



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Procurement & Contract Terms & Conditions for Utilities: Jean Block (Chief Legal Officer – Little Rock Wastewater) Arkansas Water Works and Water Environment Association Presentation

05/04/2017

Ms. Jean Block undertook a presentation at the annual Arkansas Water Works and Water Environment Association annual meeting titled:

Procurement & Contract Terms & Conditions for Utilities (“Presentation”)

Ms. Block serves as Chief Legal Officer of Little Rock Wastewater.

The *Presentation* provided information regarding:

- Procurement + Contracts (i.e, how utilities get things done)
- Two categories of utility procurements
- General Procurements
- Engineering Services

Examples of the two categories of utility procurements were identified such as:

1. General Procurements

- Lawn services
- Pipes
- Vehicles
- Professional Services

2. Engineering Services

- Feasibility Study Phase
- Preliminary Engineering Phase
- Design Phase
- Bid Phase
- Construction Phase

A detailed discussion of procurement issues associated with Bid documents was undertaken including:

- Request for Qualifications
- Request for Proposals
- Invitations to Bid

A number of key terms and conditions found in Bid documents were discussed such as:

- Cone of Silence
- Indemnification
- Freedom of Information Act/Proprietary Information
- Conflict of Interest Disclosure
- Publicity
- Right to award or not award a contract
- Award to multiple vendors

Ms. Block provided helpful thoughts and/or possible language with each identified term and condition. By way of example, in discussing the Freedom of Information Act she reminded the attendees that response documents are subject to the Arkansas Freedom of Information Act. Also noted was the vendor's responsibility for identifying proprietary information along with the redacted copy of bid documents. Further, she notes:

Utility decides if redacted information is subject to FOIA. If utility's lawyer does not believe redacted information meets standard to withhold from FOIA request, inform the Vendor before releasing the documents.

Ms. Block also noted a Little Rock Wastewater requirement that vendors not issue news releases or articles pertaining to the solicitation or any portion of the project without the utility's approval.

As to the contract (once procurement is completed) suggestions included:

- Utility's contract (utility in control)
- Vendor's contract – pay attention (but utility still in control)
- Contract amendments – pay attention
- Purchase order (utility in control)

Suggestions identified for review in vendor contracts included:

- Indemnification/hold harmless provisions
- Commercial liability or general liability insurance coverage provisions
- Venue and governing law provisions
- Automatic renewal provisions

Examples involving OSHA compliance, Arkansas Code § 21-9-311 Tort liability/immunity, and insurance coverage were provided.

Examples of Little Rock Wastewater's threshold requirement for spending and appropriate purchasing mechanisms (based on the amount) were reviewed.

Potential use of joining cooperative contract and provisions to include a utility contract were addressed.

Suggestions for utility contract provisions included:

- Parties to the contract
- Reference bid documents
- Length of contract
- Price
- Governing law/disputes
- Signatures/date

[A copy of Ms. Block's *Presentation* can be downloaded here.](#)