



# Lessons Learned from Negotiated Procurements

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*The views expressed in this presentation are solely those of the presenter and are not attributable to APTA.*

# Negotiated Procurements in the Past Five Years

- CBTC Installation
- Fleet of the Future – Railcar Procurement
- Next Generation Fare Gates – Fare Collection Equipment Procurement
- Police Department Headquarters Construction

# Next Generation Fare Gates



# Police Headquarters Project



# Communications Based Train Control



# Fleet of the Future



# Less Is More. Don't treat every administrative or technical item as a responsiveness item.

- Mandatory Requirements are barriers to competition and a responsiveness determination you'll have to defend
- Distinguish between minimum qualifications (pass/fail) and preferences (score as evaluation criteria)
- “[P]lacing unreasonable requirements on firms for them to qualify to do business” and “requiring unnecessary experience” as impermissibly restrictive (FTA Circular 4220.1G, Chapter VI, Section 1.e); 2 CFR Part 200.319.
- Security clearances, NDAs, and access restrictions should be sequenced to the shortlist/discussion phase.
- Is agency decision to reject a proposal defensible?

# Layering Your Agency Requirements on Top of Federal Requirements

- Agencies can go beyond federal requirements (confirmed by FTA); 2 CFR Part 200.319.
- “More stringent” is not the same as “inconsistent.”
- Adding such a layer can carry risk and ambiguity
- Be cautious of the cumulative effect on competition.

# Adding Scope During Evaluation

- All evaluation factors and their relative importance must be specified in the solicitation
  - Scope changes after proposals are received risk undermining the competition those proposals were based on( FTA Circular 4220.1G, Chapter VI, Section 3.d(2)(a))
- Operational pressures can interfere
- Assume FTA will scrutinize any scope addition after proposals are received
- Assess potential competition
- Structure mid-evaluation additions as priced options, not base scope
- Build a solid procurement file in real time

# System Integration Lessons Learned

- Vague integration language in base contracts can be very costly
- The agency as system integrator means the agency holds the risk
- Dual contractual relationships create legal complexity
- Rigorously document sole source justification
- Consider a three-party integration agreement
- Consider appointing a third-party system integrator
- Deploy multiple forms of oversight and intervention
- For future procurements: build in system integration at the front end

# Public Works in System Procurements

- System installations may constitute construction
- Identify all potential construction activities and legal determinations well ahead of time
- Consider bundling or unbundling such work
- Check statutory authority for delivery methods to conduct installation/construction activities
- Ensure that prime supplier and subsuppliers are duly licensed for their scopes of work - prime supplier may need to be licensed
- Evaluate installer qualifications regardless of contract structure

# Alternative Delivery / Progressive Design Build

- Define well ahead of time in the RFP the pricing and negotiations process for any early work packages
- Do not box yourself into any budget prior to agreement on the Guaranteed Maximum Price
- Be unambiguous about inclusions and exclusions in the Guaranteed Maximum Price

# Questions?

