



E-Government for Government

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Distribution: All Local Unit Chief Administrative Officers, Chief Finance Officers, School Business Administrators, County School Business Administrators, and Purchasing Agents.

E-Procurement Pilot Program – Bidding over the Internet

On March 9, 2001, Acting Governor Donald T. DiFrancesco signed into law the *Local Unit Electronic Technology Pilot Program and Study Act* (P.L. 2001, c.30). This Act allows the Department of Community Affairs to explore electronic commerce and embark upon a program to allow local units to experiment with purchasing bulk commodities and services and sell surplus property through means of the Internet and related technologies. The Division of Local Government Services (Division) is charged with implementing the provisions of the law.

The law uses the term local units to describe the government agencies subject to its provisions. Local units are defined as "school districts" pursuant to the Public School Contracts Law, (N.J.S.A. 18A:18A-1 et seq.), and "contracting units" pursuant to the Local Public Contracts Law, (N.J.S.A. 40A:11-1 et seq.). This Notice will use the term "local unit" to refer to all covered agencies.

This pilot program has a three-year life. Before it ends, the Division will make recommendations to the Governor and Legislature for statutory changes based on the experience of the program.

E-Procurement Pilot Program

The key element of the law is the ability for the Division to grant waivers of many traditional procurement procedures when Internet or related technologies are used to procure certain goods and services. In order to take advantage of the pilot program, a local unit must submit a plan to the Director of the Division of Local Government Services (Director) for approval.

The law applies to the purchase of bulk commodities and services and the sale of personal property. Bulk commodities are defined as "rock salt, petroleum products, asphalt, paper products, chemicals, electric generation service, electric related service, gas supply service, and gas related service." This list is not exclusive and local units may apply for other similar types of goods or services as part of their waiver application. When purchasing electric and gas services, the process must comply with the *Electric Discount and Energy Competition Act* (N.J.S.A. 48:3-49 et seq.).

To participate in the program, a local unit must submit a written plan to the Director setting forth:

- (a) whether they intend to make purchases, sales or both;

(b) the commodities or services that they intend to purchase or the personal property they intend to sell;

(c) whether they intend to conduct the auction with their own personnel or hire an on-line purchasing agent; and,

(d) a description of the process in sufficient detail to allow the Director to determine whether all aspects of the proposed purchase and/or sale have been addressed.

The plan is a description of how the procurement will be performed and, as necessary, a request for a waiver of the procedural requirements of the contracting laws necessary for the process. The application must include procedural requirements of the procurement laws that the local unit desires to waive, and where appropriate, how the policy goals (i.e., ensuring integrity, public disclosure, and openness of the process) of the procurement laws will be met by the new approach. The waiver request and the plan are submitted to the Director for approval.

If a local unit chooses to hire an online purchasing agent (or service), Chapter 30 makes the hiring of that purchasing agent exempt from bidding under the Local Public Contracts Law and the Public School Contracts Law. If an auction is used (see below), the local unit will be required to submit the contract to hire the online purchasing agent to the Director at least 10 days in advance of the auction.

For example, a local unit may request a waiver of the sealed bid requirement of the process. Under the model they want to use, they request that a "two-tier" approach be used instead. Under the two-tier approach, two submissions are made. The first is a request for qualifications such as bonding, experience, etc., those things

necessary to establish a bidder's responsibility and responsiveness. The second step, or tier, would be submission of price from only those bidders that were found to meet the criteria for responsibility and responsiveness.

In this case, the local unit's waiver application would request waiver of the receipt of sealed bids, and submit an explanation of why the waiver is needed, how it will benefit the plan and how the plan will meet the policy goals of the Local Public Contracts Law or Public School Contracts Law.

These waivers apply to the procedural aspects of bidding, not those related to public policy or integrity of the bidding process. For example, waivers will not be granted for things such as affirmative action requirements or statement of corporate ownership. Bidding procedures that do not include protection against collusion between bidders will also not be granted. To ensure that the goals of the laws are met, local units planning to apply for a waiver are urged to discuss their plans with Division staff in advance of their submission.

The Director will review the plan and send a response to the local unit within 45 days of receipt. The Director may approve the plan, grant a contingent approval, reject the plan, or request additional information.

In addition to local units making application for waivers, vendors that sell Internet and related technology procurement bidding services are encouraged to come to the Division with their product and apply for waivers, as would a local unit. The vendor would be required to submit the waiver request with an explanation of how their service works, why the waiver is needed, and how their application will adhere to the policy goals of the applicable Public Contracts Laws. Upon the Division's review and

granting of waivers, the vendor could then market the approved service to local units.

To expedite the submission of a plan through use of vendor's approved service local units would still have to apply for a waiver. However, the application should include the waiver application form, an explanation of how the service will be used, a reference and a copy of the vendor's plan, along with any necessary local modifications appropriately noted. The Division will expedite the processing of these applications.

To assist local units and vendors in the waiver process, the Division is preparing a document that provides guidance on the areas of law that need to be reviewed to determine if waivers are needed. While waiting for this guidance, local units should not delay preparation of plans, and those that want to move forward should contact the Division for review of their plans and to get appropriate advice.

To help ensure a coordinated approach to applying for waivers, a waiver application form is only available by contacting the Division (e-mail or phone will suffice) to let us know what you are planning. After contacting us, a waiver application will be promptly forwarded.

Division staff is prepared to work with local unit officials on these projects. In addition, several seminars run by professional groups are being scheduled for this fall. To request a waiver application, e-mail a brief description of your plans to lpcl@dca.state.nj.us or call us at 609.943.4724. Division staff will promptly respond to your request.

Value of Cooperative Purchasing Programs

Virtually all Internet-based procurement service providers charge either buyers or sellers fees for their services. This has particular application to over threshold, online reverse auction services; where the purchase of larger quantities can offset fixed fees (many services have fixed costs that have to be covered regardless of the volume of goods purchased). In addition, the purchase of larger quantities lowers the costs to the sellers, reductions that can be passed through to buyers.

One way to take advantage of the technology and potential price savings is to pool goods and services through cooperative purchasing programs. In fact, national public and private sector experience shows that significant cost savings are obtainable, as long as there is sufficient demand to overcome the costs of using the technology.

There is a significant difference in dealing with cooperative purchasing over the Internet in comparison to cooperative purchasing than through traditional practices. With traditional cooperative bidding, there is no obligation from members to purchase a minimum quantity of a good or service. Therefore, a seller may not commit the best price without a guarantee volume. Under Internet bidding, the commitment to buy should usually result in obtaining the best price.

Sale of Surplus Property

The new law also provides that Internet and related technologies can be used for selling surplus public property. Normally, a local unit's governing body resolution authorizes the sale of personal property not needed for public use. In those cases

where the estimated fair value of the property exceeds 15% of the bid threshold (currently \$2,625) in any one sale, Chapter 30 permits a waiver to allow online auction company services as a way to sell the property. Because the law regarding sale of personal property is subject to very few procedural restrictions, the process is much simpler than for purchasing or bidding.

The process for an online auction is as follows:

- The governing body passes a resolution authorizing the sale of the property. The resolution must include the following items:
 - A listing of the personal property to be sold;
 - A statement that the sale will be conducted over the Internet;
 - The Internet address at which the auction is found;
 - The opening and closing dates of the sale; and
 - A statement that approval to conduct an Internet sale has been obtained from the Division.
- The local unit posts the offer to sell the personal property on an auction website including a clear and precise description of the property to be sold. The offer must clearly indicate that the sale is an "as is/where is" sale and other relevant terms of the sale.
- Potential buyers view the offer and post bids to buy.
- Depending on the system used, either buyers can see competing bids and/or bidders and respond to them, or the auction is "blind" and buyers cannot see their competition.

- The local unit reviews the bids and, when the auction period expires, chooses the best offer.
- The parties then handle payment and delivery.

The online auction can benefit the local unit in several ways. First, it can help the local unit discover the true market price for its products. The local unit has more control over the process than in traditional methods of liquidating property. Also, the auction can improve market efficiency by revealing supply and demand for goods, speed up the process and extend the local unit's reach by including distant buyers.

A local unit considering an online auction should carefully research its choice of an online auction service to be sure it fully understands the rules and procedures of sales. Particular attention should be given to how fees (if any) to the auction site will be paid (paying with credit card is not available to local units at this time), and practices regarding payment for shipping, methods for receipt of payment from buyers, and the possible use of escrow services.

Public sales over the Internet only require waivers for the posting of a public notice in a local newspaper, and the public sale or auction and award of bids. A brief application is available from the Division for those desiring to conduct a sale. The application includes information about how the auction will be conducted, items to be sold, how payment will be obtained, if an escrow service will be used, and related information.

As in the E-Procurement pilot, to request a waiver application, e-mail a brief description of your plans to lpcl@dca.state.nj.us or call us at 609.943.4724. Division staff will promptly respond to your request.

Conclusion

It is important to remember that these new technologies have been shown, in the private sector and in other states, to have significant advantages to local units. We encourage local units to carefully consider “testing the waters” to see if these new practices can work for them.

Local units interested in exploring the alternatives are urged to share their experiences or consult with the Division on their actions. This feedback will assist the Division as we study these issues. As we learn more and gain experience from those who use the process, we will provide additional advice and guidance.

