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Chapter Officers

Angelo Salomone, CPPB
President
City of Coral Springs
9551 W Sample Road
Coral Springs, Florida 33065
Phone: (954) 344-1100
Fax: (954) 344-1186
asa@coralsprings.org

Spencer Shambray, CPPB
Vice President
City of Margate
5700 Margate Blvd.
Margate, Florida 33063
Phone: (954) 935-5346
Fax: (954) 935-5258
sshambray@margatefl.com

Michael Walker CPPB, A.P.P., FCPM, FCPA
Secretary
City of Fort Lauderdale
100 N. Andrews Ave., Room 619
Ft. Lauderdale, Florida 33301
Phone: (954) 828-5677
Fax: (954) 828-5576
mwalker@fortlauderdale.gov

Diane LeRay, CPPO, CPPB, FCPM
Treasurer
Committee Chairs and Members

Rick Andrews CPPB, FCN
Communications/Newsletter Committee Chair
Phone: (954) 828-4357
randrews@fortlauderdale.gov

Kirk Buffington, CPPO, C.P.M., MBA
Legislative Affairs Committee Chair
Phone: (954) 828-5933
KBuffington@fortlauderdale.gov

Irene Costa, CPPB
Membership Committee Chair
Phone: (954) 321-4748
irene_costa@sheriff.org

Gail Dixon, CPPB
Scholarships Committee Chair
Phone: (954) 344-1104
gad@coralsprings.org

Michal Durden, CPPB
Awards Committee Chair
Phone: (954) 359-1027
mdurden@broward.org

Michal Durden, CPPB
Time and Place Committee Chair
Phone: (954) 359-1027
mdurden@broward.org

Dave Nash, CPPO, CPPB
Historian/Photographer
Phone: (954) 749-5291
armynash@bellsouth.net

Lynne Piper
Website Liaison Chair
Phone: (561) 393-7878
lpiper@myboca.us

Angelo Salomone, CPPB
By-Laws Committee Chair
Phone: (954) 344-1100
asalomone@coralsprings.org

Spencer Shambray, CPPB
Reverse Trade Show Committee Chair
Phone: (954) 935-5346
sshambray@margatefl.com

Larry Strain, CPPO
Audit Committee Chair
Phone: (954) 321-4795
Larry_Strain@sheriff.org

Pam Thompson, CPPO, CPPB
Nominations Committee Chair
Phone: (305) 622-8031
pthompson@miamigardens-fl.gov

Karen Walbridge CPPB, C.P.M., A.P.P.
Professional Development Chair
Phone: (954) 357-7306
kwalbridge@broward.org

Michael Walker CPPB, A.P.P., FCPM, FCPA
Strategic Planning Committee Chair
Phone: (954) 828-5677
mwalker@fortlauderdale.gov
PUBLIC RECORDS EXEMPTION EXPANDED

On June 2, 2011, the Governor signed new legislation which significantly changes public access to competitive responses. Until codified in the FL Statutes, the new Public Law is HB No.: 7223. Most significantly the law amends its public records law to extend the exemption for competitive responses from 10 to 30 days from bid opening, unless the agency announces intent to award decision sooner.

Whether or not this exemption is up to the discretion of the agency is still being debated, but it is this writer’s opinion, that the exemption is not discretionary, and agencies must maintain the exemption until such time as defined in the statute. You may ask what about bid openings and bid tabulations? How do you determine and intent to award, without completing a bid tab?

Currently, the City of Fort Lauderdale is treating a bid tab as an exempt document, not open for disclosure until such time as defined in the statute. Additionally, the new law has greatly narrowed the procurement meetings which may occur in the sunshine. Specifically, there are now three types of procurement meetings which are exempt from being held in the Sunshine. They are:

1) Oral presentations and meetings where vendors are answering questions, 2) negotiations, and 3) agency meetings to discuss negotiation strategy. In reading the legislative intent, the following was some of the rationale for making these broad changes:

"Temporarily protecting such information ensures that the process of responding to a competitive solicitation remains fair and economical for vendors, while still preserving oversight after a competitive solicitation decision is made or withdrawn."

This new law is a significant change to how Florida procurement has been conducted for many years.
complete recording shall be
made. No portion of an exempt
meeting may be held off the
record.

The recording of, and any
records presented at any exempt
meeting are exempt from
disclosure until such time as the
agency provides notice of intent
or until 30 days after the opening
of the competitive solicitation.

The new statutory language
defines competitive solicitation
as: the process of requesting and
receiving sealed bids, proposals,
or replies in accordance with the
terms of a competitive process,
regardless of the method of
procurement3. Therefore, it is this
writer's opinion that solicitations
done in accordance with the
CCNA statute are included.

New Public Records Exemptions and Sunshine Law

Kirk Buffington
July 25, 2011
kbuffington@broward.edu
954-268-5144
Total Transparency in Real Time

Reverse auctions are gaining popularity as a procurement tool in the challenging economic climate.

BY LARRY ANDERSON

Gas prices had gone down a lot in December 2008 when Maricopa County, Ariz., asked its vendor of bulk flour to lower its price of 38.5 cents a pound. A previous spike in gasoline prices had driven up the flour price because much of the commodity's price is tied to the cost of transporting it. But the price had not come down to reflect the now-lower fuel costs. The county uses almost 2 million pounds of flour a year to provide bread to about 6,000 county jail inmates, and Matthew Bauer of the county procurement office contended that lower gas prices should translate into a lower flour price. However, the supplier would not budge on the price.

Maricopa County decided to re-bid the contract using an online reverse auction, a strategic outsourcing tool that reverses the roles of buyers and sellers. Multiple pre-qualified suppliers openly bid against one another electronically in an allotted time frame, prices decrease as the auction progresses, and suppliers are allowed to see each other's bids. Reverse auction solicitation is gaining popularity as a creative solution to help government agencies in tight economic times. Bidding on Maricopa County's flour contract was slow at first, but a flurry of activity in the final hours-eight different prices from four vendors—concluded with a winning bid of 20.5 cents per pound. Ironically, the winning bid came from the same supplier who had earlier refused to budge on price.

The county has repeated the reverse auction for bulk flour every six months since then, thus allowing the changing market to dictate the low bidder and the price. In three years, Maricopa County has saved $376,000 on bulk flour through reverse auctions. "Reverse auctions keep the price competitive so we know we are getting the right price for the flour," says Bauer, who is now procurement supervisor for Maricopa County.

Maricopa County has also begun using reverse auctions for other products ranging from on-site drug testing kits to inmate shoes and canned fruit and beans. Bauer estimates the county has saved more than $2 million in the last year and a half using reverse auctions instead of competitive sealed bids, which only give vendors one
chance to provide the lowest bid without knowing what
any competitors are bidding. Bauer says that Arizona’s
procurement code is conducive to using reverse auctions
although codes governing other localities might need to be
modified to allow use of the tool.

“We have used reverse auctions for commodities when
it is easy to bid apples to apples,” said Bauer. “It’s not the
best type of procurement for specifications that are not
well-defined or if there are many different products out
there to fit your needs.” For example, Maricopa County
tried unsuccessfully to use a reverse auction to buy inmate
mattresses to supply its six jails and detention facilities.
The range of products and varied specifications made it
impossible for vendors to compete fairly.

Reverse auctions take about the same amount of time
as using sealed bids, except the system tabulates the bids
automatically, which eliminates the need for a formal bid
tabulation. The BidSync software system used by Maricopa
County to administer the reverse auction includes a
database that can extend the number of competing
vendors. Maricopa has about 20,000 vendors registered
in its vendor database, but only about 2,500 or 3,000
usually bid. In the case of bulk flour, Maricopa County had
52 possible vendors in their database and BidSync had
another 175. In the reverse auction that followed, all but
one of the participants had already been listed in Maricopa
County’s current vendor list.

Successful use of the BidSync reverse auction technology
led Maricopa County to invest in the BidSync Procure
complete e-procurement tool, and the cost was more than
offset by savings from the reverse auctions, said Bauer.

A surge in interest
Periscope Holdings provides a reverse auction function as
part of its e-procurement solution BuySpeed. The company
reports a surge of interest in reverse auctions among public
entities looking for innovative ways to lighten their budget
burdens. Using BuySpeed, auctions can be conducted online in
real time, thus enabling suppliers to track and bid down against
competitors. The process ensures the best possible price and
lowest cost to government agencies. Reverse auctions can also
be conducted online by third-party vendors such as BidBridge.

Brittany Devine, product marketing and client relations
specialist for Periscope Holdings, reports that, although
costs are the primary driving force, reverse auctions also
offer other benefits, such as:

➢ a shorter solicitation cycle (eliminating the weeks
needed to score and evaluate responses);
➢ greater price competition (vendors can track
competition in real-time and have the flexibility to
submit multiple bids);
➢ opportunity to demonstrate vendor diversity (by
showing a willingness to use different suppliers); and
➢ fewer protests.

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PROCUREMENT TOOLS

Two users of BuySpeed Online have realized first-hand many of the benefits of reverse auctions to provide measurable savings for public agencies. Knox County, Tenn., recently led a multi-agency auction in the joint purchase of 164 police vehicles, and the Arizona Departments of Transportation, Game and Fish, and Education have also seen tangible savings from reverse auctions.

Acquiring 164 police vehicles
Knox County’s Purchasing Division began planning its first reverse auction in August 2010. The reverse auction capability had been added with a recent update of BuySpeed. The capability enabled Knox County to self-administer reverse auctions without involving a third party or having to pay a fee. The Purchasing Division identified 22 police vehicles in the Sheriff’s Office budget that could potentially be acquired through this competitive method. After conversations with several other local government agencies, the Purchasing Division was able to recruit two additional agencies – the Blount County Sheriff’s Department and the City of Knoxville – to compete their needs with Knox County. The resulting multi-agency cooperative bidding event was for 164 Police Interceptor Vehicles.

The reverse auction takes the place of a competitive sealed bid process, and the vendor does all the data input. All terms and conditions are determined before the auction begins. In the case of motor vehicles, detailed variables such as the wheel base and hubcap covers are specified before the auction. Delivery time is also specified. Any bid that doesn’t comply isn’t considered.

On Nov. 2, 2010, at 2 p.m., the state’s first agency-managed on-line reverse auction closed and resulted in measurable savings for three local governments. Five different vendors submitted a total of nine bids with Alexander Lincoln-Mercury Ford submitting the winning bid. The price dropped $645,000 from the auction opening price for purchase of Knox County police vehicles, and the final bid came in $2,300 under the state prices per vehicle; the county saved enough to purchase extra vehicles. The other governments involved in the reverse auction were also pleased with the outcome. "The ability to leverage our combined organizations is truly a win-win for all of us," said Keith Shields, Deputy Director of Fleet Services, City of Knoxville.

Knox County Purchasing Director Hugh Holt says there are a lot of administrative savings in reverse auctions, and time can be saved on the back-end related to followup with vendors. "The vendors saw it happen before their eyes," he said. "It’s the most transparent bidding process a public agency can use. There is less chance of a protest – and the resulting huge administrative expense – because everything is based on cost.

Knox County has also received feedback from vendors who participated in a reverse auction, and they agree it is an easy process. "The web site for Knox County Purchasing is the easiest that I have encountered," said Herb Odom of Alexander Lincoln-Mercury Ford. "I was able to work in the system without a problem." Reverse bidding has also enabled Knox County to increase cooperation and collaboration with other local agencies.

Vendors were notified through the automated system of the reverse auction, and Knox County offered a non-mandatory prebid/training program. During training, attendees saw how the system works in a test environment with a mock reverse auction. The training session drew a full house – about 20 to 25 vendors and participating agencies. Knox County also offered a “how to participate” handout on the day of the auction including screen shots of the system. "We left them fully equipped to participate," said Diane Woods, Knox County contract and systems administrator. "These folks are salesmen, but given the ease of the system, anybody can use it."

Currently Knox County has a reverse auction on the street for passenger buses for the county’s Head Start program and vans for the health department. "We are looking for other opportunities to use this tool," said Holt. "It may not fit every transaction, but there are some that it fits very well, and any time we can save time and money, that’s what we’re about."

From printing to chainsaws
Although legislation was passed several years ago to allow reverse auctions, Jean Clark, Arizona’s State Procurement Administrator, said the state moved cautiously. First the state considered using a third-party, independent provider to manage the auction, but the pilot program never came to fruition. After training on the reverse auction capability added to the state’s BuySpeed
e-procurement system, the state saw the possibility of using the new tool. A key strategy was to find examples of products that could clearly demonstrate true dollar savings to help jump-start the program.

Reverse auction successes in Arizona include a State of Arizona Department of Education print job contract that was awarded at $1,254 below budget, or 20 percent below the opening price. In another reverse auction, Arizona's Department of Transportation saved 5.2 percent on the purchase of seven heavy-duty chainsaws. The auction involved multiple small vendors throughout Arizona, and the contract specified the product had to be delivered instead of picked up, which saved shipping costs. In 24 bids submitted for Arizona Department of Game and Fish all-terrain vehicles, the contract was awarded at 13.6 percent below opening bid.

Clark's office is responsible for procurement statewide, including 120 agencies, manages long-term statewide contracts, and does some direct purchasing and contracts for agencies that do not have their own procurement staffs. Some procurement is delegated to larger agencies with their own procurement departments, and the state-level staff gets involved in possible protests and oversees statewide policy.

One way the reverse auctions saved time for Arizona was by shortening the time the auction is open, from 14 days to a 5-to-7-day period. The Arizona statute does not specify a minimum period of time the auction must be open. Arizona also had good feedback from participating vendors, who are happy with the process. "They appreciate the fact that they don't have to make a decision in a vacuum," said Clark.

Arizona was also careful in providing specifications, terms and conditions before the auction began. "Everyone has agreed to terms and conditions up front," said Clark. "They can see if they want to modify their prices or not."

The state held webinars to "walk" the vendors through and explain the software application. A mass notification is sent to vendors listed in the state's database for a specific commodity code; the notification also tells them about the training.

Clark says Arizona is looking to use reverse auctions for a taxi service contract and is looking to expand the strategy into the construction arena. "Construction and project managers feel it would work," she said. "We have the plans and documents out there and they are just filling in the pricing. If it's online they can compete against each other. We are going to try it, but the industry may not care for it."

Clark urges procurement professionals having trepidation about reverse auctions to give the process a try. "It is beneficial and something they should embrace as one of their procurement methods," she said.

**About the author**

*Larry Anderson is editor of Go Pro.*

This article is a reprint from the July 2011 issue of Government Procurement magazine
Upcoming Events

PURCHASING CO-OP MEETING
FRI, OCT 7, 2011

FCCN RE-CERTIFICATION SEMINAR
OCT 20 - 21, 2011

LEGAL ASPECTS OF PURCHASING
NOV 2 - 4, 2011

PURCHASING CO-OP MEETING
THU, NOV 3, 2011

14TH ANNUAL SEFL NIGP REVERSE TRADE SHOW
THU, NOV 17, 2011

PURCHASING CO-OP MEETING
FRI, DEC 2, 2011

NIGP: QUARTERLY CHAPTER MEETING - TENATIVE
THU, DEC 8, 2011

SOURCING IN THE PUBLIC SECTOR
JAN 25 - 27, 2012

INTRODUCTION TO PUBLIC PROCUREMENT
FEB 15 - 17, 2012

CPPB EXAM REVIEW
MAR 15 - 16, 2012
FCCN Re-Certification Seminar

Oct 20 - 21, 2011
8:30 AM - 5:00 PM
S. Fl. Reg. Transportation Authority
800 N.W. 33 Street Suite 100
Pompano Beach, Florida 33064

Fees for this event:

CHAPTER MEMBERS ONLY (2.0000 POINTS): $200.00
NON-CHAPTER MEMBERS (2.0000 POINTS): $750.00

Attachments for this event:

SEE SEMINAR APPLICATION FORM
This is a two-day Re-certification Seminar (also known as Advanced Negotiation Workshop) for the Florida Certified Contracts Negotiator Certification. The seminar will be conducted by ESI International and is being discounted to Southeast Florida NIGP Chapter members.

Please complete the attached State of Florida Seminar Application Form and mail, fax or e-mail to Karen Walbridge, Pro-D Chair, at 115 S. Andrews Avenue, Room 212, Fort Lauderdale, FL, 33301 with either a Procurement Card - - Master Card or VISA - - of $200.00 or a Check for $200.00.

The Seminar Application Form and check/credit card payment will be logged and forwarded to the Chapter Treasurer who will deposit the check or process the credit card payment. A separate Check will be printed to the State of Florida for the full $750.00 seminar fee and the Seminar Application will be forwarded to the State of Florida.

If you have any questions, call Karen Walbridge at (954) 357-7306.
Seminar Title: Advanced Negotiation Workshop

Seminar Dates: October 20-21, 2011

Seminar Time: 8:00 am – 5:00 pm

Seminar Location: The South Florida Regional Transportation Authority, 800 N.W. 33 Street, Suite 100, Pompano Beach, FL 33064

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Credit Card Information: (Please Print)

Card Type: __________________________

Name Printed on Card: __________________________

(Please Print Name Legibly) __________________________

Individual Name: __________________________ (Person Attending Seminar)

Account Number: __________________________

Expiration Date: __________________________

Amount of Charge: $750.00

Authorized Signature: __________________________

If Pre-payment is made by check, please make payable to: ESI International. Check should be mailed to the address and attention above at least two weeks prior to class.

ESI – State of Florida, Division of State Purchasing
Southeast Florida Chapter of NIGP, Inc.

EDUCATIONAL REIMBURSEMENT APPLICATION

It is the intent of the Program Development Committee to consider applications for reimbursement for the professional development of the members for successful completion of Purchasing, Materials Management, and for other related studies required for purchasing certification or re-certification and forward the recommendations to the SEFL NIGP Chapter board for approval.

Each applicant must complete this form and a letter from their employer and fax, mail, or email to the scholarship chair at least 30 days prior to the class date for approval. Reimbursement will include registration fees, but travel expenses will NOT be reimbursed.

Upon completion of the course, fax, mail, or email a course certificate, copy of the course description and payment receipt to the scholarship chair which must be received within 90 days of the course completion or the educational reimbursement approval may be withdrawn unless extenuating circumstances are proven.

It is the sole responsibility of the applicant to ensure that the committee has received the application for reimbursement and all required documentation. The decision of the NIGP SE FL Chapter board will be final. Forms & bylaws available on www.nigpsefl.org.

Note: Please read Article X Scholarships on Bylaws to see if you qualify for a scholarship.

Name: ___________________________ Position or Title: ___________________________
Address: __________________________ City, State: ___________________________ ZIP: ___________________________{

Are you a current member of SEFL NIGP: yes no
Date of last meeting attended: _______________________________________________

Current Certifications: CPPB CPPO C.P.M. Other: ___________________________{

if working toward certification or recertification, please specify:

# Points/credits earned toward above: __________ Points/credits required: __________

Employer: __________________________
Address: __________________________
City, State: __________________________ Phone: ___________________________{

Does your employer a professional development plan that includes reimbursement for attending NIGP/FAPPO/ISM seminars: yes no

Has your employer eliminated or depleted function for such professional development?
Yes No Please include a letter stating such.

Seminar/course name: __________________________
Seminar location and date: __________________________
Total Amount of reimbursement requested: $ __________________________

Is this seminar/course directly job-related? yes no

Is it required for re-certification/graduation? yes no

Applicant’s Signature: __________________________

Committee Recommendation: yes no Amount $ __________________________

Scholarship Chair Signature: __________________________ Date: __________________________
Newest O’s and B’s

Joseph Gagliardi, CPPO
Broward County Board of County Commissioners

Kevin Bellamy, CPPB
Broward College

Parum Cheerangie, CPPB
Broward County Board of County Commissioners

Marie S. Williams, CPPB
Broward County Board of County Commissioners

Congrats!
On the Light Side Of Budget Cuts
Have a Great Day
Have a Great Day