

NEGOTIATIONS STRATEGIES

Public Purchasing Educational Forum:
"Holding the Reins on the Public Purse"
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PUBLIC PROCUREMENT IN THE 21ST CENTURY

- The lowest price – strategies have changed as Pay to Play evolved; and the number of vendors have changed
- RFPs – ideally lead to not only the lowest price but also the best goods, service, quality and condition
- QPAs et.al. must be effective negotiators and fiscal analysts

NEGOTIATION FOR PROCUREMENT SPECIALISTS

- It's a critical skill — and sometimes an overlooked opportunity — in the public sector
- Negotiation starts with the first idea and does not end until the contract is signed

NEW RULES

- State contracts, National Purchasing cooperatives, Fed rules such as the “Amazon Rule” have all shaped the way procurement is now conducted
- The easy way out – may not be

AMAZON AMENDMENTS

- Section 846 of the 2018 National Defense Authorization Act (NDAA), Procurement Through Commercial e-Commerce Portals. This amendment (dubbed the "Amazon amendment") will permit government agencies to buy commercial products through online portals like Amazon, Overstock, Staples, and Walmart

NEGOTIATION IN NEW JERSEY?

- What every QPA and RPPO should know about negotiation strategy
- Lowest responsible/responsive bidder
- Bid evaluators – ROI, cost, capabilities, responsiveness

OPPORTUNITIES

- Two rejections
- Under the bid threshold
- RFPs RFQs
- Within the final contract

Contracts

- Three components: offer, acceptance, consideration
- EVERY purchase is a contract
- Professional services, goods and services, construction, IT

PRIMARY STRATEGIES

- Before actual “negotiations”
 - Know your objectives – Council, municipality, procurement professional
 - Know the mission/philosophy of the Governing Body
 - Often the “first” negotiation is with someone within your organization who needs/wants the item or service

NEGOTIATIONS

- Defined as, noun “mutual discussion and arrangement of the terms of a transaction or agreement”
- Not necessarily adversarial – negotiations, in the procurement arena are strategic in nature

NEGOTIATIONS

- Start with the RFP, RFQ, Bid Specs
- Rent/Lease
- Cost of Ownership
- Think outside the box – everything is negotiable
- What do you put in your documents?

NEGOTIATION ESSENTIALS

- Understand the product or the service for which you are creating the RFP, RFQ, Bid
- By understanding the product/service, you can better use the municipalities leverage to get the best deal
- Understand that YOU are in the position of power
- DON'T NEGOTIATE WITH YOURSELF
- This is not a used car lot, Pawn Stars or American Pickers
- *Be willing to walk away*

LEVERAGE

- Leveraging Imbalances
- Know the competitive dynamics
- He/she who holds the purse strings
- Sole source and "sole source" after the fact
- Has leverage shifted?
- If its lost – can we regain it?

PRE-BID DOCUMENTS

- WHAT YOU WILL OR WILL NOT PAY FOR?
- Shipping, receipt
- Payment terms
- Meetings
- Postage
- Travel

RFP Docs

- Billing: All bills submitted will be reviewed by the Borough Administrator. All bills shall be submitted on a monthly basis with the smallest increment will be 0.1 of an hour (6 minutes). You will be asked to itemize and, where appropriate, aggregate. For example, a separate line is not needed for each email but you may aggregate email readings and responses. The bill should be itemized to be able to distinguish the different projects, people talked to/corresponded with and/or cases worked upon.
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RFP Docs

- Flat fees: If you are proposing a flat fee for a time period or a project, please itemize how the time will be spent and what specifically is covered. For Public Defender, Prosecutor – you may submit a charge per session.
- Special Bail Reform Fees

RFP Docs

- Other Expenses: If you are charging for copying, you must state how many pages are being copied and the copying rate. Note: OPRA only permits a certain charge for copying. If there is a large volume of copying, or binding, or particular publications, you will be asked to get pre-approval on these items. Any overnight or courier charges must be pre-approved.
- Generally, the Borough will not pay for in house conferences, meetings attended by multiple employees of the vendor (professional/consultant), leaving messages, or excessive "chain of command" approvals.

CHANGE ORDERS

- Engineers are engineers
- How to limit your change order exposure – beyond the statutory limitations

BEWARE STANDARDIZED CONTRACTS

- AIA contracts
- Attorney Value Added Billing

STRATEGIES

- Used car dealer strategy
- Good cop/bad cop
- Game-theory strategy
- It's not a two inning game
- Know the alternatives
- There is no such thing as a dumb question – just don't ask that question three times

- **Leverage** - In the world of professional buying we often find ourselves in a position of power, buying a product in a mass market full of providers competing for business. Leveraging our power and playing 'buying hardball' in these situations can be the most appropriate approach.

CONTINUING CHALLENGES

- Squeezing out the Mom and Pop
- Rising Prices
- Lack of competitive dynamics
- Control of the Market
- "Philosophy" of Mayor and Governing Body
- Need v. Want
- New Tariffs

RESOURCES

- Give and Take by Adam Grant
- Getting to Yes by Roger Fisher
- "Game Theory – The New Art of Negotiations" by Dominik A. Steffani