PROCUREMENT SYSTEM REVIEWS
FROM THE EYES OF A REVIEWER

Procurement Materials and Maintenance Workshop

At APTA’s Annual Meeting
San Antonio, TX – October 5, 2010

Presented by: Denise Bailey
Grantees’ System-Wide Elements Are Assessed
AND
Individual Procurement Elements Are Tested
By
testing a sample of procurements for 56 elements
(as applicable) plus Buy America Certifications
Review Process

- Desk review
- Notification letter
- Site visit
  - Opening Conference
  - Exit Conference
- Draft Report
- Draft Final Report
- Final Report
- Resolution of findings
- Follow-up reviews
Preparing for the Review

- Review past Triennial or State Management Review
- Review other FTA specialized reviews (PMO, FMO, DBE, etc.)
- Review grants in TEAM
- Retrieve information on website
- Desk review with FTA regional office
- Other agency information (GAO, NTD, etc)
Common Areas of Deficiencies

- Written Policies and Procedures
- Independent Cost Estimate (ICE)
- Written Record of Procurement History
- Cost or Price Analysis
- Cost Analysis (Sole Source)
- Sole Source if Other Award is Infeasible
- Written Protest Procedures
- Award to Responsible Contractors
- Evaluation (RFP)
- Exercise of Options
Grantees must have written procurement procedures as a condition of self-certification.

FTA C 4220.1 F Ch. III, 3.a.
How P&Ps Are Evaluated

- Compare P&P against checklist - available from FTA’s website at:
  - [http://www.fta.dot.gov/funding/oversight/grants_financing_1145.html#3_2_a](http://www.fta.dot.gov/funding/oversight/grants_financing_1145.html#3_2_a)

- Review additional documents if all pieces are not contained in one comprehensive document

- Look for evidence that policies and procedures are followed
Should Address:

- Responsibility Determination
- Written Record of Procurement History
- “Time and Materials Type Contracts”
- Contract Term Limitation for Rolling Stock
- Tag-Ons
- Full and Open Competition
- Unreasonable Requirements and Excessive Bonding
- Organizational Conflict of Interest
- Prohibition on Arbitrary Action
- Prohibition on Geographic Preference

- Contractor Selection Procedures
- Clear and Accurate Contract Specifications
- “Brand Name or Equal” Requirements
- Requirements Applicable to Micro-Purchases
- Requirements Applicable to Small Purchases
- Requirements Applicable to Sealed Bid
- Requirements Applicable to Competitive Proposals
Procurement Policies and Procedures

Should Address:

- A&E, Brooks Act Procedures
- Procurement of Design-Bid-Build
- Procurement of Design-Build
- Sole Source Documentation Requirements
- Requirements for the use of Options
- Cost and Price Analysis
- Independent Cost Estimates
- Cost and Profit Analysis for Sole Source
- Cost Principles consistent with Federal Guidelines

- Prohibition on Cost-plus-Percentage of Cost
- Bonding Requirements
- Prohibition on Advance Payments
- Progress Payments
- Liquidated Damages
- Notification of FTA Participation
- Remedies for Breach of Contract
- Termination Clauses
- Address Federal Statutory and Regulatory Requirements
- Revenue Contracts

System-wide Checklist
Independent Cost Estimate

…in connection with every procurement action ….grantees must make independent estimates before receiving bids or proposals

FTA C 4220.1 F Ch. VI, 6.

- Independent doesn’t mean independent of your agency, it means independent of (and prior to) bids and proposals being received
- Documenting (date, source) the ICE is key
How ICEs Are Evaluated

Independent Cost Estimates (ICE)

- Review procurement files for documentation of completed ICE in advance of bid receipt
- Review other procurement actions (change orders, options)
Grantees are required to maintain and make available records detailing the history of each procurement to include:

- Rationale for the method of procurement
- Reason for the selection of the contract type (fixed price, cost reimbursement, etc.)
- Reason for contractor selection or rejection
- Basis for the contract price

FTA C 4220.1F Ch. III, 3.d(1)
How Written Records Are Evaluated

- Look for overall agency policies in P&P
- See how this is carried out for each procurement reviewed.
Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications.

FTA C 4220.1F Ch.VI, 6
How Cost or Price Analysis is Evaluated

- Review procurement files for documentation of cost or price analysis prior to award
- Review other procurement actions (change orders, options)
- Determine if ICE was used in process

FTA Pricing Guide
When supplies or services are available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole source award.

When the recipient requires an existing contractor to make an out of scope change, the recipient has made a sole source award that must be justified.

FTA C 4220.1F Ch.VI, 3.i
Sole Source - Justification

Property or services are available from one source if one of the following conditions is present:

- Unique or innovative concept
- Patents or restricted data rights
- Substantial duplication costs
- Unacceptable delay
- Only one bid is received
Sole Source - Cost Analysis Required

The recipient is expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order.

FTA C 4220.1 F Ch. VI, 6.a
How Sole Sources Are Evaluated

- Review:
  - P&P
  - Justification for selected sole source awards
  - Cost analysis for selected sole source awards
Grantees are to have written protest procedures, as part of their requirement to maintain or acquire adequate technical capacity.

- Grantees must notify FTA when they receive a protest and keep FTA informed about its status.
- When a grantee denies a bid protest, they are to inform FTA.

FTA C 4220.1 F Ch. VII, 1.
Written Protest Procedures

- A protester must exhaust all administrative remedies with the grantee before pursuing a protest with FTA.
- Limits on FTA’s protest review:
  - a grantee fails to have or follow its protest procedures
  - there has been a violation of Federal law or regulation
- Appeals to FTA must be received within 5 working days of the date when the protester received actual or constructive notice of the grantee’s final decision
How Protest Procedures are Evaluated

- Review P&P
- Review policies and how they are communicated
- Interview FTA on any protests they’ve received
- Review any protests filed
Award to Responsible Contractor

Grantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.

FTA C 4220.1F Ch.VI, 8.(b)
Award to Responsible Contractor

4220.1F lists areas for responsibility determinations:

- Integrity and Ethics
- Debarment and Suspension **
- Affirmative Action and DBE
- Technical Capacity
- Licensing and Taxes
- Financial Resources
- Production Capability
- Performance Record

This is a summary list, please refer to 4220.1F.
How Responsibility is Evaluated

- Review policies and procedures
- Review individual procurement files
  **Review documentation that Debarment and Suspension List was checked**

https://www.epls.gov/epls/search.do
Exercise of Options

An option may not be exercised unless a grantee has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.

FTA C 4220.1F Ch.V, 7.a(1)
How Options are Evaluated

Review the following items

- Were the option periods and quantities contained in the original bid or proposal?
- Were the option periods and quantities evaluated as part of the original contract award?
- When exercised, was a market analysis conducted to ensure that the option pricing is still in the best interest of the agency?
All evaluation factors will be identified along with their relative importance.

Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees.

FTA C 4220.1F Ch.VI, 3.d(2)(b) and (d)

Note: The solicitation does not have to include the weighting factors; however, the evaluation criteria should be listed in order of importance.
After a PSR

- Use the review as a tool for improvement in all procurements
- Maintain proficiency with FTA resources/requirements
- Work with your Regional Office and the reviewer to address deficiencies and get additional information
- Focus first on resolving repeat findings
- ARRA has heightened transparency and accountability for all procurements
- Don’t just “paper over” a finding, make sure you can demonstrate implemented corrective actions
Thank You

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