



**STATE & LOCAL
GOVERNMENT
PURCHASING**

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**STATE & LOCAL
GOVERNMENT
PURCHASING**

A Digest



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NATIONAL ASSOCIATION OF STATE PURCHASING OFFICIALS
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
PEAT, MARWICK, MITCHELL & CO.

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Foreword

Public purchasing, at the state and local government levels, is a difficult task. To seek the best value of goods and services from a multitude of suppliers becomes even more complex today with the high degree of technology offering sophisticated equipment and more refined products. This study is a digest of the first comprehensive research effort on this topic.

The report traces the purchasing process from the assessment of needs; to written specifications; to advertising, evaluating and awarding bids; to inspection and testing procedures on goods purchased. Considering the expenditures involved, state and local purchasing officials have a great responsibility to assure impartiality, integrity, and cost savings in government purchasing.

The Council of State Governments is pleased to publish this report prepared by the National Association of State Purchasing Officials, an affiliate of the Council, and Peat, Marwick, Mitchell & Co., under the sponsorship of the Law Enforcement Assistance Administration.

Lexington, Kentucky
June 1974

Brevard Cihfield
Executive Director
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Preface

This study of state and local government purchasing is the first comprehensive research effort on this subject. It is directed to the acquisition and utilization of goods and services and does not treat construction and public works contracting. Its purpose is to recognize differences in current practices and to identify those characteristics which promote strong and effective programs. The study is being performed by the National Association of State Purchasing Officials and Peat, Marwick, Mitchell & Co., under the sponsorship of the Law Enforcement Assistance Administration.

The Law Enforcement Assistance Administration (LEAA) is authorized to grant funds at its discretion for worthy projects and to conduct a technical assistance program which provides expert advice and consultation to state and local governments in all areas of criminal justice. The definition of crime encompasses white collar crime, including public corruption. Strong, well-managed purchasing programs are important to good government because poorly managed programs not only may result in inefficient and wasteful government but also may lead to a loss of public confidence in the integrity of government. Public confidence is critical to the success of crime prevention efforts. The volume on *Community Crime Prevention* (January 23, 1973) of the report published by the National Advisory Commission on Criminal Justice Standards and Goals addresses these very issues. This research study is another example of LEAA's interest in strengthening state and local government purchasing, thereby maintaining and fostering public confidence in the integrity of government.

The scope of the research effort extends from state and local laws to written policies and day-to-day practices. This information is the basis for developing the principles and characteristics found in successful programs. The Final Report will provide a complete discussion of detailed findings and recommendations. In contrast, this Digest presents a brief summation of certain essential factors which have been defined to date.

If a distillation can be made of the study which represents months of intensive cooperation by state and local purchasing officials and other public administrators, it might be said that given *openness, centralization and*

professionalism, government is well served in public purchasing. Where there is public record there is public confidence and this distinguishes state and local acquisition of goods and services from other activities not as openly performed. The centralization of purchasing authority is also the centralization of responsibility and accountability, and the central purchasing office has the perspective of commonweal, not the special program interests of individual departments. And finally, where there is professionalism and conformance to technical and ethical standards, public purchasing can work as it is expected to work in awarding contracts impartially, reducing costs of government operations, and instilling confidence in the integrity of government.

1 | Introduction

Background

The public purchasing profession is handicapped by a general lack of understanding among people as to how it differs from contracting for public works. Historically, the body of state and local government laws and principles governing purchases of goods and services has been developed around construction and public works contracts. These types of contracts are predicated on the successful bidder's building a structure, for example, or carrying out a similar project of the owner's design, and assume that a number of contractors have equivalent capability such that the owner will receive essentially the same structure irrespective of who is the successful bidder. Price can be and usually is the principal determinant.

With most purchases of equipment, materials, supplies, and services, however, the relationship is usually reversed because the purchaser is buying products of the seller's design or capability. Seldom are they custom-made. Except for certain standard items, instead of receiving the same or essentially the same product from all bidders, the buyer receives products with different characteristics depending upon who is the successful bidder. To arrive at best value, purchasing officials must often consider individual product capabilities or the quality of the proposed services as well as bid prices; price becomes only one factor in the total evaluation. This evaluation process must be conducted in accordance with preestablished announced criteria which often differ among commodities.

Public purchasing has always been a difficult profession because it must deal fairly in seeking competition from a multitude of suppliers who furnish a wide variety of products and services. Commodities must be obtained at the most advantageous prices, taking into account the users' needs and the best interests of the state or local government.

Today, however, public purchasing faces new problems that are larger than any in its history. The wave of technology that has been characteristic of the national economy for the past decade or more has brought with it increasingly complex equipment, materials and systems. Items with a high degree of

technology frequently become obsolete in a short period of time by the rapid introduction of new and more refined products. As items become more highly developed, it is progressively difficult to separate the "frills" from the actual requirements and, consequently, to determine the best buy for the money. This challenge of technology requires public purchasing agents to continually update their technical knowledge, information systems and purchasing techniques.

State and local governments are faced with the need to provide more and better services to an ever-changing population. These services, in turn, are reflected in steadily growing budgets for the purchase of goods and services. Until recently, public purchasing functioned in a market where supply and demand were relatively balanced, or where a buyer's market existed. Now the market conditions have changed drastically. Basic commodities such as food, fuel and paper are suddenly in short supply, and purchasing finds itself trying to satisfy increasing demands within the constraints of a tight seller's market. The task of seeking suppliers and competitive prices is, indeed, a challenge.

One of the unique features of centralized public purchasing is the complete openness of its operations, which distinguishes it from private purchasing. Records and information related to purchases made or to be made are open to public inspection; this is required because it is public money that is being spent. However, despite this general openness, there have been cases where favoritism has occurred in the awarding of contracts, and favoritism invariably reflects negatively on all public purchasing activities.

In addition to the challenges of technology and the market, public purchasing officials often must cope with social and political influences. Good safeguards and controls must exist, but must not be so restrictive as to stifle the professional judgment and personal initiative that enable purchasing officials to function effectively in the public interest. Indeed, purchasing officials must recognize and resist the pressures of sellers and others who attempt to improperly influence their purchasing practices. These are challenges which demand professionalism at its best. And yet, the formal education that is a part of most professions does not exist to any great degree in the purchasing profession. Experience has been not only the best teacher, but the only one. In addition, dedication to the principles of good purchasing has been and will continue to be a necessary attribute of good purchasing officials.

The Study

The Need

Over the years, state and local governments have adopted individually a variety of public contracting laws, rules, policies and practices representing whatever was deemed acceptable and expedient at the time. In some cases, these laws and policies have remained virtually unchanged for years; in other cases, they have been changed piecemeal or in response to a particular problem. *Consequently, state and local government laws, rules and policies generally have*

not been developed in terms of any overall understanding, knowledge, or data, and they vary widely among state and local governments.

At the same time, many improvements have been made by state and local governments in their public contracting operations. Perhaps the most significant of these has been the growth of more centralized purchasing, which has been motivated largely by the recognition that economies could be realized. The volume of state and local government purchases of goods and services has grown dramatically during the past decade; it now exceeds that of the federal government. Despite this magnitude, the literature on the subject is sparse, with some of the best of it obscured in law reviews and limited in scope. Therefore, the dimensions, objectives and methods of this research effort are unique; and this very uniqueness marks the need for such a study. The concept of New Federalism—the trend toward giving state and local governments more authority and responsibility in spending funds collected by the federal government—is another aspect which highlights the importance of and need for this research effort. The federal government's interest in state and local government purchasing is expressed directly through the Law Enforcement Assistance Administration's sponsorship of this study.

The Objective

In light of these factors, this nationwide study is timely. The study seeks to recognize and identify the differences in public purchasing laws and practices and to highlight those characteristics that promote strong and effective programs. These characteristics will be expressed in terms of suggested statutory/regulatory coverage and guidelines for implementing policies and procedures. Although a variety of local conditions may cause differing details of implementation, common acceptance of basic principles is possible and necessary.

The study results will be directed to the public purchasing professional community, legislative and executive bodies, educators and the public. These results are intended to reflect the state-of-the-art in public purchasing and to serve as a sound basis for taking action to improve purchasing programs. The study also seeks to identify emerging trends and to be a guide for state and local government coordination and cooperation in achieving common goals.

This Digest

During the course of this research effort, a wide assortment of inquiries from purchasing officials, educators, Attorneys General, legislators and a number of federal agencies was received. Many of these requests were for information on the state-of-the-art in specific technical areas, and all the requesters were vitally interested in obtaining a copy of the Final Report. In some cases, specific responses to the inquiries were possible; in many cases, they were not. *This Digest is being published in advance of the comprehensive Final Report as a*

preview of the findings to date. It is intended to serve as a general guideline to those state and local government officials already involved in efforts to improve purchasing programs. Being a digest, it does not seek to treat any questions or problems in depth. Moreover, it is being published before the completion of all research and data gathering. Areas that have not yet been fully developed could not be included in this Digest.

The research performed during this study has disclosed patterns which suggest that there are essential elements to an effective purchasing program. This Digest attempts to highlight the major findings to date for such use as state and local officials can make of them at this time.

The Final Report

The comprehensive Final Report is scheduled to be published in the late summer of 1974. It will contain a complete discussion of each essential element and will present final conclusions on suggested statutory/regulatory coverage. Separate sections of the Final Report will be devoted to the results of the nationwide survey of cities and counties and to the results of a survey on contracting for professional services, both of which were conducted as a part of the study. The Final Report will also contain other material, such as a detailed format for a procedures manual, a bibliography of case law and legal citations, a bibliography of business and legal articles, and a glossary of terms—all as they relate to public purchasing. The comprehensive Final Report will be extremely useful to those state or local governments undertaking substantive legislative action in the purchasing area or major overhauls of their purchasing programs. Also, the Law Enforcement Assistance Administration is available to provide expert advice and consultation.

Central Purchasing Authority

The first issues confronting state and local governments are to define the scope of the public purchasing function and to determine where it should be situated in the governmental structure. These issues are presented in this Introduction as a backdrop for the remaining sections of the Digest. The discussion which follows is based on the following general principles.

The purchasing authorities and responsibilities should be clearly set forth.

A central purchasing authority should have overall responsibility for the purchasing program.

Provision should be made for waivers of competitive bidding and for delegation of various functions.

The central purchasing authority should be management-oriented.

The internal organizational pattern for the purchasing program will probably continue to vary among state and local governmental units.

The central purchasing authority should occupy a place in government which provides the status needed to effectively coordinate and deal with other departments and agencies, and which attempts to preclude direct political pressures.

A purchasing program encompasses much more than merely placing orders for goods and services. Management functions such as planning and scheduling, seeking competition, assuring the preparation of proper specifications, maintaining a quality assurance program and reviewing the utilization of purchased items are all part of the program.

Authorities and Responsibilities

Many purchasing functions and activities require coordination with user departments and with various technical disciplines, both inside and outside the purchasing unit. Left unstructured, these activities tend to be performed haphazardly or not at all. Good management and internal control require that responsibility and accountability for key activities be clearly fixed, and this is particularly important in public purchasing, which involves the commitment of public monies. A clear statement of authority, responsibility and accountability is therefore a necessary prerequisite to an effective purchasing program.

Furthermore, regardless of the level of government or the relative size of the purchasing program, there should be a designated individual, office or body which assures that the requirements and principles of the total purchasing program are met. This study defines this individual, office or body as the "central purchasing authority." The central purchasing authority must either accomplish all functions of the program, or see that they are properly performed by others. In the latter case, delegated functions must still be monitored and reviewed by the central authority. *The mechanics of purchasing cannot overshadow the need for central management and control of the total program.*

Furthermore, the central purchasing authority should be responsible for purchasing all types of goods and services. Presently, most centralized purchasing programs exclude the responsibility for procuring professional services, such as those of architects and engineers. The responsibility for these types of purchases frequently remains decentralized (i.e., with the individual departments and agencies). There is no adequate reason why this responsibility should not be assigned to the central purchasing authority. The same general principles and procedures apply to purchasing goods and services alike, and centralization of this responsibility would provide better control in assuring that the standards of good purchasing are observed in seeking effective competition and making awards impartially.

Organization

Given the need for management direction and a central purchasing authority, how should it be organized and located within the governmental unit?

For state and larger local governments, the purchasing authority should rest in a central office. In other cases, purchasing may be decentralized, or may be so small an activity that it is handled by one individual on a full- or part-time basis. Factors such as organization and management philosophy, tradition, magnitude of the purchasing program and available resources have a major impact on these issues. Also, what may work best in one state or local government may not work best in another. In any case, a central authority should be responsible for assuring the integrity and effectiveness of the purchasing program.

Each state and local government must make its decisions in terms of such factors as:

- Is the present purchasing organization functioning effectively? If not, is it an organizational problem?
- A fundamental objective of purchasing is to serve the public interest. In so doing, the principles of good purchasing must be observed. Does the organizational structure foster the observance of purchasing principles? Do organizational constraints impede the achievement of objectives?
- Is purchasing organized so as to be a management-oriented activity which is responsible for the total purchasing program, or is it functioning as a routine service activity?
- Does the organizational structure provide sufficient authority, proper support, and requisite safeguards including a buffer against political pressure?

Purchasing officials must deal fairly with vendors, coordinate with other government departments, provide timely and quality service, and safeguard the public interest. To meet these responsibilities, the central purchasing authority must be able to exercise independent professional judgment. This independence can be encouraged or discouraged by its placement within the government hierarchy. It cannot be relegated to the status of a minor activity or be pigeonholed in an obscure corner of government. It must be able to deal with vendors and with all department heads *from a position of authority commensurate with its responsibilities.*

Cornerstones

The following four sections of this Digest deal with the basic aspects of preparation, specification, competition and inspection. These four frames of reference embody the essential elements and principles of an effective purchasing program. If they are observed and accomplished, related purchasing activities are likely to be carried out well.

2 | Preparation

Before purchases can be made, a well-managed program requires that there be a timely assessment of what the needs are, and when the items will be needed. Also, there must be a determination of the best means for seeking competition from qualified suppliers. These two functions, designated here under the headings of planning and bidders lists, are discussed as part of the preparation process.

Planning

The central purchasing authority should be responsible for managing the planning function.

Information as to the estimated commodity and service needs should be submitted to the central purchasing authority by users.

Wherever practicable, scheduled contracting should be utilized.

A continuous and fundamental process in the purchasing cycle is developing estimates of the types and quantities of items needed, and identifying realistic time frames during which these needs are to be satisfied. At the outset, therefore, the purchasing program depends on input from other departments and agencies—the users. Information on the items needed, in what quantities, and when they will be required is developed at the user level, often in conjunction with the budget process. Although using agencies are responsible for generating the data, the central purchasing authority should provide historical purchasing information, price estimates and the status of any relevant current contracts.

After the schedule has been prepared, it should be provided to the using agencies so that they know the timetable for requisitioning. Similarly, information on contracts awarded should be provided to users so that they may requisition or order accordingly.

The function of planning and scheduling does not involve dramatic or complex techniques, although close coordination and cooperation between central purchasing and users are necessary. Being so basic, there sometimes is a tendency to leave planning and scheduling as an informal process. Since it is the

baseline for an orderly and well-managed program, however, the central purchasing authority should be responsible for administering a formal planning function which embodies the coordination and cooperation of all users. To be successful, the process must be ongoing and not just a one-time event. Plans and schedules need to be updated throughout the year, and the central purchasing authority is in the best position to serve as the focal point for managing this function.

The Bidders List

The central purchasing authority should maintain and use a bidders list.

There should be a published policy concerning prequalification requirements and procedures.

The bidders list should be constructed by commodity group or service and should extend to the lowest practical level for which there is a distinct group of bidders.

There should be a program for identifying new prospects for the list.

There should be a system of feedback from users to purchasing on vendor performance, and this information should be maintained in a central vendor file.

There should be a published policy which includes criteria for deleting bidders from the list, and which sets forth reinstatement procedures.

Public purchasing seeks to obtain the maximum competition in the purchase of goods and services. This fundamental standard, in turn, relates to two important issues. The first is *maintaining adequate safeguards and controls to preclude favoritism in the awarding of contracts*. To avoid such an occurrence, there must be some means of assuring that invitations to bid and requests for proposals are sent unrestrictedly to qualified bidders and not just to selected bidders or offerors.

The second issue involves *identifying and attracting qualified bidders*. As a starting point, a well-structured listing of qualified bidders is necessary. The purpose of the bidders list is to serve as a ready reference of prospective suppliers sufficient to guarantee adequate sources of supply. The principle of competition in public purchasing, however, must take into account the qualifications of bidders. In seeking low prices, purchasing officials must have some assurances concerning the reliability, capability and other qualifications of bidders, lest they find that they receive inferior goods, or are faced with late deliveries or defaults. The theory of prequalification, therefore, has much merit.

Prequalification

Prequalification of new or unknown suppliers is not only desirable but necessary. There should be some assurance that such suppliers are regular dealers in the commodities and that their financial position and physical capabilities are

such that they are qualified and reliable. In the modern business environment, where companies are constantly merging, diversifying and expanding product lines, it is sometimes advisable to prequalify suppliers by product line. That a supplier is well established in a particular product line is no assurance that he will perform satisfactorily in a new, and perhaps completely unrelated, product or line. Determinations of this kind are examples of the need for professional judgment and care in the art of public purchasing.

A good prequalification process should require suppliers to submit specified information on their financial position, length of time successfully in business, physical or plant capabilities, and compliance with certain federal and state policies. This, in turn, means that a standard form should be used for obtaining the necessary information. However, the information cannot just be collected and filed; it must be reviewed and analyzed. Consequently, there needs to be a written procedure with guidelines and criteria to be used in evaluating the information, rating the suppliers and setting forth the bases for accepting a supplier. Factors such as credit rating, solvency and supply capacity should be reviewed. A visit to the applicant's place of business is useful, if needed, as an additional insight into his capabilities and operations. Other sources of pertinent information include trade organizations, various registers and publications, and technical personnel familiar with the supplier's particular industry. Should an applicant fail to qualify, the reasons should be documented, and he should be advised in writing. The applicant should have the right to request and obtain an administrative review of the decision.

The prequalification process, therefore, is not routine; it requires time, effort and money. However, there are many suppliers—those who are well-known and proven, with a good performance record in furnishing a certain product or group of products—for whom prequalification is largely a formality.

To be most effective, the bidders list should be organized by commodity category and divided into the lowest practicable item level within each category. For example, rather than grouping all truck suppliers under a single category, the list could be further segmented into subcategories such as four-wheel-drive trucks, pickup trucks and tractor trucks. This reduces the duplicating and mailing costs of issuing bid invitations and provides a higher percentage of return on the effort.

Structure

In structuring the bidders list, consideration must be given to developing an index system which arranges commodity groups according to a meaningful industry or functional classification. This, in turn, would facilitate computerization of purchasing activities when and if such action is contemplated. More importantly, however, a coding system could be used to improve communication and the exchange of information among purchasing activities. *Presently, there is virtually no commonality of commodity code*

classifications among local governments within a State, among local governments and state governments, or among state governments.

Although not essential, there are advantages to maintaining a central bidders list, particularly by computer. This adds to internal control and can expedite the issuance of invitations for bids (IFBs) and requests for proposals (RFPs). The other procedure is to have each purchasing agent maintain the list for his designated commodity groups. This latter practice is prevalent today, but the trend in larger offices is to centralize the activity.

The central purchasing authority's management functions include methods of generating additional competition. This is frequently accomplished by reviewing trade literature (e.g., *Thomas Register of America Manufacturers, Chicago Buyer's Guide*), attending trade shows and researching license bureau files. Techniques such as general promotional or exploratory advertising can also be used. This type of advertising, which appears in trade publications, can identify those commodities for which additional bidders are being sought and highlight the advantages of doing business with the state or local government. Such advertising may also have the additional benefit of indicating to suppliers and to the public at large that the market is indeed open to all qualified competitors.

Deletions

Just as there is a need for continually seeking new sources of supply, there must be a program for identifying bidders who should be deleted from the list. This is a sensitive issue and the procedures and criteria used should be set forth in writing. Typical factors used include:

- history of no responses to IFBs;
- history of "no bid" responses to IFBs; and
- default or poor performance (e.g., failure to meet delivery, failure to meet specifications, or failure to keep promises).

This aspect of maintaining the bidders list requires that certain information be regularly available to purchasing. This information includes a record of no responses or "no bid" responses by a vendor and some form of vendor performance reporting by users. Information of this nature should be maintained in a central vendor file. Just as there is a need for standards of ethics and professional conduct for public purchasing officials, so too there should be similar standards established for suppliers doing business with state and local governments. Such standards should provide for penalties, sanctions or other disciplinary actions (e.g., removal from the bidders list) for violations of the standards. Whenever it is necessary to delete a bidder from the list, the central purchasing authority should approve the action, and the vendor should be advised in writing and should have an opportunity to obtain an administrative review of the action. Reinstatement policies must also be developed, and vendors

should be informed of what procedure to follow if they wish to be reinstated. These types of safeguards are necessary to protect both the integrity of the lists and the rights of the bidders.

Bidders lists can also be used by state law enforcement agencies in reviewing who is doing business with state and local governments, and in identifying those suppliers which, according to their records, have organized crime affiliations. It is recognized that state agencies encounter numerous problems related to doing business with firms having organized crime connections. This subject will be treated in the Final Report.

3 | Specification

A well-conceived purchasing program is built on a series of interrelated functions and activities which, working together, achieve the objective of maximum practicable competition. Each function and activity must be well managed, or the objective may not be achieved. Although there may be no single dominant function, specifications are a key determinant of the extent of competition obtained in public purchasing. The study findings indicate that purchasing officials feel that the preparation of good specifications is among the most difficult functions in the purchasing program.

Specification Process

The responsibility for reviewing, modifying and approving specifications should rest with the central purchasing authority.

The specification process should be set forth in writing, citing both the user's and central purchasing's responsibilities and authorities.

Except where standard specifications apply, users should convey their requirements in a clear, descriptive manner.

To avoid organizational conflicts of interest and to assure objective specifications, suppliers should not prepare specifications.

The use of brand names is justifiable in some circumstances, but should be accompanied by identification of the pertinent characteristics and by language explaining that their use is not intended to be restrictive.

Users should set forth any reasons why a particular item is considered to be available only from a single source, so that purchasing may determine the proper purchasing techniques to be used.

Specifications should not call for features or a quality level which is not necessary to an item's intended use.

Specifications describe the item or service to be purchased and must be clear, concise and nonrestrictive. The specification process starts at the user level, where the item to be purchased is identified and described in some fashion.

These descriptions can be quite general, can be prepared from catalogs or prior purchase records, or can be very detailed and specific. Too often there is a direct vendor involvement in the specification process at the user level, and every effort should be made to prevent this. Although users initiate the descriptions of items needed, there must be an independent body which assures that the specification that finally accompanies the invitation to bid is not restrictive and does not call for features or for a level of quality not needed for the item's intended use. Good management control requires that someone outside the user departments review and approve specifications, and the central purchasing authority is the logical choice. As an added measure of control, and to save research time within central purchasing, users should be required to identify the source(s) used in the specifications they prepare.

In some cases, it may be found that a brand name must be used, and contrary to some beliefs, the use of brand names does not defeat the principles of competition. However, central purchasing must guard against the indiscriminate or unnecessary use of brand names because it frustrates the competitive bidding process. Where the number of different items involved or the work and time required to prepare a physical or performance specification are prohibitive, brand names or model descriptions can properly be used as a general indication of the type of item needed. But this type of specification must clearly indicate that the intent is not to restrict bidding and that other brands and models of the same general type and function will be acceptable. An "or equal" or "approved equal" type of clause should also be used as a further safeguard against restricting competition.

In contrast to the use of a brand name as the least desirable form of specification, the most desirable is a description based on performance requirements. In this process, bidders are invited to offer proposals in terms of what the product is to do, rather than how it is formulated or designed. This type of specification requires considerable expertise, effort and time both in the preparation and in the evaluation of proposals, and these facts, together with the conventional engineering concept of detailing design characteristics, are barriers to its being used more commonly. Its worth, however, is being increasingly recognized.

Single-source procurements present both questions and difficulties. These problems may occur for a number of reasons, such as special-purpose equipment having features unique to only one supplier or items that must be compatible with equipment which is already in place. Users' requisitions should include a detailed justification that sets forth why only one supplier can fill the need. This justification should contain specific information regarding the peculiarities of the purchase, such as a supplier's unique capability, critical time schedules which cannot be met by other suppliers, or patent/copyright considerations. Once central purchasing has received the supporting data, it can review the matter to assure that it is not feasible to solicit competitive bids, and decide upon the

appropriate course of action.

Prudent buying is essential in guarding the public interest. One aspect of this deals with buying only what is needed; another concerns the quality of the goods and services bought. Specifications should not contain features which are frills and not necessary to the item's intended use. It is incumbent upon operating agencies to discipline themselves to the judicious use of public monies. The independent review and approval function of central purchasing, however, adds a vitally needed element of control in these areas.

Twelve States have a statutory responsibility for central purchasing to inquire into the need for items requisitioned, and 23 have published policies calling for review of the quantity and/or quality specified by a requisitioning agency. All state central purchasing offices indicate a recognition of this role of controllership, although it is not always exercised directly or consistently. The specification process, therefore, with its attendant responsibilities and authorities, should be set forth in a formal written policy statement. The difficult aspect is having the policy accepted by all and carried out in a professional manner, which does not include the appearance of attempting to obstruct operating agencies.

Standardization

Consolidation of purchases to provide the benefits of volume buying can result in substantial savings.

Standard specifications are a prerequisite to an effective consolidation program.

A number of items are frequently purchased in volume on a recurring basis by one or several using departments of a governmental unit. To permit consolidation of purchases and to save the time and effort required to prepare separate specifications each time a purchase is made, at least 42 States and many local governments have initiated standardization programs to develop a single specification that is suitable for most or all purchases of a given item. The process requires that all users' needs for the item be examined and that the standard specification as finally developed be acceptable not only to all users but also to competing suppliers as well. The first step in standardization is to identify items that are suitable candidates. This is best accomplished by the purchasing agents, who have previous experience and historical purchase data available to them. The products which lend themselves to standardization are usually those which are purchased in large quantities on a recurring basis by a number of users. Lower prices are brought about by consolidating purchases and eliminating individual specification writing.

Close coordination is required among all users and with suppliers. Each user must be satisfied that the final standard specification will fulfill his performance requirements. Vendor input is needed to assure that the specification does not unduly restrict competition. Once established, the standard specifications should

be indexed, filed and used for each purchase of that item. They should be reviewed on a regular schedule and updated, or otherwise modified, as necessary. Establishing and maintaining standard specifications is a long-range and difficult process, but one which can produce substantial savings to state and local governments.

Organization

An ideal situation exists where resources permit establishment of a specification unit.

Where such a unit is established, it should be a separate element under the central purchasing authority.

Maximum use should be made of industry specifications and specifications available from federal, state and local governments.

Some means is needed to provide better collection and dissemination of specification data among state and local governments.

The specification process and principles just discussed apply to any purchasing program. Many state and local governments have separate specification units which are responsible for preparing and modifying specifications. Some of these units are within purchasing; others are not. Where there are no separate units, there may be a cadre of technical personnel working with purchasing agents in reviewing and preparing specifications.

Among the States, 14 have special and organizationally distinguished standards and specifications units, 14 more place the responsibility upon buyers along with their procurement duties, and the remainder divide this responsibility between standards units and procurement units.

Much time and effort are devoted to the specification process, and yet no one can afford the resources necessary to staff this function with personnel having the technical disciplines necessary to do a thorough job on all specifications. *Consequently, as a general observation, the writing of specifications is at best being accomplished only adequately.* While this may seem to be a harsh appraisal, it is a frank statement of the condition as it relates to a very complex function of public purchasing. The situation grows progressively worse for governmental units having smaller purchasing programs, less sophistication and fewer resources.

Where resources permit, it can be desirable to have a specification unit under the central purchasing authority, but separate from the purchasing unit. In this way, the unit functions independently but has access to input received from users and purchasing officials. Final approval for specifications rests with the central purchasing authority or one of its delegated units.

The ultimate goal is to have suitable specifications for all purchases. Too often there seems to be a feeling of isolation when searching for data to use in developing a specification, and too often specification writers—whether they be

technically trained personnel or purchasing specialists—simply do not know where to obtain the information they need.

Data

In an attempt to assist in the process of preparing specifications, professional purchasing organizations publish lists of specifications recently used by a state or local government. For some products there are industry-wide specifications, and the federal government has thousands of specifications on file. None of these specifications necessarily should be used "as is" by any state or local government, but they can serve as a basis for preparing specifications. It is easier to modify, tailor, and update an existing specification than to develop a new one completely.

Purchasing officials agree that files of stock specifications can assist state and local governments, but they consider it more important to find a way to *marshal and coordinate all the effort being devoted to the writing of specifications, and to the collecting, organizing and disseminating of these data to those who need it.* This could be a program supported by the States alone, but it would be far better to have a federal-state-local government program. This is an area which is calling for further study and effort, and one which could alleviate a major concern in public purchasing.

4 | Competition

Purchasing statutes and local ordinances generally require that purchases be made on the basis of open competition. Most state and local governments have statutory dollar ceilings for transactions above which they must call for bids. *The objective of this requirement is to obtain competitive prices, guard against favoritism and profiteering at public expense, and protect sellers' interests by giving them an opportunity to compete for business.* Good planning, proper specifications and a well-structured bidders list are basic prerequisites to the task of seeking competition. Having established these, there are a number of additional requirements which must be met and actions which must be taken by the central purchasing authority to assure that open competition in the purchasing program does, in fact, exist and that the commensurate value is obtained.

Advertising

While present legal notice requirements seldom serve their original intent of enhancing competition, and involve some expense, there is a need to keep the public apprised of the types of major purchases being made.

An abbreviated form of public notice satisfies the need to keep the general public informed of purchase activity.

Purchasing officials should be available to provide additional details, as necessary.

Most laws require that all purchases which exceed a specified dollar amount be advertised in a newspaper having wide circulation, often in a designated official newspaper in a capital city or county seat. The dollar value set for this legal notice requirement usually coincides with the requirement to obtain formal, sealed bids, by means of a formal invitation to bid. Because of this association, it is sometimes assumed that newspaper advertising is a good technique for obtaining competition. Historically, this was probably the case. Today, however, most purchasing officials do not believe that this type of advertising enhances competition. A soundly conceived bidders list is the best

means of obtaining competition. Public purchasing must function with openness because the public is entitled to know what is being bought. Therefore, some form of public notice is called for, not primarily as a means of attracting competition, but as a means for keeping the public apprised of the major purchases being made.

Advertising is an area being reassessed by many state and local governments because compliance with most of the current legal notice requirements can be costly. Among the 35 States which have legal notice requirements, some statutes specify that advertisements run for a continuing period of time or in more than one newspaper. Also, under many existing laws, considerable detail must be included in the advertisement. Requirements such as these are outdated; they are carry-overs from earlier days when there was limited communication and less complexity in the purchasing function. In lieu of these requirements, it is more reasonable to provide for a listing or an abbreviated type of public notice which identifies the items being purchased. This satisfies the basic need to keep the public apprised of purchasing activity and invites further inquiry if additional details are desired.

The Bidders List

Soliciting Bids

As a general rule, all bidders on the bidders list should be solicited when formal sealed bids are required.

Any system of selectively soliciting formal sealed bids opens possibilities of favoritism; therefore, rotational bidding should be discouraged as a generally accepted practice.

Where necessary, regional bidding may be used, with advance notice to bidders.

The purpose of a bidders list is to provide the broadest competition among suppliers who are qualified and willing to furnish items and services needed by state and local governments. Therefore, when formal sealed bids are required for the purchase of a particular item, all bidders on that list should be solicited. If this practice is not followed, there can be a breakdown in competition, leading to selective solicitation and favoritism, even if unconscious. The possibility of this unfortunate occurrence is one reason why some state and local governments establish a central control over the bidders list, rather than leave it among individual purchasing agents. As discussed in Chapter 2, Preparation, the bidders list must be properly structured and kept current. This aspect of the solicitation process also speaks for a centralized management, which can objectively solicit all bidders.

Some governmental units practice rotational bidding and others use regional bidding. In the rotational bidding technique, each bidder is solicited in turn over a period of time. The reason given for using this technique is that there are too

many bidders on the list to solicit all bidders each time an item is purchased. The underlying problem here involves a bidders list that is too broadly categorized or is out-of-date. As a general rule, rotational bidding should not be used because it invokes the obvious danger that biases may result either from the manner in which bidders are grouped for solicitation, or from eliminating bidders entirely from the solicitation plan. The solution lies in establishing, controlling, and administering a system to assure equity through a better-managed bidders list.

In some cases, the bidders list is divided into geographic regions. This is helpful when deliveries must be made to widely scattered points, and it may be impractical to maintain a single bidders list for all locations. When this practice is used, prospective bidders must be advised in advance of the regional structure and be permitted to bid in any or all regions.

Invitation for Bids

The IFB is a key document in the purchasing process.

Responsibility for final approval of the IFB needs to be fixed and should be assigned to the central purchasing authority.

The need for bid security should be determined by the purchasing official on a case-by-case basis:

When used, the bid security requirement should apply to all bidders.

The IFB is the means by which competitive bids are solicited. It is a key document in the purchasing process because it contains all the terms, conditions and specifications to be used by suppliers in preparing their proposals. Similarly, it forms the basis for determining bidders' responsiveness, which is a critical factor in determining the successful bidder. Finally, the terms, conditions and specifications are incorporated into the contract of award.

Coordination and assistance among various elements of government may be necessary to accumulate the data necessary for the IFB. In all cases, however, the final review and approval of the IFB prior to issuance must rest with the central purchasing authority.

Bid Security

The subject of bid security often comes up in discussing IFB requirements. Some state and local laws still require that some form of security (e.g., bid bonds, certified check) be provided along with bids. Proponents of this policy state that they need assurance that bidders will maintain their bid prices and not withdraw or change their bids. Although there is a place for bid security, it seems unnecessary to require it as a matter of general policy on all bids, particularly for bids from established suppliers who have a good history of performance with the state or local government. The cost of bid securities undoubtedly is passed on to state and local governments by means of higher prices. Additional administrative time and expense are also incurred in

accounting for and controlling bid securities. However, there should be provision for requiring bid security at the discretion of the purchasing official, as is the case in 33 States. If used on a particular purchase action, the bid security requirement should be clearly set forth in the IFB and should apply to all bidders alike.

Bid Receipt and Opening

Procedures should be established to log, control and safeguard bids received.

Bid openings should be public.

A bid tabulation should be prepared for all bids received.

Bid files should be available for public inspection and be public records for a stated period of time.

As bids are received, they must be controlled and safeguarded until the time of opening. The bids should be time and date stamped upon receipt and secured unopened until the proper time. A separate record should be made of all bids received, showing date and time, to serve as a cross-check for the bid tabulation.

State and local government policies concerning attendance at bid openings vary, with some calling for public openings and others restricting attendance to bidders. Consistent with the objective of complete openness in public purchasing, it is preferable to permit bidders and the general public to attend all bid openings. If there are no bidders or public representatives at a bid opening, it is good policy to have a disinterested party witness both the opening and tabulation of bids.

Some suitable form of bid tabulation should be prepared and kept as part of the official files, along with the bids themselves. These files should be made available for inspection by the public, after award, and should be made a public record for a stated number of years before disposal.

Evaluation and Award

Professional judgment must be used in determining whether or not bids are responsive to the solicitation, but statutes need not provide detailed criteria.

There should be a written policy that sets forth evaluation guidelines and formal procedures to be used in determining if bidders are responsive and whether or not bids are responsive to the requirements spelled out in Invitations for Bids.

Purchasing officials should make the final decision concerning award.

Factors leading up to the award decision should be documented in the purchasing record, which should be available for public inspection.

Most laws provide that awards will be made to the "lowest responsible" bidder, rather than to just the "lowest" bidder. Provisions such as these call for an evaluation of bids and the use of judgment in determining whether bids are

responsive, and which bid is most advantageous to the government, considering price and other factors (e.g., discounts and transportation costs) set forth in the IFB. It is impractical and inappropriate to attempt to detail by statute all criteria to be used in making awards. Nevertheless, administrative guidelines are needed and the process must be a formal one. Nonexistent or loosely administered procedures lead to carelessness and abuse. *Therefore, a formal written policy is necessary to set forth the general criteria, procedures and documentation requirements for this function.* While each award may have its own peculiarities which must be considered on a case-by-case basis, there are general factors common to all awards which should be considered. Case law reaffirms ministerial discretion for determining that the bids are in substantial conformance with specifications and other terms and conditions, void of material mistakes or errors, and reasonable in price, but the courts look for some evidence of reasoned procedure.

The written policies in this area should require that each IFB set forth the specific criteria which will be used in making awards, to permit all bidders to submit bids on an equal basis. This requirement will also serve as a control which precludes the use of completely subjective criteria after the fact. For example, if an IFB did not call for the servicing of a piece of equipment being purchased, the inclusion of service as part of the price bid by a supplier should not be considered as an award criteria. Similarly, an IFB which specifies "adequate service" on a piece of equipment being purchased allows too much latitude and subjectivity. *The IFB must clearly set forth in detail all requirements and conditions which will receive consideration during the review-award process.* This requires considerable care in preparing and reviewing IFBs before they are issued. This process is extremely important because it is a safeguard against favoritism in making awards.

Specifications are intended to serve as a means of assuring that the items purchased have the desired quality and performance characteristics. A determination that an item offered by a bidder does not conform to the specifications is not routine, and the nature and materiality of the nonconformance must be identified and considered as part of the bid evaluation process. The responsibility of bidders must also be determined before the "award" decision is made. Consideration should be given to the bidders' general business integrity, financial capability and past performance. The purchasing official may need to call on technical representatives from user agencies or from outside the governmental structure itself to assist in making these types of evaluations, but the final decision can only be made by the purchasing official.

Similarly, administrative procedures should require that bids be reviewed for mistakes, errors and compliance with other terms and conditions, such as delivery dates. Guidelines should be provided so that the purchasing official can distinguish between minor deviations and technical irregularities which can be waived, and substantial nonconformance which cannot be waived.

These and a multitude of other factors are considered by the purchasing official in determining which bid is most advantageous. There should be valid and documented reasons for not making an award to the lowest bidder, and this documentation should be part of the permanent purchase record maintained by the central purchasing authority. The entire record should be available for inspection by other governmental elements (e.g., internal auditors), bidders and the general public.

Late Bids

As a general rule, late bids should not be considered. Sound policy suggests that the consideration of late bids is not in the public interest, and as a general rule this is correct. There are, however, circumstances which can call for a different position. The fundamental question is whether a bidder has submitted a bona fide proposal without knowledge of the offers of his competitors. Where there is clear evidence that this is the case, the fact that the mails prevented a bid from reaching the purchasing office by a certain time or that a bid was delivered to the wrong room or mishandled after reaching the purchasing office does not necessarily disqualify it unless so stipulated by statute or policy.

Therefore, the question as to how a policy is phrased and implemented to reflect the public interest in the matter of bona fide late bids must be left to the individual jurisdiction. However, it is essential that whenever a late bid is given consideration, the circumstances must be clearly documented and the envelope, date stamp and other evidence must be kept in the record.

Competitive Negotiation

Many purchasing laws do not adequately consider purchasing by competitive negotiation.

There is a place and need for competitive negotiation in public purchasing; however, negotiation should be allowed only under limited and defined circumstances.

Most purchasing laws provide that all awards for purchases exceeding a stipulated dollar amount be based on formal sealed competitive bids. While the process is and should be the general standard for public purchasing, there are frequent instances in practice where competitive negotiation can and should be used. For example, when time is a crucial factor, when the procurement involves high technology items (e.g., data processing hardware, communications systems, complex telemetry equipment), or when the purchase is for professional services, competitive negotiation is advisable. Almost all States report problems in attempting to apply conventional bidding techniques in the procurement of these types of items because of the difficulty in constructing suitable descriptive specifications which are necessary so that all bidders can compete on a common and equal basis. To be most effective, therefore, provision for negotiation should be made in the procurement process.

Contrary to some belief, negotiation is in no way synonymous with noncompetitive (single-source) procurement. When needed items or services are found to be available from only one source, negotiation can be useful and advantageous. However, the general use of negotiation is not intended to preclude competition; the objective should be to purchase an item or a service in the most effective manner and in the best interest of the government, as is the case in the formal sealed bid process.

Some principles applicable to the competitive negotiation process are the same as those pertaining to the formal sealed bid process. A bidders list consisting of qualified offerors should be prepared, public notice of the product or service needed should be made, and all qualified offerors should be solicited. Some of the detailed procedures, however, will differ from the sealed bid process. A Request for Proposal is used in lieu of an IFB. The RFP should include a description of the item or service to be purchased, the specific criteria which will be used in evaluating proposals, and other pertinent information such as delivery dates or time frames within which the work must be completed. Since these purchases usually involve nonstandard items or complex services, the RFP should also call for additional information such as experience in the line of work being considered (including references), staff capability along with resumes of key individuals who will work on the contract, and a cost breakdown of the proposed price. Price is not normally the determining criterion for award; consequently, factors such as the above are used in developing the proposal evaluation criteria. These criteria must be carefully developed and a weighting scheme formulated around the most important features of each procurement action. The evaluation criteria should be included in the RFP along with the stated relative order of their importance. Frequently, the criteria are divided into three main categories: managerial capability, technical capability and approach in meeting performance requirements, and reasonableness of price.

The proposal evaluation criteria should be looked upon as standards which measure how well an offeror's approach meets desired performance requirements, and which permit an evaluation of the differences between desired performance characteristics and what the offeror proposes to do. Moreover, such standards permit the evaluation of proposals against objective norms rather than against each other. A scoring system, once devised, must be impartially applied to each proposal. Any departure from the established plan which is prompted by factors outside the system is proper only insofar as the same treatment is extended impartially to all offerors. Proposal evaluations should include cost or price analysis. Price analysis represents an evaluation of proposed prices without regard to the separate cost elements and proposed profit amount. Techniques such as comparing proposed prices with each other, with published price lists and with independent estimates can be used. This type of analysis may suffice when there is adequate competition and prior experience in the item or service being purchased. Otherwise, cost analysis is essential. Cost analysis consists of a

review and verification of cost data supporting each element of proposed cost.

Negotiation generally involves discussion and bargaining with a view toward reaching agreement on price and other terms of a proposed contract. These discussions should be conducted individually with each qualified offeror. The basic objective is to achieve the contract agreement most advantageous to the government in terms of factors such as period of performance, type of contract, quality of the items or services being purchased, and price. Proposals submitted by competitive firms are not disclosed to the public or to competitors. However, after a contract is awarded, its terms and conditions should be public record.

Purchasing officials report that they have less experience and fewer professional procedural benchmarks in negotiation than in any other procurement activity. In this regard, the *Grant Manager Procurement Manual*, published by LEAA in February 1973, provides excellent guidance for procurement of supplies, equipment and services. An entire section of this manual is devoted to the subject of negotiated procurements. Purchasing officials see negotiation as a challenging and exciting exercise of the 70s for state and local governments. *Although negotiation should never supplant sealed competitive bidding in public purchasing, it should be available for use when this procedure is not effective.*

Price Fixing

Purchasing officials should have a regular program for evaluating bid history data to detect instances of possible price fixing, conspiracy and collusion.

Deadlocks caused by identical bids should not be broken by a lottery system.

Purchasing officials must take continuous imaginative action to dissuade identical bidding.

Statements of noncollusion in bidding should be required.

A formal program of liaison and coordination with the Attorney General should be established.

Fair-trade statutes should exempt public purchases.

Purchasing officials must be continuously on the alert for conditions or situations which impede competition, and which otherwise represent unfair or deceptive practices. In general, the sophistication and professionalism of the purchasing operation, coupled with the high visibility of the decision-making process, leave the purchasing official master over the more routine impediments to competition. There is a constant exposure, however, to unilateral practices over which the purchasing official has less control and where, without vigilance, he may unwittingly work against the public interest. Specifically referred to here are collusion, conspiracies and agreements among competitors to fix prices.

There are innumerable techniques which have been used by sellers in fixing prices and in dividing the market among themselves. *The Handbook for State*

Procurement Officials on Impediments to Competitive Bidding, published by the Council of State Governments in 1965, covers many of these techniques. An important point to be made is that purchasing officials must have readily available to them historical bidding data and should have a formal program for periodically evaluating these data as a means of identifying suspected price-fixing arrangements. For example, if such analysis shows that there was a sudden change in the pattern of bidding on an item, from competitive pricing to identical bidding, there could be grounds for suspecting collusion. Similar analysis can disclose that competitors are taking turns in submitting low bids, or alternating in not submitting bids.

Identical bids are received on occasion. When they are, a careful evaluation should be made by the purchasing agent to determine whether there is a basis for suspecting collusion or conspiracy. Also, some means must be used to break the deadlock and make an award. Too often the deadlock is broken by using some form of lottery system, i.e., tossing a coin or drawing cards, or splitting the business among the identical bidders. These techniques do not discourage identical bidding and, in fact, tend to encourage and perpetuate it. *Consequently, the laws cannot be so rigid as to preclude a purchasing official from using his ingenuity and whatever techniques may be appropriate not only to break the deadlock but also to discourage the practice of identical bidding.* The following are some techniques which have been used successfully by purchasing officials:

- If delivery cost is included in the bid price, make the award to the bidder farthest from the delivery point.
- Make the award to the bidder who received the previous award, then continue to do so as long as all low bids are identical.
- If identical prices are the result of fair-trade laws, combine both price-controlled and nonprice-controlled items in the same IFB.
- Reject all bids and negotiate for a lower price.

There are other actions that can be taken to discourage identical bidding. Some States, for example, require bidders to execute a Certificate of Non-Collusion in Bidding, either as part of the IFB or as a separate document. A requirement such as this is desirable and should be enforced. It is also advantageous to establish a formal program of liaison and coordination with the U.S. Department of Justice, the State's Attorney General, and/or the district attorney or corporation counsel for the reporting and investigation of suspected collusion.

A number of States have fair-trade statutes that permit manufacturers of trademark or brand products to set and enforce their selling prices. The fair-trade problem today is not as pervasive as it once was. In at least four States, it has never applied to public purchasing and, in recent years, other States have obtained exemptions for public purchases or had these statutes declared

unconstitutional. In those States where fair-trade statutes are still in effect, every effort should be made to exempt public purchases.

Preference

There should be no in-state or local preference allowed in public purchasing. Some States, cities and counties have laws which give overt preference to in-state or local products and bidders. This preference is frequently expressed in terms of a percentage, such as 5 percent preference to local bidders. Although 10 States still have a percentage preference, most have acknowledged that there is little or no merit in such a provision. Eleven States have no preference provisions, and 29 have tempered the provision by providing that local bidders will receive preference only in the case of equal bids, such that there is no loss of quality or price. *Preference provisions are not compatible with the principle of free and open competition and, as a result, penalize the taxpayers.* These provisions also give unnecessary opportunity for favoritism in the award of contracts. Frequently heard is the argument that making awards to local business is good economic policy and results in increased tax revenues. These are parochial arguments, at best, and practical problems associated with retaliation by surrounding localities, thus further restricting competition, are very real. Although the trend has been away from preference at the state level, cities and counties have not yet followed suit.

Unusual Market Conditions

Statutes should not be so rigid as to impede purchasing officials from acting in the best interests of the government.

There should be provision for the use of price escalation clauses in contracts.

The market conditions which prevail at this particular time serve as an excellent example of the need for professionalism in purchasing. The ingenuity, imagination, resourcefulness and judgment of public purchasing officials are challenged by today's economic and market conditions. Similarly, state and local government purchasing laws are being tested by these same conditions.

Most state statutes and local ordinances on purchasing were drafted prior to the 1940s. They reflect an earlier economic era and a conservative and restrictive attitude toward public purchasing. In some cases, these laws are so rigid as to preclude or impede the purchasing officials from legally functioning in the best interests of government.

As an example, purchasing officials have been faced with situations where suppliers will not submit bids on items such as fuel oil because of short supplies and fluctuating prices. If the laws do not permit the use of price escalation clauses in contracts, purchasing officials are faced with a serious problem. There have been instances where bids have been accepted on the basis of market price at the date of delivery because this was the only means by which needed items

could be obtained. This practice is contrary to the principles of public contracting and has been held to be unenforceable. To avoid problems such as these, purchasing laws must provide some flexibility.

Some statutes permit the use of price escalation clauses, and some States are now proposing that their statutes be revised to include such clauses. These statutes commonly require:

- that the contract price be frozen for a specified period;
- that suppliers submit cost data supporting any proposed increases for evaluation by the purchasing official;
- that any adjustments allowed consist only of bona fide cost increases resulting from such situations as unforeseen raw material cost increases which may be passed on to the consumer;
- that no adjustments be made to compensate a supplier for inefficiency in operation; and
- that no additional profit be allowed.

This type of provision gives suppliers some incentive to submit bids and provides an equitable basis for allowing price adjustments under given circumstances.

5 | Inspection

The purchasing program would be incomplete without a formal program for inspection and testing. It does little good to devote time and money to reach the point of contracting and ordering a product and have no means of assuring that what is received is what is specified and paid for. The inspection and testing program should also be part of the central purchasing authority, although the day-to-day, on-site receiving and inspection details may be delegated to using agencies.

The central purchasing authority should establish and administer a formal inspection program.

The inspections can be made by purchasing officials, warehousemen or users, as appropriate.

At a minimum, discrepancy reports should be routed to the central purchasing authority.

Central purchasing should be responsible for contacting suppliers regarding discrepancies and for maintaining vendor performance history files.

Central purchasing should establish and administer a formal testing program.

As appropriate, use should be made of existing test facilities (such as those at colleges, universities and private laboratories) and of supplier certifications/test results.

Purchased goods should be inspected upon receipt or shortly thereafter. The central purchasing authority should establish the formal inspection program, including the details of inspection methods, and definitions of authorities and responsibilities which can be set forth in an inspection and testing manual.

Inspection Procedures

Provision should be made for detecting and reporting such obvious discrepancies as shortages, damaged goods and late deliveries. Beyond this, the type and extent of testing will vary, depending on the nature of the item. The inspection function typically makes use of the five senses. For example, factors

such as color, size and shape can be visually determined. The sound of a motor and the smell of hot oil in a motor can be used as inspection techniques. Although quite basic, techniques such as these should be built into the inspection function.

Inspectors

Inspections can be made by users, warehousemen, purchasing officials, or any combination of these. Seventeen States and some local governments have special inspection teams, as part of the central purchasing authority, who seek to inspect the goods received. In 18 States, the inspection function has been delegated to users, with central purchasing making only spot checks or special inspections in unusual circumstances. *The important point is that the inspection function should be ongoing and centrally administered.*

The program must provide feedback to central purchasing. This can be done on a routine basis, with all inspection reports being routed to purchasing, or on an exception basis with only the discrepancies being reported to purchasing. When discrepancies, damages or shortages are reported, central purchasing should have the responsibility for contacting the vendor, taking appropriate action and maintaining a historical record of vendor performance.

Testing

Testing not only supports the inspection function, it also usually involves some type of expanded product testing. Frequently this is the only way certain quality aspects of products can be determined. Twelve States have established separate testing facilities which can handle a majority of product tests. Other States have practices which go so far on some products as to visit manufacturers' plants during the production process.

Not all governmental units have the resources necessary to establish their own testing facilities, nor is this necessary. Alternate procedures in 32 States include the use of other existing facilities, such as colleges, universities and private testing laboratories, although the latter sometimes can be quite costly. In some cases, suppliers are required to furnish certificates of compliance or certified test results with each shipment, both of which are good protective measures. Any or all of these techniques can be used, recognizing that not all products need to be tested and that certain sampling methods are appropriate.

Just as in the area of specification, it would be highly beneficial if more collecting and disseminating of test data to public purchasing officials were possible. Extensive testing is being performed in many federal, state, college, university, and private laboratories. While very useful to a few, this body of data is not reaching the many purchasing programs which perform little or no testing on a regular basis. Testing is an integral part of the purchasing-specification-standardization process. Considerable improvements and potential savings would be possible if a testing program similar to that described in Chapter 3, Specification, were established.

6 | Summary

The study findings indicate that state and local government purchasing programs take many different shapes and sizes, ranging from very decentralized, one-person activities, to highly centralized programs having many people. The study findings also indicate, however, that there are certain fundamentals which are, or should be, applied universally to these diverse operations.

One of these fundamentals is that each governmental unit legally authorized to conduct a purchasing program should assign full purchasing authority to one central activity. This authority should be accompanied by the right to delegate certain activities and responsibilities as deemed desirable. Central authority is conducive to increased awareness of and adherence to the best principles of public contracting.

Further, to be effective, this authority requires proper recognition of and support from officials responsible for total governmental operations, such as Governors, mayors, councilmen and commissioners.

Another fundamental requirement of effectiveness is the quality of purchasing personnel in terms of proficiency and attitude. It is found that a dedicated, professional individual or staff can produce results far beyond that which might otherwise be expected.

By and large, public purchasing operates in full view of the public. The study group was impressed by the fact that the openness of the process promotes confidence in it on the part of suppliers and the general public. As the trend to bring contracts for services into the purchasing office grows, it can be expected that this same confidence will be imparted to that area of contracting.

Responsible purchasing is fundamental to responsible government and, in contrast to industrial or private buying, the price of goods purchased is not the overriding indicator of performance. More important in public purchasing is how the price is obtained. Here, fairness and openness are paramount. There is no room for partiality, secretiveness or deception. Good government and good purchasing are found together.

This study discloses that given the attributes of openness, centralization and professionalism, there can be variety in the detail of organization, policy and

procedure without great effect on the delivery of competent procurement services.

Finally, the study findings indicate that the fundamentals of a strong purchasing program can be identified in terms of a number of key elements. Each of these requires basic statutory or regulatory coverage, together with written policies and procedures for implementation. These key elements will provide the framework around which the Final Report will be developed and recommendations presented.

END