

Kent Beers, Chief Procurement Officer, State of Utah

Idaho Committee Assigned to Update State's Procurement Code

1. Informal agreement between Governor's Office and Legislative Leadership to safeguard the Bill(s) – not allow special interest groups or individual politicians to play politics with the Bill(s).

2. Committee Assigned to Update State's Procurement Code

- a. Attorney General's Office (2 attorneys + paralegals and interns)
- b. State Purchasing (3 members + other staff as assigned)
- c. Legislative Research and General Council (1 member)
- d. Drafts of concepts and Bills Distributed to interested groups for feedback:
 - i. Procurement Advisory Councils (Higher Ed, Public Ed)
 - ii. State Procurement Policy Board (15 members representing all public entities)
 - iii. Association of General Contractors, Architects and Engineers Association, Cities and Counties, etc.

3. Based on 2000 ABA Model Procurement Code

- a. Reviewed other "Model Procurement Code" States reported to have "Best Practices"
 - i. South Carolina
 - ii. Nevada
 - iii. Arizona
 - iv. Colorado
 - v. Virginia
 - vi. Etc.

- b. Publications for Associations and Experts on "Best Practices" in public procurement
 - i. NASPO – State & Local Government Procurement – a practical guide 2nd edition
 - ii. NASPO Network – Directors Community (Electronic Forum to ask questions)
 - iii. ValuePoint (WSCA) – Discussions on "Best Practices" 21 State Directors
 - iv. Michael Asner – RFP Guides, Manuals, Templates, etc.
 - v. Other articles and publications

4. Goals

- a. Standardize procurement practices for public entities subject to the procurement code
 - i. State Agencies
 - ii. School Districts
 - iii. Higher Ed
 - iv. Special Service Districts
 - v. Cities and Counties – if they choose to adopt code – several have adopted all or part. Default is Code if cities/counties don't adopt their own ordinances.

b. Streamline the Protest and Appeal Process

i. Former Process:

(A) Protests heard by Chief Procurement Officer or Head of Other Procurement Unit (School Dist., College, Service Dist., Etc.).

(B) Appeals heard by a Board composed of 2 volunteer attorneys and 1 subject matter expert selected by 2 Board members. Process was treated like court proceeding: briefs, hearings, etc. Process took 9 months to 1.5 years for a determination. Firms used the appeal process to extend existing contracts.

ii. New Process:

(A) Protests heard by the Chief Procurement Officer or Head of Other Procurement Units (School Dist., College, Service Dist., etc.) within 30 days.

(B) To file an appeal, the protestor must post a bond or security deposit based on a % (table) of the contract value.

(C) Appeals heard by 3 member panel selected from 15 member State Procurement Policy Board – 60 days to issue determination.

c. Prevent Procurement Fraud

i. Separate scoring of cost from RFP evaluation committee

(A) Evaluation Committee evaluates and scores “technical qualifications” of proposals (typically 60% to 75% of total points).

(B) An individual (not member of evaluation committee) scores cost (25% to 40%)

(C) Cost scores are submitted to the evaluation committee after the committee has completed its technical scores – committee may not change their technical scores after cost scores are revealed. Technical scores and cost scores are added together (combined) to identify proposal with highest score.

ii. Cost-benefit analysis is required if proposal with highest combined score is not the lowest cost proposal. Evaluation Committee & Conducting Procurement Unit must provide an informal cost-benefit analysis documenting the financial value for each justification given to award to the contract to the proposal with the higher cost. If higher cost cannot be justified financially, move to next highest scored proposal and so on.

iii. Standardize procurement process for all public entities subject to the Procurement Code.

(A) All public entities in the state to conduct procurements using the same process – opposed to dozens of different processes. More efficient for vendors, public entities, training, etc.

(B) Requirements for Bids and RFPs fairly prescriptive – step by step process outlined.

iv. Unlawful Conduct and Penalties (Procurement officer ethics, prohibition against gifts, illegal kickbacks, etc.) – all public entities, including cities and counties, are subject to this section of the code.

v. Small purchases training for all state employees conducting any type of procurement is required by statute.

5. Revisions and clarifications

a. No matter how extensive and thorough the Code writing process, you will need to come back and make edits, clarifications, and, in some cases, rewrite sections.

b. Once the code is put into practice (boots on the ground), ambiguities and discrepancies will be discovered. Attorneys representing various parties will interpret the code differently than what was intended. Agencies will interpret the code differently that what was intended. Clarifications will be needed over the next couple of years.