitan Sewer District.

New Codes: We continue to work with the code users to add to the code base. The creation of new codes helps to ensure that the NIGP Code remains responsive to the demands of public procurement. In 2012, we added 16 five-digit items, 985 seven-digit groups, and 5,802 eleven-digit details to the overall code set.

Coding and Code-Related Services: The NIGP Code services team works with code users to convert from existing (legacy) code systems and inventory masters to the current NIGP Code, or to establish a standardized spend classification system for the first time. In some cases, the code users require ongoing assistance to establish codes for new goods and services. This coding work has resulted in enhanced visibility for inventory, improved classification and identification of vendors, and transparency in reporting for code users.

In 2012, we worked with the following entities to help manage their master data:

- Baltimore County Public Schools – inventory management
- City of Austin, Department of Public Works – construction project standardization and development of a “crosswalk” to CSI codes
- Harford County Public Schools – inventory
- City of Houston, inventory and spend management (QA of SAP master file)
- State of North Dakota, State Hospital – inventory conversion
- State of Tennessee – punch-out interface from e-procurement system to the NIGP Code
- State of Texas, Comptroller of Public Accounts – contracts management and inventory
- State of Texas, Department of Transportation - inventory
- State of Washington, Department of Corrections - inventory
- State of Washington, Department of Transportation - inventory
- State of Washington, Department of Social and Health Services - inventory.

Periscope Holdings will continue to be represented at key conferences, deliver conference seminars and training webinars for users of the NIGP Code to educate agencies on best practices related to the Code and master file management. We also conduct NIGP Code Boot Camps to develop implementation approaches and train endusers regarding the NIGP Code.

We look forward to continued success in 2013, and have plans for significant expansion of our NIGP Code-related activities. For more information on the NIGP Code, please visit www.nigp.com or contact us at any time.

MATT WALKER is president of the NIGP Code Services at Periscope Holdings, the custodian of the NIGP Code on behalf of the NIGP. He welcomes feedback and ideas related to the Code. Contact him at mwalker@nigp.com.
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State Electronics Challenge
FREE TOOLS AND RESOURCES AVAILABLE TO IMPLEMENT OFFICE EQUIPMENT SUSTAINABILITY PROGRAMS

Computers – ubiquitous, pervasive and constantly changing – are the poster-child for environmental concern. Computers and other office equipment contain toxic materials and hazardous constituents; they are heavy users of energy and paper, and are often hard to recycle. Nearly everyone has seen or heard a horror story about the improper handling of electronics at the end of their useful life.

Therefore, computers and office equipment are an important target for public sector sustainability programs. States and local governments are well positioned to mitigate the environmental impact of these products by “greening” their purchasing, use, and end-of-life management systems.

As more and more public entities work to improve the environmental footprint of their operations and implement sustainability and greenhouse gas reduction plans, procurement managers need to find ways they can contribute. The State Electronics Challenge (SEC) offers a simple, straightforward approach to help government purchasing managers green the lifecycle of their office equipment.

States and local governments spend more than $35 billion annually on technology. The SEC harnesses the purchasing power and resources of the public sector to change the way office equipment is designed, used and disposed of. The SEC provides tools and resources to help participating organizations, known as partners, buy green office equipment, use it efficiently, and recycle it responsibly.

To buy green, participating organizations – partners – commit to purchasing EPEAT-qualified office equipment. EPEAT [Electronic Product Environmental Assessment Tool] is a green certification program for office equipment. To foster energy and paper use efficiency, partners establish energy and paper conservation policies. To recycle responsibly, partners use recycling companies certified by the R2, R2/RIOS, or e-Steward programs. Partners can choose to focus on one, two or all three of these lifecycle phases. The SEC provides free technical assistance to help managers through the process.

Many State Electronics Challenge partners are already on their way to greener office equipment when they jump on board. For those organizations, joining the SEC can boost sustainability programs. SEC tools and resources enable government purchasers to flesh out their green electronics programs and to identify the growth opportunities with the biggest environmental bang for the limited government buck.

Working with the SEC can help government purchasers figure out what they are not doing that they could do, and determine the impact of those actions. For example, the SEC program information helped DuPage County, Ill., recognize that standardizing duplex printing would improve environmental performance and reduce costs. SEC data and information was used to build support within the county government for a policy that now requires exclusive purchasing of printers, copiers and imaging devices with duplex capabilities and ensures the settings default to double-sided printing (unless deselected by the user).

Working with the SEC can also help programs become more accountable. It can be a focal point to bring together the players involved in the office equipment lifecycle and give structure to their collaborative efforts. The program’s reporting forms help partners document efforts and track results. Agency reports are used by SEC to generate an annual Sustainability Report for each partner. The report documents the environmental benefits of partner programs using key sustainability indicators such as reductions in energy use and greenhouse gas generation, as well as avoidance of toxic materials and waste. These sustainability reports provide legitimacy to partners’ activities and external validation of results. Many partners use these reports to document their contribution to greenhouse gas reduction plans, sustainability plans or other environmental goals.

The SEC also provides recognition for outstanding efforts; partners that address one lifecycle phase are eligible for a bronze award, two phases for silver and all three phases for gold. Award recognition can energize programs and help to drive policy improvement and program expansion.

An introductory webinar provides information about how an entity can benefit from SEC partnership. Visit www.stateelectronicschallenge.net, or email info@stateelectronicschallenge.net to register.
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Public sector organizations really do buy many of the same goods and services, even among sectors as diverse in their missions as local government and higher education. To better identify collaborative procurement opportunities, organizations need a way to break down their respective data silos. However, the chances of a group of independent organizations implementing a common accounts payable or ERP system with the same data structures at the same time are slim to none. Therefore, spend analysis provides the most efficient and effective means to bring data together to provide the needed visibility.

So what are the benefits of carrying out a collaborative spend analysis to take advantage of this common expenditure?

1. **Top Priority: Procurement Savings**
   Whether it’s saving time, money or resources, there’s no reason to suggest that collaborative procurement is (or should be) about anything more than organizations looking to survive in a tough economic environment with reduced budgets. Doing a collaborative spend analysis to save money really is a given, so what else is possible?

2. **Transform Ad-Hoc to Proactive and Reactive to Strategic**
   Most folks can imagine a scenario in which their local purchasing group (NIGP chapter, local collaborative, council of government purchasing committee) gets together to discuss potential joint bids and contracts. A benefit of a collaborative spend analysis is the ability to take what is typically a reactive and ad-hoc conversation about collaboration and transform it into a proactive and strategic discussion. A collaborative spend analysis project will provide the group with the visibility to plan the most effective time to carry out a joint competitive solicitation for a commonly procured good or service and to have a firm understanding of which members of the group are buying those goods or services already and from whom.

3. **Shift Leverage to the Public**
   Where the goods and services needs do overlap among organizations, the balance of information in most cases still lies with the vendor in competitive negotiations. The vendor typically has better information on the spend patterns of a group of local organizations than the organizations themselves. Furthermore, the vendor knows whether or not they are charging different organizations different prices for the same goods and services, how much each is buying and exactly what they are buying. Bringing data together in a collaborative spend analysis can often correct this informational power imbalance. If the group knows how much it spends with all vendors on a particular category of goods and services, it can arrive at the negotiating table with buying power that the vendor doesn’t even know exists.

4. **Lower Vendor Risk, Lower Pricing**
   Not surprisingly, vendors don’t just set prices based on market conditions and cost of sale. The more risk in the contract, either from a lack of orders being made or in not being able to scale up fast enough to deliver the volume of goods and services required, the greater margin the vendor factors into their pricing for contract risk. For indefinite quantity contracts (into which category the vast majority of group purchasing organizations and state contracts fall), the risk to the vendor of getting anywhere between 0 and too many orders is huge, and this risk is reflected in the pricing. If the vendor knows that, based on history, they are going to supply roughly 1,000 widgets to a group of organizations, they can determine their pricing based on 1,000, rather than anywhere between 0 and too many.

5. **Administrative Efficiencies**
   This isn’t to say that cooperatives, group purchasing organizations and state contracts are bad because they are indefinite quantity contracts. Piggybacking on others’ contracts can create significant administrative efficiencies as well as drive time and cost down. Most advantageously, by working as a collaborative group in a collaborative spend analysis project, piggybacking can be taken one step further by splitting up the research into best pricing among the membership. Rather than always carry out a group competitive solicitation, there is the opportunity for
various members of the group to take responsibility for assessing each other’s pricing for a particular category of goods or services. By comparing this pricing to group purchasing and state contracts, the group can make use of the procurement method that provides the best prices, best value, most favorable terms, and takes into account other factors that would impact the group’s decision.

6. REALLOCATION OF RESOURCES AND SHARING DURING CRISIS

Not surprisingly, disaster and emergency planning has become a savings opportunity as well as a safety priority. In reality, if the group is purchasing goods and services from the same vendors and there is a reasonable amount of consistency in the goods purchased, it makes it much easier for the group members to reallocate resources (one member buying up spare inventory from other group members who have too much) or to share resources in times of crisis (parts for snow plows, text books, emergency generators/supplies).

7. IMPACT ON LOCAL, SMALL, DIVERSE BUSINESSES

One final criticism of collaborative procurement is that it could have a detrimental effect on spend with small, local or minority-owned businesses. But through a collaborative spend analysis, this doesn’t have to be the case because the group has the information to anticipate potential effects of collaborative decisions on those businesses before any action is taken. The push and pull between saving money and spending money in the local economy and with small and minority-owned businesses will not go away, but at least when the data is aggregated in one place, the impact can be properly assessed before group or individual decisions are made.

THE CHALLENGE

The above benefits of collaborative spend analysis don’t just happen, and they all can only begin after the group’s spend data is transformed into a consistent, normalized format and put into a single database for analysis.

JONATHAN WHITE, territory director for Spikes Cavell, Inc., which equips decision makers in the public sector with the business intelligence, online tools and analytical insight to transform the way they procure goods and services. The Spikes Cavell Observatory is an online platform that facilitates delivery of spend and contract visibility quickly, affordably and with little effort on the agency’s or institution’s part.

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Checking references is a time-consuming burden for many procurement entities. In Tucson, Ariz., for example, principal contract officer Nathan Daou says reference checks involve multiple members of the evaluation committee making numerous calls and often playing phone tag. Having multiple people do the calling increases the variability and makes comparisons difficult, but the burden is too large to assign to a single team member busy with other duties.

It’s a thankless, but necessary, task. The best source of information about a supplier’s current—and therefore future—performance is their customer base, as reflected by effective reference checks. To provide a new approach to collect reference information, NIGP and eVendorCheck have partnered to provide eVendorSelect, an automated web-based survey solution to assess and select reliable, effective suppliers at less cost, less risk and less effort than telephone reference checks and similar methods.

eVendorSelect allows procurement professionals to obtain real-time customer feedback gathered using web-based surveys of up to 25 references per supplier. The supplier company provides the reference contact information, and the system generates an automated email to each contact containing a link to an online survey. eVendorSelect converts confidential customer assessments into statistically meaningful predictions of supplier performance, according to the company. The data is collected by the third-party supplier, which minimizes variables and eliminates any perception of bias.

Another advantage of eVendorSelect is the practice of surveying multiple individuals at each reference entity, including a mix of project managers, procurement, finance managers, etc. Each reference provides multiple data points, which broadens the sampling of responses and increases the value of the resulting information. Survey questions provide a combination of numerical ratings and narrative responses that combine both a quantitative score and valuable verbatim comments.

eVendorSelect provides a documented, reviewable process and results to ensure transparency and integrity of referencing practice. Detailed and standardized ranking simplifies supplier reference ratings. The NIGP member fee is $99 per supplier evaluated.

System-generated reports fill the requirement of legible, non-biased documentation of what a customer’s references said.

Herlihy says transparency is required in public procurement, and decisions are often guided by a fear of supplier protests. In the case of a multi-million dollar contract, for example, a supplier might hire lawyers to review every piece of paper, so the references have to be transcribed into documents that could be turned over to multiple parties in a protest. “Our system-generated reports fill the requirement of legible, non-biased documentation of what a customer’s references said,” according to Herlihy.

Tucson’s Nathan Daou used eVendorSelect in a pilot program involving solicitation for hydraulic modeling software for the water department. The solicitation included language that any vendor who submitted agreed to work with eVendorSelect on the reference check. In the end, only one supplier bid on the contract, so the result of the reference check was
moot. However, the process allowed Daou to see how the process works and to get a feel for the depth and quality of the resulting reference check information.

In the case of the Tucson solicitation, a single company provided 33 references (including multiple people at several entities), which Daou says reflects how easy it is for supplier companies to enter reference contacts. The 73 percent response rate suggests the survey is easy to use, said Daou.

RULES VARY BY STATE

Rules vary from state to state about reference checks, said Doug LaPasta, CEO/chairman of eVendorCheck. Generally, there is a dollar limit – usually around $40,000 or $50,000 – above which references must be checked. “Reference checks are often based on unstructured conversations and there is no consistency about what is said, which allows possible misinterpretation,” said LaPasta. “The notes on a yellow pad are not archived, transparent or consistent, and may not answer the necessary questions.”

In the case of eVendorSelect, because the questions are being asked by a third party, the answers are anonymous and references are more likely to be honest in their responses, said LaPasta. In contrast, phone calls also provide a smaller sample size.

SWIMMING POOL CONTRACT IN TAMARAC

Keith Glatz, purchasing and contracts manager of Tamarac, Fla., recently used eVendorSelect when awarding a swimming pool management contract. After using the same supplier for years, the city had previously switched to a different supplier (based on a lower price), but was dissatisfied because the new supplier had not met the requirements. The city ended the contract. At the height of the summer swim season, the city had to bring back the previous supplier on an emergency basis and re-bid for a new supplier.

Unfortunately, the previous supplier, which the city had been happy with, had recently received bad publicity regarding an incident in which one of its lifeguards had been fired for leaving his zone to save a life. A city politician had publicly opposed awarding the new contract to the long-time supplier based on the incident and negative publicity.

The political aspects of the contract, and the recent bad experience with the newer supplier, made complete and impartial reference checks especially important to the city. “Using eVendorSelect ameliorated the issue of staff bias related to collecting references,” said Glatz. “It took the political pressure off our staff, and provided a high-quality reference check with a depth of references we had never seen before.”

Glatz said the references were provided within a matter of days and saved the eight to 10 staff hours it might have taken to check the references of the three companies that bid on the new contract.

Glatz said the third-party reference taker was also more successful getting references to respond. Offering a combination of quantitative and qualitative (narrative) responses, the product turned a subjective process into an objective one. In the end, the city awarded the contract to the former supplier, despite the negative publicity, based on positive eVendorSelect ratings from references.
**FROM PROPOSAL TO AWARD: DISCUSSIONS IN RFPS**

By Richard Pennington

"We cannot regard as unreasonable the City’s apparent assessment that its duty to conduct discussions was satisfied ...."

What duty to conduct discussions? This Hawaii court language raises some questions. Is your agency required to conduct discussions in requests for proposals? Should you? This article looks at the information exchange that occurs from the time proposals are received and the government’s obligations with respect to those exchanges.

In competitive sealed bidding, commonly called invitations for bid, there is little opportunity for information exchange between a bidder and the government about the bid before award. There may be very limited exchange related to mistakes by the bidder or clarification of minor informalities. However, except in very rare cases, the bid is not revised or prices changed.

This article looks at the other kind of competitive solicitation. The American Bar Association Model Procurement Code names this process “competitive sealed proposals.” The title of the Federal Acquisition Regulations section on the request for proposal (RFP) process is “Contracting by Negotiation.” Some states – Florida and California, for example – have separate statutory authority that permits competitive negotiation.

What characterizes this type of negotiation is the opportunity to have a give-and-take exchange of information. This exchange is significantly broader than permitted in sealed bidding. Ultimately, the exchange can lead to proposal revisions, often through a process called “best and final offers” (BAFO). But the process requires some oversight to ensure that the information exchange is fair to vendors.

**HAWAII’S ANALYSIS OF MEANINGFUL DISCUSSIONS**

A 2012 decision from the state of Hawaii illustrates the importance of fairness in discussions. [Bombardier Transportation (Holdings) USA, Inc. v. Director, Department of Budget and Fiscal Services, 289 P.3d 1049 (Haw. Ct. App. 2012)]. The city and county of Honolulu issued a request for proposal for a large design-build-operate-maintain contract for the Honolulu transit corridor. The solicitation terms and conditions limited contractor liability, but the clause specifically exempted liability arising out of a contractor indemnity provision in the contract.

In its proposal, Bombardier stated that it assumed the indemnification exclusion from the limitation of liability cap was an inadvertent oversight, because the exclusion would defeat the purpose of the limitation of liability provision and essentially eliminate any cap on liability of the contractor. During discussions before award, Bombardier argued that the limitation of liability provision should be amended to eliminate the exception for indemnification liability.

The city orally warned Bombardier that a conditional proposal would be considered nonresponsive. The city issued a BAFO request and an RFP addendum, retaining the language excluding indemnification claims from the liability cap. Bombardier submitted a confidential question to the city, asking again that the terms of the limitation of liability provision be revised. The city declined to respond but issued a final RFP addendum stating that no changes would be made to the limitation of liability provision.

Bombardier then submitted its BAFO. Its proposal said that Bombardier was basing its proposal on the assumption that the indemnification exclusion would be deleted from the limitation of liability provision. The city notified Bombardier that it had submitted an impermissible conditional proposal and awarded the contract to a competitor.

Bombardier protested the award, which was denied, and eventually filed a lawsuit against the city. Bombardier alleged that the city had failed to engage in “meaningful discussions,” a term well known in federal procurement law. Hawaii’s procurement code is based in large part on the ABA Model Procurement Code (itself modeled on federal procurement law). Hawaii’s statutes permit “discussions” with responsible offerors. Despite differences in language between the Federal Acquisition Regulation (FAR)
and the Hawaii procurement code, the court considered federal precedent anyway regarding what constitutes “meaningful discussions.”

Federal procurement law requires, once an agency elects to conduct discussions, that the agency ensure that discussions are “meaningful.” That is, the agency is required to point out deficiencies or significant weaknesses in a proposal, or adverse past performance information, with enough specificity that the offeror is led into areas of its proposal which may require amplification or correction.

The court never articulated the standard for discussions under the Hawaii procurement law; it opted instead to address federal “meaningful discussions” standard argued by Bombardier. The court held that even under that more stringent federal standard, the city met its obligations regarding discussions. The court held also that the city was not required to conduct another round of BAFOs to permit Bombardier to revise its proposal to remove the conditional language. The court sustained the award.

**CLARIFICATIONS, DISCUSSIONS AND FAIRNESS**

We tread lightly into this topic of discussions because the Hawaii case, federal cases, and other state cases rely heavily on the specific language that governs the request for proposals process. While your agency’s statutory or regulatory language likely is different from that in Hawaii, the Bombardier case introduces guidelines regarding discussions that help make RFP processes fair to all vendors.

There is a distinction in many statutes and rules between clarifications and discussions. Clarifications are less comprehensive communications that generally address reasonable interpretations of the proposal and are not considered proposal revisions. Discussions under Hawaii’s procurement law are more comprehensive exchanges “to promote understanding of a state agency’s requirements.” They lead to proposal revisions. Discussions permit agencies to achieve better value and offerors to learn how to improve proposals.

Why is the distinction between clarifications and discussions important? Sometimes, a limited communication is needed to confirm an understanding of a proposal. In some less complex procurements, award can be made without discussions where only limited clarification exchanges are used. Likewise, where an agency’s procedures permit “short listing” (establishment of a competitive range), limited clarifications may be needed that are short of proposal revisions. If your jurisdiction distinguishes between clarifications and discussions, your counsel can help you assess whether communications have crossed the line into discussions that may involve proposal revisions.

Once communications cross the line into proposal revisions, Hawaii’s procurement code and federal regulations (FAR section 15.306) require all offerors to be given equal opportunity for discussions. Bombardier argued that the city’s discussions with it were not meaningful. The court noted that a specific written demand by the city that Bombardier remove the objectionable proposal language might have been preferable. But the court concluded that the progression of RFP amendments, oral warnings about the conditional nature of the proposal, and Bombardier’s own proposal language showed that Bombardier had fair notice about the seriousness of the issue.

There are other limits on discussions. An agency cannot assist one offeror’s technical approach or pricing to another. Nor can an agency assist one company to improve its proposal through detailed identification of weaknesses while not providing the same level of assistance to other offerors, a practice sometimes known as technical leveling. For example, a six-page BAFO request letter might be sent to one offeror with detailed listings of weaknesses. If another offeror receives a one-page letter merely extending an opportunity to revise its proposal without identifying any weaknesses, technical leveling might be a concern.

**MEANINGFUL AND FAIR**

Promoting fairness to offerors through the discussion process is a role of the procurement professional. They should review agency communications before they are sent during evaluation and award in order to avoid misperceptions that discussions are unfair.

The use of best and final offers (proposal revisions) permits a freer and more open exchange of information before the ultimate award decision. Yes, they take additional time, but the BAFO request letter can discourage comprehensive proposal rewrites. Using instructions that invite only change pages to proposals, the time for BAFO submission can be reduced to a matter of days.

Extending an opportunity for proposal revisions in many respects eliminates the issue of the distinction between clarifications and substantive discussions before award. All offerors in the competitive range are given the same opportunity to revise proposals. But, as Bombardier and this article highlight, the discussions must be meaningful and fair.

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EMBRACING ‘LEAN’ – IT’S ALL ABOUT THE PROCESS

By Steve Demel

More than 30 years ago, Total Quality Management (TQM) guru W. Edward Deming said: “If you cannot describe what you are doing as a process, you do not know what you are doing.” In fact, a need to focus on process is among the things that lean government, strategic sourcing, reinventing government and TQM all have in common. In order to be successful, all of them require the ability to describe current processes and make changes that lead to overall improvement.

When procurement professionals hear the term “Lean Government,” it’s likely their eyes roll back and they think: “Here we go again, another bureaucratic program.” Or they think: “This, too, shall fade away; I can outlast it.” Others are skeptical, too. In 2011, economist and consultant David Longstreet said: “Where’s the beef? I see a lot of words (a lot of bun), but little beef in this new ‘lean’ thing.”

Have you embraced lean government or is your organization between the last buzzword and this one? Here’s a suggestion: Why not use the current euphoria over “lean” to justify changes you want to make in your organization? I’m not ashamed to admit that for periods of time during the past 30 years, I have become a TQM advocate, a reinventing government engineer, and a strategic sourcing proponent, all so I could get upper management’s approval for organizational changes that needed to be made for us to succeed. Success is doing what upper management always expects us to achieve: Doing more with less. “Lean government” means less waste and cost with better outcomes.

Embracing lean government, by definition, means you want process improvement with emphasis on “less” and on outcomes that are “better.” How many government organizations have actually written down their key business processes? Based on my personal polling while instructing classes made up of government purchasing people from around the state of Washington, I would say a very small percentage, certainly less than 20 percent.

Many organizations look for best practices they can adopt. The chances of successful adoption are minimal if you cannot describe your current process and determine what changes will work in your organization to implement the best practice. Behind any successful best practice implementation is some effort to map the current process and make changes in order to implement it.

Here’s an example: My department decided we wanted to adopt a best practice for obtaining vendor quotes over the Internet. When we began, we quickly realized we did not have a written process to describe how we were currently getting quotes. In fact, each buyer was doing things differently. Some were using phone, some email and some regular mail. However, once we wrote down what everyone was doing, it was fairly easy to map the results into a single process document.

After selecting a provider for registering vendors and receiving electronic quotes, we wrote down what we envisioned the steps would be to obtain quotes via the Internet. Then it was simply a matter of replacing old steps in the process with new steps. Much of the essence of the old process did not change, it was just reworded. For example, quotes were still awarded based on low bid, but the evaluation was now done on-line and vendors were notified with a system-generated email instead of a buyer-generated communication. We did some testing and modifications leading up to implementation. Finally, as we gained experience, we tweaked the new process to make it even better.

Within six months the process was stable. We were saving time, getting more vendor participation and competition, leading to lower prices. From what we learned on the simple quote process, we moved on to receiving formal bids and proposals on-line.

In my business case for the “e-bid” project to the boss, besides showing a nice return on investment, I stated that what we were proposing was a “lean government” initiative.

There is no magic to lean government. You cannot wave a magic lean wand and generate better outcomes. What you can do is simple, but challenging: Dare to identify a current process and describe it (write it down). This exercise alone can help identify ways to improve the process and achieve better outcomes.

Steve Demel, CPPO, is purchasing manager of Tacoma Public Schools.
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Praise like this doesn’t come around every day. But it sure feels like it around here.

The route to excellence

Central Puget Sound Region Transit Authority, which was established in 1996 and began operating transit services in 1999. The authority, formed by the Snohomish, King and Pierce County Councils, provides regional transit services within Washington’s three largest counties, an area with more than 50 cities and more than 40 percent of Washington’s population. The authority operates express bus, commuter rail and light rail service in the region with nearly 100,000 weekday riders.

The Sound Transit Procurement and Contracts Division processed close to $1 billion in spending in 2012. The authority’s procurements are key to Sound Transit’s effective stewardship of taxpayer dollars. The national recession has reduced funding for the Sound Transit authority by 30 percent through 2023 for voter-approved expansions, so cost controls will continue to be a critical priority for delivering projects.

Affirming procurement excellence, the Sound Transit Procurement and Contracts Division has received NIGP’s coveted Pareto Award of Excellence in Public Procurement, recognizing achievement of criteria so challenging that only eight public agencies have earned the accreditation since the award’s inception in 2003.

“Striving to get the Pareto made us a better working team,” said April Alexander, Sound Transit’s Contracts Manager, Materials, Technology and Services. “There were high-fives as the excited team learned of the award, she said. “The best part of the Pareto Award process was watching the team grow and increasing our ability to work together on a daily basis. The whole group was energized and proud of our accomplishment.”

Sound Transit is the popular name for Washington state’s

By Larry Anderson

Sound Transit provides express bus, commuter rail and light rail service to nearly 100,000 weekday riders.
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The Procurement and Contracts Division is comprised of three sections – the Design and Construction Contracts Group with 13 team members led by Linneth Riley-Hall; the Contracts Systems Group with four team members led by Laura Sharp, which manages records, reporting, the p-card program, the solicitation system and the purchase order system; and the Materials, Technology and Services group, also known as Goods and Services, with 11 members led by April Alexander.

The previous Director of Procurement and Contracts, Kunjan Dayal, helped lead pursuit of the Pareto Award, but had moved on to another job by the time the award was presented. Alexander said the momentum was there to finish the journey even with a vacancy at the Division’s top job. Dayal’s successor, Ted Lucas, came on board after the team received the Pareto Award at last August’s NIGP Forum in Seattle.

Alexander said her initial reaction at the suggestion of pursuing the Pareto Award was “who has the time?” – especially given the management climate of having to do more with less. “At the time, I had no idea how this pursuit would truly pull our team together. Every person in the division was involved.”

“Sound Transit’s operation stands tall in serving as a prime example of professionalism and proficiency in transit authority procurement,” said NIGP CEO Rick Grimm. The Pareto Award of Excellence in Public Procurement, comparable to the Malcolm Baldrige National Quality Award, is named for the political sociologist and economist Vilfredo Pareto (1848-1923), the father of scientific procurement, whose Pareto Rule says roughly 80 percent of the effects come from 20 percent of causes.

TEAMWORK PROMOTES EXCELLENCE

The Sound Transit Procurement and Contracts Division holds an annual retreat off-site, facilitated by a professional consultant who helps the group review goals and objectives, mission and values. The Procurement and Contracts Division promotes values of accountability, integrity, respect, efficiency and teamwork. The retreat enables team members to re-assess, re-confirm and re-connect with each another through educational and fun tasks/games to build team strength and commitment.

An example of the pride Sound Transit employees have in their organization is the practice of “street teaming” whenever the transit system opens new service. The whole agency is involved as new transit service is being launched, with employees from every department on hand to help riders during the launch. “We get to hear directly from some of the riders how Sound Transit has affected their lives,” said Alexander. “Sound Transit employees like getting out there and talking to our riders and feeling like we’re making a difference. Procurement improvements at Sound Transit include implementing a Contracts Help Desk within the Contracts System Section to ensure timely response to internal customers and to provide a central point to submit requests and questions. The Contracts Help Desk also provides internal customers a central location for assistance utilizing Oracle’s JD Edwards Enterprise One (E-1) system. This system is used for the issuance of purchase orders, payments to vendors and consultants, and other purchasing and accounts payable activities. Help Desk data is collected and analyzed to evaluate areas for additional training and improvement.

The Procurement Activity List (PAL) is a checklist of activities for solicitations (Requests for Proposals or Qualifications and Invitations for Bid) from the initial discussion with the Project Manager through award and notice to proceed. The PAL includes sample documents for the various activities required for issuing solicitations. The team worked together to create this helpful tool in producing work for the agency, and it works continually updating and revising it. This tool helps to ensure regulatory compliance and confirms that everyone is working under the same processes and procedures. Utilizing best practices ensures that procurement provides consistent and quality work. At the request of the Federal Transit Administration (FTA), the PAL has been recently showcased at a national FTA Conference by the Division Director. The FTA wants to make the PAL a model for other agencies to follow.

In 2011, the Procurement and Contracts Division began utilizing a Kaizen/Rapid Process Improvement (RPI) initiative to work with internal departments to review and evaluate workflow with the assistance of a professional consultant, to achieve improvements in workflow processes. RPI is a fast cycle method of removing waste, improving quality, improving morale and reducing costs within a specific process. In working with the Accounts Payable department, procurement was able to eliminate some duplicate processes and streamline others, greatly reducing the time from invoice to payment, and achieving a more effective and responsive workflow.
I’m an outdoorsman.
(So naturally, I ended up behind a desk.)

Sure, I’d rather be outside than stuck in an office. That’s why I started working for our parks department in the first place. But since then, my job has changed a bit. I guess you could say that if my department were a machine, I’d be the guy with the oilcan. Instead of sitting on a mower, now I’m buying them, making sure our parks stay a place folks can be proud of. So I have to make sure every machine is an investment that pays off. Like our Grasshopper mowers did. Seems like they do more in a day than our other machines do in a week. And we’ve cut our equipment inventory by using our mowers all year long to throw snow, aerate and pick up leaves. I haven’t heard one complaint from my crews — except for our maintenance guy, who claims he doesn’t have enough to keep him busy. Go figure. But, in the end, all that matters is our city parks have never looked better. And even though I’m a desk jockey now, I’m proud to have helped make it that way. After all, I’m an outdoorsman at heart.
Similarly, a cross-functional group assessed the Change Order process using RPI, reducing the lead time of change order process; clarifying cross functional roles; increasing early cross functional collaboration and reducing redundancies.

**ON-SITE EVALUATION CONFIRMS ACHIEVEMENTS**

Pareto accreditation is awarded for five years, and obtaining the award requires rigorous adherence to a three-phase award process. Candidates must complete a self-study and provide responses to 60 questions covering areas of leadership, strategic planning, customer focus, process management, technology and information management, and performance review. The final phase involves an on-site peer review. NIGP consultants Bill Brady and Connie Hinson conducted the on-site review to clarify, verify, interview and examine the procurement function at Sound Transit. The agency scored 96.3 out of 100 points in the on-site evaluation. Only public procurement agencies that have been accredited with NIGP’s outstanding Agency Accreditation Achievement Award (OA4) are eligible for the Pareto Award. Sound Transit’s achievements in each area include:

**Leadership.** Employees are encouraged to be innovative at all levels of the organization. Dialogue is a priority, and a yearly retreat is held to focus on strategic plans and outcomes. Communication strategies include an extensive Internet and intranet containing relevant information about procurement and contracts. P-card sleeves were created that list spending limits and limitations on how the cards can be used. The Division also supplies mouse pads with information on dollar thresholds to internal customers.

**Strategic planning.** Procurement participates in projects up front – well in advance of requisitions being received. All employees understand short- and long-term goals, with a focus on three-year and five-year plans. A scorecard measures performance, and Contracts Activity Reports (CARS) and procurement management reports are distributed to clients and management monthly.

**Customer focus.** Procurement works closely with clients to carry out the goals and focus of the authority. The procurement staff understands what they are procuring, and is involved in the planning stages so they can schedule critical milestones. Sound Transit (ST) Connect quarterly outreach events bring agency procurement staff and vendors/contractors together for a networking session and provide a Best Practices overview from procurement staff.

**Process management.** The main improvements suggested by the on-site review consultants surrounded the p-card program. “While the p-card program has excellent procedures in place, they are not using it to obtain maximum value,” said the evaluation panel. Auditing concerns about misuse are limiting the program’s ability to generate revenue, according to the panel. Also, although just-in-time contracts are being used, there should be more integration of the approach into p-card processes. The panel also noted a low level of delegated authority to client departments, particularly p-card limits. The authority is currently considering raising limits (currently $3,000 per transaction) and increasing use of p-cards as a payment method in lieu of checks issued by accounts payable.

**Technology and information management.** The procurement and contracts department has good data collection initiatives. Weekly training ensures sufficient knowledge of technology tools. The authority’s intranet makes information available to client departments and suppliers. Bids and proposals are advertised and can be downloaded. Data enables evaluation of the status of contracts and procurements, scorecard and cycle time. Technology is also integrated into the benchmarking process.

**Performance improvement.** A business efficiency team created a focus on improving the procurement and contracts department several years ago. There is an emphasis on certification and hiring the best candidates to embrace the mission, vision and goals of Sound Transit. The CEO personally recognizes employees in their performance appraisal with a note. To encourage existing procurement professionals to obtain CPPB and/or CPPO certifications, Sound Transit offered cash bonuses to employees who got certified, totaling 3 to 5 percent of their pay. To provide qualified procurement professionals to work on more complex contracts, the department upgraded contract assistant positions to contract specialist or senior contract specialist as vacancies occurred. The authority encourages employees to be involved at every level and to bring ideas to management. Morale is high, and innovation is encouraged.

**‘JUST GO FOR IT’**

Documenting existing procedures is central to achieving the Pareto Award, and earning the award for some procurement operations may be just a matter of documenting procedures already in place, said Alexander. The biggest obstacle is the initial motivation required to commit to taking the time to apply for the award. “The Pareto demonstrates our value and competence to the agency, increased our teamwork and morale in the division, and validates what we do on a daily basis,” said Alexander.

Alexander urges other procurement operations to “just go for it” and pursue the Pareto Award despite the day-to-day demand on time and energies. “Engage every member of your team in some way,” she said. “With the strength of great team efforts, where everyone pitches in and helps with writing responses to questions, the impossible becomes possible. It’s a matter of taking the time to demonstrate and document exceptional procurement practices that are already in place.” Alexander acknowledged a core team of Linda Winter, Tina Davis and Rosalind Knox, who were instrumental in keeping the Sound Transit department on track to meet deadlines, compile responses, etc.

LARRY ANDERSON is editor of Government Procurement.
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– Steve Pitts
Rural Fire Defense Coordinator
INCOG

Changing the Way Cities Run

Steve Pitts, rural fire defense coordinator for INCOG (Indian Nations Council of Governments), drives over 3,000 miles a month, supporting rural fire departments in Northeast Oklahoma. “When you run that many miles, saving $2 or more a gallon with compressed natural gas (CNG) is really important to these small communities. Plus I’m getting better mileage from CNG. The WiNG Power System will pay for itself in about two and a half years.”

When it came to choosing a CNG truck, INCOG picked the WiNG Power System, engineered by Westport, the global leader in natural gas engines. “Safety is important in my job, and I have no doubts about the WiNG Power System. It’s as safe as any truck I’ve ever driven on the job.”
Energy procurement strategies:
TWO YEARS LATER
New NIGP survey reflects continuing market evolution since 2010
By Bob Wooten and Tina Borger

Two years after NIGP’s last survey on procurement of energy, a new survey now measures changes in policy, practice and strategy. Some results are expected, but other findings are surprising.

In November 2010, the initial survey was issued by NIGP to more than 2,000 recipients. The survey was designed to gain a better understanding of how governmental entities approach the procurement of energy. In particular, the survey was intended to help better understand existing opportunities for competitive supply of energy commodities, and to gain a deeper insight into existing policies, procedures, and attitudes toward the procurement of electricity, natural gas, and transportation fuel.

In general, the findings two years ago indicated a lack of knowledge regarding opportunities existing at the time for competitive procurement of electricity and natural gas. In addition, there was no widespread use of detailed market intelligence incorporated into the procurement process, and most entities started their plans just shortly before current energy contracts were expiring, thereby limiting their ability to follow the market and time their procurements more effectively. The use of professional consultants to assist with energy management and procurement was starting to become more prevalent as well.

What a difference two years can make. Following is a summary of how the landscape has changed among governmental entities with regards to energy procurement.

OPPORTUNITIES FOR THIRD PARTY SUPPLY
Procuring competitive supply of energy is primarily dependent upon the state laws and statutes in place. There have been no significant changes over the last two years with regards to laws in place among the states allowing for the competitive procurement of electricity or natural gas. In the 2010 survey, it appeared many respondents were unaware of opportunities to source third party supply. The spread was wide enough to indicate a definite gap in knowledge of opportunities available for local governments to competitively procure power in their area.

The 2012 survey indicates a positive development regarding the understanding of electricity deregulation and opportunities: Most respondents indicated correctly when asked whether their area was in fact deregulated. However, natural gas continues to be an area of confusion, and many respondents are still not aware that there are even more competitive suppliers of natural gas today than two years ago. The lack of knowledge is a lost opportunity to achieve savings over the standard gas utility rate many entities are still on.

POLICY IMPLEMENTATION
This knowledge gap regarding opportunities combined with confusing state statutes led to a lack in uniform policies and procedures utilized for the procurement of energy seen in the 2010 survey. The good news is that over the last two years, there has been a definite increase in policies established to procure energy (see Graph 1). In the case of electricity procurement, there has been an 11 percent increase in entities that have now crafted a policy. With regards to natural gas, there has been a 7 percent increase. So in general, more entities are putting structure around the process they utilize to procure electricity and natural gas.

There were no significant changes measured from 2010 to 2012 regarding how these policies match up to existing state statutes and regulations governing the procurement of energy (or the lack thereof). In most cases, still about 75 percent of the respondents indicate their policies either comply with state statutes, or that they are not in conflict.

PROCUREMENT PLANNING AND MARKET TIMING
In a competitive, free market environment, the informed buyer will always stand a better chance of securing the best price than an uninformed buyer. When we surveyed entities in 2012, the findings indicate that most procurement cycles for energy started only six months prior to contract expiration. A combination of a short procurement
Timeline and little market information made the chances of securing the best pricing for energy difficult at best. Since the wholesale electricity and natural gas markets are extremely dynamic and volatile, it takes a longer-term planning approach to maximize the opportunities to secure and lock down prices during favorable market movements. We typically recommend having a 12- to 24-month outlook prior to current contract expiration, and it was obvious that less than 20 percent of respondents in 2010 used this type of approach.

There was a huge change when comparing this metric in the 2012 survey. There was a significant decrease in the number of entities that delayed their procurement process to the final three months before contract expiration, whereas there was a corresponding increase in those who started their planning more than twelve months out. Graphs 2 and 3 show the planning windows for electricity and natural gas, respectively. Regarding electricity procurement, there was a 15 percent increase in those planning long-term, and for natural gas the increase was 11 percent. This indicates that the educational push to encourage governments to expand their procurement window has been successful.

PROFESSIONAL CONSULTANTS

The 2010 survey showed a growing trend among governmental entities to use professional consulting firms to assist with the procurement of energy commodities, such as fuel, electricity, and natural gas. Issues regarding market timing, market information, and professional insight on energy commodities are all areas where a professional consulting firm assists an entity in securing a more favorable contract than otherwise. Because of the increasing complexity in already deregulated markets, it was expected that the use of consultants would rise. The results of the 2012 survey confirm the trend. There has been almost a two-fold increase in the use of professional consulting firms to assist governments with the strategic procurement of energy, as Graph 4 indicates. In the case of electricity, the use of consultants grew 13 percent from 19 percent to 32 percent. And in the case of natural gas, consultant utilization grew 10 percent, from 24 percent to 34 percent. Professional
consulting firms will almost always implement strategies with longer term planning cycles, and this may also be a direct contributor to the fact that more entities are starting their procurements more that 12 months out.

**CONCLUSION**

Differing responses to the NIGP survey from 2010 to 2012 demonstrate that most governments are becoming smarter, more informed energy buyers. Policies are becoming more formalized as familiarity increases within these commodities. The use of intelligence and professional assistance has also continued to grow as the contracting opportunities become more complex and the number of suppliers and products and services continue to grow.

**BOB WOOTEN** is director of government accounts for Tradition Energy, where he manages energy procurement for a variety of governmental entities including cities, schools, colleges and universities. He also coordinates Tradition Energy’s involvement through cooperative purchasing programs, in addition to its service offering available through NIGP.

**TINA M. BORGER** is the executive director of finance and administration for NIGP. Prior to joining NIGP in 2007, she was the procurement manager for Loudoun County, Va., located just outside Washington, D.C.

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**IN DEPTH** [energy purchasing]

**Graph 4**

<table>
<thead>
<tr>
<th>Year</th>
<th>Electricity</th>
<th>Natural Gas</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>30%</td>
<td>25%</td>
</tr>
<tr>
<td>2012</td>
<td>35%</td>
<td>30%</td>
</tr>
</tbody>
</table>

**Questions:***

- **Working with a consultant for procurement of electricity and natural gas?**

**Answers:**

- **2010:**
  - Electricity: 30%
  - Natural Gas: 25%

- **2012:**
  - Electricity: 35%
  - Natural Gas: 30%

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October 2012 – The Universal Public Procurement Certification Council (UPPCC) announces that 248 individuals successfully completed the fall 2012 UPPCC certification examinations administered October 15-27, 2012. The Certified Public Procurement Officer (CPPO) and Certified Professional Public Buyer (CPPB) credentials are recognized throughout the public procurement profession as demonstration of an individual’s comprehensive knowledge of public procurement. Of the 248 newly certified individuals, 164 earned the CPPB certification and 84 earned the CPPO certification. This newest class of professionals brings the total number certified for CPPB and CPPO to 9,085 and 2,209 respectively.

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Knowing who you are negotiating with and what their authority is can be as important as what you are negotiating. Authority limits differ from private company to private company. A title does not confer unlimited power to commit a private company to performance. “Salesman,” “National Sales Manager,” “Executive Sales Manager” are only titles given to show status in an organization or to impress potential clients. They may not be legally able to commit their company to an agreement to perform.

In a public body, such as those most of us work for, it’s different. We have systems of delegated authority that are clearly defined. Power rests with a Chief Operating Officer or Board of Commissioners or those who the enabling legislation specifies. That authority is delegated down to Managers, Supervisors, and Procurement Professionals. We do our jobs, and get either authority to negotiate beforehand by requesting permission (prior approval) or disclosing and requesting permission to approve our actions after the fact (post approval). We are completely transparent in our actions. That may not be the case with a private company.

Remember the last time you bought a new car? You negotiated to the best of your ability with the salesman and, once you thought you were finished, they had to check with someone in the back of the showroom. Time passes, which is done by design to make you wait. The intent is that you are supposed to wonder whether they will agree. Someone comes out, shakes your hand, and either says they are losing money or you have a great deal (I hate the word “deal;” it reminds me of a TV show or buying fruit at a farmer’s market). The guy from the back then tries to get you to change the agreement you made with the salesman. It’s almost that way when negotiating with a private company. They may have to check back with a home office or with a superior. All your hard work and research may be negated by someone who was not a party to the negotiation. Either way, your negotiated agreement is in jeopardy.

And don’t forget that whoever has the authority to negotiate should sign your contract. If it’s a very important document, have a requirement for a corporate seal on the signature page. Don’t accept someone’s signature who has less authority. Send it back if you have to.

There are important legal concepts involved with this subject, and I strongly recommend that you get your law department or legal counsel to develop a presentation to your buyers on this. If that’s not available to you, read up on the Law of Agency and the Master Servant Rule (also known as Respondeat Superior). They define who has authority, and what happens if authority is misused.

A good business practice is to bring up the question of authority directly to negotiate when you are making arrangements for the negotiating team to meet with the other party. I’ve always asked a direct question such as “Do you have the authority from your organization to commit your organization to performance after we conclude?” If there is hesitation, then go further. Generally a corporation’s articles of incorporation will state who can commit to performance – an officer, a majority of officers, or other designees, but let your legal counsel make that decision. And it’s acceptable to ask for it in writing, signed by an officer of the corporation. And if it’s really important to you, have the corporate seal affixed to the letter. I did that on several occasions. I usually say that “my manager requires it for all important negotiations”. Blaming your manager takes the burden off you for being hard-nosed. Besides, managers gets the big bucks, let them earn their pay.

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