

**BID/PROPOSAL SELECTION & CONTRACT AWARD DOCUMENTATION**

**PURPOSE:** Explain (1) What selection documentation is necessary to meet Federal Transit Administration (FTA) requirements for a formal solicitation third party contract award using FTA grant funds; (2) the process for submitting this documentation to DRMT for review and determination; and (3) how to properly document a procurement file in the event of State or federal review.

**1. SELECTION AND CONTRACT AWARD REVIEW**

The Caltrans Division of Rail and Mass Transportation (DRMT) Procurement Management Branch maintains oversight over subrecipient purchasing to ensure that purchases made with federal funds administered by DRMT meet federal and State procurement guidelines.

Purchases and contract awards made without DRMT-prior approval may not be eligible for federal reimbursement. Federal procurement requirements are provided under:

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principals, and Audit Requirements for Federal awards; and
- FTA Circular 4220.1F – Third Party Contracting Guidance.

As required by the FTA, subrecipient purchases exceeding the Small Purchase threshold (\$150,000.00, as of this writing) must be awarded through a formal solicitation process (i.e., Request for Proposal (RFP) or Invitation for Bid (IFB)). Additional information on formal solicitations is available on the DRMT Procurement web page, and the FTA website.

Before a subrecipient makes a final award to a third party, the DRMT must review the subrecipient's evaluation committee selection process for compliance with federal procurement guidelines regarding full, fair, and open competition.

*Subrecipients are strongly encouraged to review both the FTA Procurement Circular (C4220.1F, as of this writing) and the FTA Best Practices Procurement Manual (BPPM), which provide guidelines and guidance on bid evaluation, selection and contract award. Links to the Circular and BPPM are provided at the end of this guidance.*

After the evaluation committee proposes a recommendation to award a contract to a third party, but prior to the final award, the supporting documentation, in the following section, should be submitted to the DRMT. Please remember: purchases and contract awards made without prior approval from DRMT may not be eligible for federal reimbursement.

**2. PROCEDURES**

*If a subrecipient has received approval for the formal solicitation (i.e., IFB or RFP) from the DRMT Procurement Branch, the following information should be submitted directly to the Procurement Analyst that reviewed the formal solicitation. Otherwise, subrecipients should contact their FTA Section 5310/5311/5339 Program Liaison.*

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At a minimum, the following selection and contract award supporting documentation must be provided to the DRMT for review:

- A. Method of advertisement;
- B. Offer tabulation;
- C. Offer scoring results and ranking;
- D. Proposal negotiations (RFP), if applicable;
- E. Best and Final Offer (BAFO), if applicable;
- F. Offer summary and analysis;
- G. Naming the selected offeror;
- H. Draft third party contract, unless approved with the RFP; and
- I. The original solicitation documents from the IFB or RFP and all addenda, if not previously approved by the DRMT.

**Supporting Documentation:**

- A. **Method of advertisement:** Formal solicitations require an advertisement. A receipt or clipping of the advertisement must be provided as verification that the solicitation was publicly noticed.
- B. **Offer tabulation:** All solicitations should be date stamped. Bids or proposals received after the specified closing date and time should not be considered unless there it is the single offer. Documentation should list *all* the offerors that submitted a bid or proposal to the subrecipient for consideration. Although the submission from all offerors should be included in the list, subrecipients may determine that, due to clearly identifiable deficiencies in the offer, the submission does not need to be evaluated. For example, the subrecipient may find that an offer does not meet the requirements stated in the solicitation or that an offeror may not be able to demonstrate that the offer is responsive.
- C. **Offer scoring results and ranking:** For an IFB, the responsive and responsible bidder whose price is overall the lowest shall be ranked highest.

For an RFP, all proposals found to be responsive must be scored against the RFP scoring criteria. All scores should be formally documented and a narrative should be included to explain: (1) how the scores were determined, and (2) the significant strengths, weaknesses, and deficiencies in the proposal. A common scoring trap that subrecipients must avoid is scoring proposals against one another. Using a scoring table or matrix can help to keep the scoring on point with the scoring criterion in the RFP.

In either solicitation method, the evaluation committee must also determine whether a proposal is in the competitive range established by the Independent Cost Estimate (ICE).

All evaluation documentation must be retained in accordance with federal records retention guidelines. Typically, records are retained for the life of the contract *plus 3 years after the date of final payment*.

- D. **Proposal negotiations:** RFP solicitations often are awarded based on factors other than lowest price—a/k/a best value—allowing the evaluation committee to hold discussions

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with offerors for explanation or clarification of the proposal. Commonly done through an interview with all the offerors in the competitive range, the evaluation committee may ask for proposal clarifications and modifications, so long as the clarifications and modifications are consistent with the intent of the solicitation and are afforded to all offerors. Said another way, the subrecipient cannot use clarifications or proposal modifications as a way to provide a competitive advantage to any proposer. All offerors in the competitive range must be given the same opportunity to clarify or modify their proposal.

The objective of negotiations is to maximize the ability to obtain the best value. The discussions should be based on the requirements and evaluation factors of the RFP and may include cost, price, technical approach, past performance, and other terms and conditions. If essential terms of the third party contract are allowed to be modified by one offeror, the same changes must be allowed for all offerors. This practice allows the formal procurement to remain full, fair, and open.

*Subrecipients are strongly encouraged to review the FTA negotiation and BAFO guidance in the FTA BPPM before entering into negotiations or seeking BAFOs. Errors made during the negotiation or BAFO process that violate federal guidelines may require re-solicitation or result in the loss of federal funding support.*

- E. **Best and Final Offer (BAFO) (if applicable)**: If the evaluation committee decides to hold proposal negotiations (as described in D. above), a formal BAFO process should be initiated for all the offerors in the competitive range. The BAFO gives the proposer the opportunity to submit a final offer with changes to the technical proposal or price that reflects the proposal negotiations. The BAFO shall be evaluated in the same manner as the initial offer using the same evaluation criteria in the RFP.

As is indicated by the name, the BAFO is the *final offer*. No further discussions or negotiations are permissible after the submittal of the BAFO. If there is a need to reopen discussions, the discussions must be held with *all* offerors. Supporting documentation should include a summary of the negotiation process and the results and the outcome of the BAFOs.

*As stated above, subrecipients are strongly encouraged to review the FTA negotiation and BAFO guidance in the FTA BPPM before entering into negotiations or seeking BAFOs. Errors made during the negotiation or BAFO process that violate federal guidelines may require re-solicitation or result in the loss of federal funding support.*

- F. **Offer summary and analysis**: The selection summary and analysis is where a subrecipient considers each offeror's strong and weak points based on the scores received and then documents how the selection for the third party contract award is made. This may be done with a narrative discussing the agency's method of selection. The narrative should be thorough and clearly documents the steps that occurred in selecting a proposal. The summary should also include a price (or cost) analysis by comparing the price in the selected proposal with the competitive range established by the Independent Cost Estimate (ICE). The analysis should explain why and how the price is considered fair and reasonable.

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If the offered price deviates from the competitive range, subrecipients must explain the reasons for the deviation (e.g., poor estimate, incomplete information).

- G. Naming the selected offeror: This documentation may be brief and include the name of the selected bidder and the primary reasons for the selection.
- H. Draft third party contract: The draft third party contract must be approved by the DRMT. DRMT will review the draft third party contract for compliance with federal guidelines. Third party contracts must state the terms and conditions with the selected contractor. The draft contract should also contain a clearly defined contract duration with any options *and the FTA required contract clauses*.

If the subrecipient elects to use an offeror's standardized contact, DRMT recommends that the subrecipient's legal counsel review the contract language to verify that the terms meet subrecipient's expectations, are reasonable, and comply with local regulations.

- I. Original solicitation (i.e., IFB or RFP) documents and all addenda, if not previously approved by DRMT. If not previously approved, please contact your Program Liaison before submitting any documents to the Procurement Branch.

Upon completion of the formal solicitation evaluation and selection, and prior to third party contract award, the subrecipient must submit the applicable documentation, described above, to the DRMT Procurement Branch for review and approval. Allow 20 business days for DRMT to complete its review and send a response to the subrecipient. For questions regarding DRMT review and approval process, please contact the procurement branch or the grant program liaison.

### **3. PROCUREMENT FILE DOCUMENTATION**

The subrecipient's procurement file should be well documented to support the award action taken. As a best practice, the following procurement documentation should be maintained in the contract file in accordance with federal records retention guidelines. Typically, records are retained for the life of the contract *plus 3 years after the date of final payment*:

- Purchase request, acquisition planning information, and other pre-solicitation documents;
- Evidence of availability of funds;
- Rationale for the method of procurement (IFB or RFP);
- List of sources solicited;
- Independent cost estimate (ICE);
- Copies of published notices of proposed contract action;
- Copy of the solicitation, all addenda, and all amendments;
- Liquidated damages determination;
- An abstract of each offer or quote;
- Source selection documentation;
- Determination of contractor responsiveness and responsibility;

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- Cost or pricing data;
- Determination that price is fair and reasonable including an analysis of the price or cost for award;
- Notice of award;
- Notice to unsuccessful bidders or offerors and record of any debriefing;
- Record of any protest;
- Bid, Performance, Payment, or other bond documents, and notices to sureties;
- Required insurance documents, if any; and
- Notice to proceed.

If an IFB was used and there was adequate competition, the only other documentation required is the bid tabulation sheet which will serve as the test of price reasonableness; no other documentation is needed. If an RFP was used and there was adequate competition, the documentation should include the scoring matrix and a narrative summary of the reason for the selection.

In either an IFB or RFP where there was inadequate competition, additional steps may need to be taken to comply with federal guidelines.

**4. RESOURCES:**

Additional procurement guidance may be found on the FTA's website; the FTA's Best Practices Procurement Manual; the FTA's Procurement FAQ; and the FTA Procurement Circular.

- <https://www.transit.dot.gov>
- <https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>
- <https://www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-procurement-faqs>
- <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

Federally compliant procurement training workshops are offered by the National Transit Institute (NTI) through their Procurement Series courses.

- <http://www.notionline.com/courses/>