

**ALAMEDA COUNTY
BOARD OF SUPERVISORS'
PROCUREMENT AND CONTRACTING POLICY COMMITTEE**

Monday, June 6, 2011
2:00 pm

Location: Board of Supervisors' Chamber – Room 512 – 5th Floor
County Administration Building
1221 Oak Street, Oakland, CA 94612

Supervisor Nate Miley, Chair
Supervisor Keith Carson

Summary Action Minutes

I. Report on SLEB Program Proposals
a) Bid protest procedures

Aki Nakao, Director, General Services Agency, presented an oral report on the Bid Protest and Appeals procedures.

The County solicits over \$160 million worth of goods and services and comprises over sixty (60) sealed bid solicitations annually, not including contracts from community based organizations (CBO's). The County Departments and the General Services Agency (GSA) follow guidelines for solicitations consistent with the Public Contract Code, County Ordinances and as defined by County Counsel, GSA Purchasing and the Office of Acquisition Policy, defined in the Uniform Procurement Manual (UPM).

The UPM provides standard language for all departments to use in Request For Proposal (RFP) documents, including protests procedures. The UPM is available to all County Departments on the Intranet and it describes the number of days for filing a protest, notification procedures and other various processes.

In the General Services Agency, initial protest is lodged with the Assistant Director of GSA. Departments that manage their own procurements would identify their own initial point of entry person, however, it is recommended that it be at the agency director or assistant agency director level.

The first point of entry reviewer renders a decision, and if the reviewer upholds the action recommended by the selection committee, then the party receives a response denying the protest, and that party has a right to an appeal to the Office of Contract Compliance in the Auditor's Office.

Time line

The Agency sends out a notice of intent to award, and the bidder choosing to protest must submit their protest within 10 business days before 5:00 pm. on the tenth (10th) day.

Time line (continued)

The protest must include the basis for the protest and must refer to all the specific portions that the protest is based on. The protest is received by the assistant agency director, who will review and analyze the protest, and subsequently advise of a decision within ten (10) business days. The response will be issued to the complainant and the complainant will have five (5) business days to appeal that decision to the Office of Contract Compliance in the Auditor's Office.

The Auditor's Office will review the appeal for accuracy, and will render their opinion.

The intent is to provide an objective way to make sure the RFP is followed and the separation of GSA to the Office Contract Compliance.

Questions/Discussion

Supervisor Miley: The Uniform Procurement Manual, can the public receive a copy?

Aki Nakao: Yes.

Supervisor Miley: What are the criteria that determine when GSA handles procurement versus a County department or agency?

Aki Nakao: There are no hard and fast rules; it's been left to the discretion of the department or agency that needs procurement. The bulk of procurements for goods and services are handled through GSA, however the departments mostly handle their own CBO contracts.

Supervisor Miley: Are there any guarantees that the departments are following the UPM?

Aki Nakao: Unless the departments seek our assistance there is no guarantee that they are following the UPM.

Supervisor Miley: If they agency doesn't follow the UPM, would that subject that bid to a valid protest?

Aki Nakao: Yes.

Supervisor Miley: Is there any reason why all procurements do not go through GSA?

Aki Nakao: Mainly the issues are centered around goods and services contracting and the level of resources for goods and services are substantial. CBO's are treated as a category of its own and they were not considered in the Availability Study.

Speakers

Samuel Manning, CFO Williams Wallace Management: related three (3) points: 1) Vendors must believe that the bid process is above board and without reproach; 2) the process should be free of personal bias and error and stand on its own merit; 3) The grounds for disqualification in the process should be transparent. Examples of errors include signatures missing and blank documents in the packet.

Norm Budman, Human Relations Commissioner, stated that he expected to see a draft and something in writing regarding bid protest procedures. He also wanted to confirm that the process for bid protests is included in the UPM, as well as in any RFP. Mr. Budman also wanted to know if there is a suggested format for the bid protest.

Todd Berryhill stated that he has an active appeal with GSA. The procedure is clear about how to appeal; he appealed five (5) days after notification. However, in his most recent appeal, Mr. Berryhill was informed that he was outside of the time limit. He stated that he received the notice via certified mail, but was told that the five (5) day time limit began on the date of the notice, not on the date he signed for the notice. He feels that is an error, and should be reviewed. Also, he believes that there should be a way for a third party to review the content of the RFP, and not just the process.

Clarence Hunt stated that there are two (2) components to the current bid protest procedure. First the protest goes to GSA and then if there is dissatisfaction with results and findings of GSA, the protest then goes to a second level appeal process, and sent to the Auditor's Office. Mr. Hunt also stated the following:

- GSA looks at the process and evaluation of content; the findings are formulated and a decision is rendered to award or not.
- The UPM is not referenced in any RFP
- The Auditor's Office confirms or reviews the process, the content and substance of the vendor's complaint is not addressed
- If the Auditor's Office does not have the resources to address the content and process, there really is no second level appeal
- The Auditor's Office has approved RFP's without signatures and using incorrect RFP numbers.
- The panelists reviewing the RFP's should be likewise qualified.
- The County should look at outsourcing the appeal process with respect to content.

Mr. Hunt wanted to know what the County's definition is of an "immaterial omission".

Brian Washington, County Counsel, advised that the definition is used under State Law.

Dr. Eleanor Ramsey commended the Committee for their continued effort to bring transparency to the bid process. In addition, she just recently learned of the existence of the UPM. Dr. Ramsey also inquired about the status of her appeal, which was originally denied, sent to the Auditor's Office, and denied again. Is the appeal still active and what is the procedure to be heard before the Board of Supervisors?

Discussion

Aki Nakao stated that when the contract comes before the Board for award, then the protestant can at that time speak about it.

Supervisor Carson stated for the record that there were three (3) avenues to protest the bid 1) internal appeals process 2) when the contract is heard at the Board of Supervisors meeting for award and 3) protestant can take the matter up in court.

Discussion (continued)

Dr. Eleanor Ramsey stated that with the hearing before the Board, a person would be contesting the intent to award, and not actually protesting, because in the three (3) minute time frame allotted to speak, it does not afford an opportunity to raise any substantive issues.

Dr. Ramsey asked the County to consider that there are other jurisdictions that do hear appeals and review process as well as content. In addition, Dr. Ramsey inquired as to whether County Counsel reviewed appeals/protests in the General Services Agency as well as in the Auditor's Office.

Brian Washington, County Counsel, stated that there are separate attorneys for both, who offer legal opinions however they do not make decisions on appeals/protests.

Dr. Ramsey suggested that the County allow vendors to have a hearing before an independent body or to the Board of Supervisors, instead of the three (3) minute public comment.

In addition, Dr. Ramsey stated that the vendors are held to very strict time frames, however, the County takes various lengths of time to respond to an RFP/RFB. It is important to standardize time frames and the information should be included within the RFP/RFB.

Dr. Ramsey submitted the State of California Department of Transportation Request for Proposal Evaluation Standards and Procedures that could possibly be used as a guideline.

Supervisor Carson stated that he understood Dr. Ramsey's point as being that at all appeal levels, the same group of persons are reviewing the protests. He, as the Chair of the Budget Committee, has encouraged departments to contract out less for legal services and use the bevy of attorneys that the County has internally.

Recommendation from the Procurement and Contracting Policy Committee:

- 1) The General Services Agency will provide a matrix of bid protests from the last 3-5 years that will include number of protests, type of protests and outcome.
- 2) The Committee Supervisor Miley and Supervisor will be responsible for convening a working group to put together proposals for reforms and best practices for bid protest procedures.

II. Quarterly Auditor-Controller Procurement Contracting Report

Patrick O'Connell, Auditor-Controller, presented the Procurement Update from the period July 1, 2008 through March 31, 2011 for the Small, Local and Emerging Business (SLEB) and Minority Business Enterprise (MBE) contracts.

The report in its entirety is available on line at: [CountyProcurementReport2011-06-02.pdf](#)

The next report will cover the period from July 1, 2005 through June 30, 2008 and July 1, 2008 through June 30, 2011. In addition, the Agency is

Questions/Discussion

Supervisor Miley: Can a CBO become a SLEB?

Patrick O'Connell: A CBO can apply to become a SLEB, but that has to be revisited.

Aki Nakao: There are instances when a CBO wants to compete in the private market, and that is where the SLEB is advantageous.

Supervisor Miley: What is the difference between a CBO and a non government organization NGO?

Aki Nakao: It may apply to 501(c) 3 – is there any legal distinction?

Speakers

Norm Budman thanked the Agency for the report, and was happy to hear that they will be reviewing additional data from the past up until now. However there is no analysis of the successfulness of the program. Question for the Committee: Are you satisfied with the program and why?

Clarence Hunt stated that there is a large disparity between the minority vendors and the Caucasian vendors. The Committee should look at the effectiveness of the program and how it can be enhanced.

This item was informational only and required no Committee action or recommendation.

PUBLIC COMMENT

Keith Lewis, Executive Director of Horizon Services, currently has two (2) bid protests with the Auditor's Office: Request that during the evaluation and scoring process for proposals that the panelists be knowledgeable about the topic they are evaluating. The moderator for the panel should not be a scorer, but if that is not possible, the moderator, should not divulge his or her score to the panel and why such a score was given.

Clarence Hunt requested to know who are the employees or members of the Office of Contract Compliance and what are their qualifications, relative to hearing second level appeals.

Supervisor Miley stated that the above questions and requests from the speakers could be taken up with the Bid Protest Working Group.