The DOs and DON’Ts of Procurement in Idaho

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Presentation Overview:

Idaho Code specifies the process for agencies to buy goods, services, and public works construction.

- Counties, Cities, Highway Dist., etc.

These laws apply for securing services or goods from:

- Architects, Engineers, Surveyors,
  Contractors, and Suppliers

Presentation Outline:

1. Hiring design professionals
2. Hiring a contractor
3. Procuring goods & services
Presentation Disclaimer:

I have been taught that too many words on a presentation is boring and difficult to follow. I apologize in advance. Because the subject matter is words, the presentation will contain words and references.
Legal Disclaimer:

- I am not an attorney.
- I don’t play one on TV nor aspire to be one.
- The information presented herein is based on my experience as an engineer.
- I will attempt to explain things as I see and understand them which may or may not be accurate – you get what you pay for. 😊
- Please consult with your legal advisor for advice on interpreting the rules and regulations.
- If after this course you have a headache that lasts for more than 4 hours, please consult your physician.
The Rules…

Hiring a Professional Engineer (PE)

PE required to prepare plans, specifications, estimates, and review construction for public works construction  
(Idaho Code 54-1281)

<table>
<thead>
<tr>
<th>State of Idaho</th>
<th>Drainage districts</th>
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<tbody>
<tr>
<td>Counties</td>
<td>Highway districts</td>
</tr>
<tr>
<td>Cities</td>
<td>Water/sewer districts</td>
</tr>
<tr>
<td>School districts</td>
<td>Recreational districts</td>
</tr>
<tr>
<td>Irrigation districts</td>
<td>Any political subdivision that can levy taxes or assessments</td>
</tr>
</tbody>
</table>

Qualifications Based Selection (QBS) must be followed  
(Idaho Code 67-2320)

- Engineers
- Architects
- Landscape architects
- Land Surveyors
- Construction Managers

KELLER ASSOCIATES INC.
QBS in a nutshell…

Selecting a licensed professional to complete work based on qualifications rather than cost.

If anticipated fee is greater than $25,000, then a formal QBS process must be followed (Idaho Code 67-2320)
  - Subsection (2), paragraphs (a) through (g).

If anticipated fee is less than $25,000, then an informal QBS process may be used in lieu of Subsection (2), paragraphs (a) through (g).

It is illegal for an owner to request a bid as part of or instead of the QBS process - regardless of the price.

It is illegal for an engineer or other discipline to submit a bid for services where QBS process should be followed.
Y QBS?
Qualifications-Based Selection (QBS) is a procurement process established by the Federal Government and the State of Idaho for public agencies to use for the selection of architectural and engineering services for public construction projects. It is a competitive contract procurement process whereby consulting firms submit qualifications to a procuring entity who evaluates and selects the most qualified firm, and then negotiates the project scope of work, schedule, budget, and consultant fee.

Why is it used?

Lowest cost is widely recognized as the poorest criterion for service selection when quality and professional creativity are sought. This QBS process fosters innovative, cost-saving and timesaving approaches to problems, ensuring that the final project meets or exceeds the functional and performance goals set by the owner.

For example: Most individuals would not select medical or legal services based solely on cost — these highly skilled services are too important to leave to the lowest bid.
Owner develops a Request for Proposals
- Scope of services
- Selection criteria (QBS)
- Proposal requirements
  - due date
  - number of pages
  - contact person

Advertise RFP
- Entity’s official newspaper
- At least twice where due date is a minimum 15 days from initial publication
- A summary of the RFP may be published indicating how one may obtain the full RFP

Review RFP and select firm determined to be the most qualified

Negotiate scope and fees with highest ranked firm
- Seeking a reasonable and fair price
  - Considering estimated value
  - Scope
  - Complexity
  - Nature of services

If unable to negotiate satisfactory terms to both parties
- Formally terminate negotiations
- Undertake negotiations with next highest ranking firm(s)
RFP, What to Include

1. Company Overview
2. Relevant Project Experience
3. Qualifications of Project Team
4. Project Approach and Schedule
5. References
6. Other.....

If there is not a clear top choice after reviewing proposals, owners may request an interview with the top two or three firms. Interviews may last 20-30 minutes and can be a presentation with Q&A or just Q&A.
For projects with fees < $25,000

**OPTION 1**
FOLLOW FORMAL QBS PROCESS

**OPTION 2**
ESTABLISH OWN GUIDELINES BASED ON COMPETENCE AND QUALIFICATIONS

NEGOTIATE SCOPE AND FEES

Seeking a reasonable and fair price

Considering estimated value
Scope
Complexity
Nature of services

In no case is it appropriate to ask for fees to complete the work from multiple firms as this is considered bidding.

1. First, select firm.
2. Second, negotiate fees.
PREPARE A PROPOSAL FOR THIS CUSTOMER. WHY ME?

YOU WERE WALKING BY. I HAD IT IN MY HAND.

WE CAN'T WIN THIS BUSINESS. WE DON'T HAVE THE RIGHT PRODUCTS OR EXPERTISE.

JUST SAY WE DO. WE'LL FIGURE IT OUT LATER.

THEY KNOW WE DON'T, AND WE'D STILL BE THE MOST EXPENSIVE BIDDER.

BID LOW. WE'LL MAKE IT UP WITH CHANGE ORDERS AND UNEXPECTED ESSENTIAL UPGRADES.

IN OTHER WORDS, I'VE BEEN RANDOMLY ASSIGNED TO CREATE LIES FOR A PROPOSAL WE CAN'T WIN FOR A SERVICE WE CAN'T PERFORM.

YOU MAKE COMPETING SOUND BAD.
One other consideration…

When a public agency or political subdivision of the state has previously awarded a professional services contract to a person or firm for an associated or phased project, the public agency or political subdivision may, at its discretion, negotiate an extended or new professional services contract with that person or firm.

In other words… it is not necessary to go through the RFP process for phased projects or a continuation of a previous project where the QBS process was previously followed.
How to rank firms

Who's the winner?
## By average

<table>
<thead>
<tr>
<th>Company</th>
<th>Bob</th>
<th>John</th>
<th>Sue</th>
<th>Ann</th>
<th>Average</th>
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<tbody>
<tr>
<td>XYZ</td>
<td>10</td>
<td>92</td>
<td>96</td>
<td>92</td>
<td>72.5</td>
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<tr>
<td>ABC</td>
<td>91</td>
<td>92</td>
<td>95</td>
<td>85</td>
<td>90.8</td>
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<tr>
<td>123</td>
<td>20</td>
<td>93</td>
<td>98</td>
<td>98</td>
<td>75.3</td>
</tr>
</tbody>
</table>
Or by rank

01
XYZ Engineering
BOB 3
JOHN 2
SUE 2
ANN 1
AVERAGE 2.0

02
ABC Engineering
BOB 1
JOHN 2
SUE 3
ANN 3
AVERAGE 2.3

03
123 Engineering
BOB 2
JOHN 1
SUE 1
ANN 2
AVERAGE 1.5
Determine how it will be done prior to ranking and scoring proposals. I believe the 2\textsuperscript{nd} option is fairest and best.

<table>
<thead>
<tr>
<th></th>
<th>BOB</th>
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Or by throwing out the high and low scores
Hiring a contractor

Selection of contractors is based on:
- Price
  - lowest responsible bidder wins
- Licensing
- Qualifications
  - when prequalification process is implemented

State statute outlines requirements for:
- Bidding
- Advertisement
- Licensing
- Bid security
Anticipated cost of project dictates minimum level of bidding requirements

<table>
<thead>
<tr>
<th>Anticipated Cost Range</th>
<th>Bidding Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 to $10,000</td>
<td>• No licensing required</td>
</tr>
</tbody>
</table>
| $0 to $25,000          | • No bidding requirements  
                          | • Go ahead and hire someone to get the job done |
| $25,000 to $100,000    | • Written solicitation of bids to at least 3 contractors  
                          | • Allow 3 days for written response |
| $100,000 to no limit   | **Category A**  
                          | • Open to all licensed contractors  
                          | • Advertise in entity’s official newspaper  
                          |   • at least twice where due date is a minimum 15 days from initial publication  
                          | **Category B**  
                          | • Open only to pre-qualified bidders  
                          | • Follow advertisement as outlined in Category A |

Idaho Code 67-2805
Pre-Qualified Bidders (Idaho Code 67-2805 3b)

- Method to limit bidding to contractors that are qualified to do the work
- 2 stage process
Pre-Qualified Bidders (Idaho Code 67-2805 3b)

(Continued)

Stage 1. Prequalification Stage

- Prepare solicitation package for contractors interested in being prequalified
- Establish prequalification standards
  - Demonstrated technical competence
  - Experience on similar facilities
  - Available non-financial resources
  - Equipment and personnel relating to project

- Include standards for evaluating prequalification packages
- Advertise as required for typical bid process
- Evaluate prequalification packages to determine which contractors meet standards
- Notify contractors of prequalification status
  - There is an objection and protest process outlined in Idaho Code.

Stage 2. Bidding Stage

- Issue project bid documents and solicit bids from prequalified contractors
- Advertise in entity’s official newspaper when other trades or supplies are in project
  - at least twice where due date is a minimum 15 days from initial publication
- Award is made to lowest responsive bidder
# Public Procurement of Goods & Services (Idaho Code 67-2806)

<table>
<thead>
<tr>
<th>Range</th>
<th>Amount</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0 to</td>
<td>$25,000</td>
<td>• No bidding requirements</td>
</tr>
</tbody>
</table>
| $25,000 to $50,000 |         | • Written solicitation of bids describing desired goods or services to at least 3 vendors  
|          |          | • Allow 3 days for written response                                           |
| $50,000 to no limit |         | • Open to all licensed potential suppliers or services                        
|          |          | • Advertise in entity’s official newspaper                                   
|          |          | • at least twice where due date is a minimum 15 days from initial publication|
Exemptions to following the rules for public procurement of goods and services (Idaho Code 67-2803)

With every rule, there is an exemption…. without exception

- Piggy Backing – property already competitive bid (1)
- Contracts or purchases of goods and services (less than $25,000) (2)
- Wages of Employees (3)
- Personal or professional services performed by contractor not covered previously or as outlined in Idaho Code 67-2320 (4)
- Real Property - lease or purchase (5)
- Insurance (6)
- Costs of Joint Powers Participation (7)
- Procurement of used personal property by irrigation & drainage districts (8)
- Emergency Expenditures (Idaho Code 67-2808)
Penalties for violation of bidding statutes
(\textit{Idaho Code 54-1941, 54-1920, 54-1026})

### Public Officials
- Up to $5,000 and 1 year in prison
- Violation of Competitive Bid Laws
- Contracting with unlicensed contractors

### Contractors
- Up to $20,000 and 1 year in prison
- Violation of Public Works Contractor Statutes
- Acting without a license
Questions and Answers

References:
www.idahoqbs.com