



# Texas General Land Office

## Community Development and Revitalization

*“The GLO stands ready to help our state maximize the use of this disaster recovery funding to build back stronger and more resilient communities.”*

*~ George P. Bush, Commissioner*

# Non-Competitive/ Sole Source Procurements



## Agenda

- Sole Source Procurement
- Non-Competitive Procurement
- Non-Competitive Checklist
- Cost Analysis & Reasonableness
- Considerations and HUD OIG Reports
- Questions & Answers

# Non-Competitive Procurements



- Noncompetitive procurements always raise **red flags** for auditors
- GLO does *not* encourage the use of noncompetitive procurements, and they may only be used under certain circumstances with appropriate documentation and justification



# Sole Source Procurement



- Any contract entered into without a competitive process, based on a justification that only one known source exists *or* that only one single supplier can fulfill the requirements
- Reasons to use sole source should fall within the following:
  - Only **one known source** can provide the commodity or service
  - **Unique source** (commodity/service is unique/special in nature)
  - **Compatibility** (e.g., a public safety agency requires specific equipment to work with an existing system)
  - **Limited or proprietary systems** (i.e. additional licenses, updates, specialized replacement parts)
  - A **professional expert** is requested
  - **Sales territories or product availability** within limited geographic boundaries

# Sole Source Examples



Flux Capacitor



Motorola Radio Tower



Nuclear Submarine



# Non-Competitive Procurement



1. **Single (sole) source:** may be used if the good or service is available from single source
2. **Public Emergency or Exigency:** may be used if a subrecipient determines an emergency will not permit a delay resulting from a competitive solicitation (*only permissible during the actual exigent or emergency circumstances*)
  - **Exigency** - there is a need to avoid, prevent, or alleviate serious harm or injury, financial or otherwise, and a competitive procurement would prevent the urgent action required to address the situation
  - **Public Emergency** - there is a threat to life, public health or safety, improved property, or another dangerous situation that requires immediate action to alleviate the threat

# Non-Competitive Procurement



3. **Federal Agency or Pass-through Approval:** a grantee expressly authorizes a non-competitive procurement in response to a written request from a subrecipient
  - Document why this method is preferred over other procurement methods, the information you used to reach this conclusion, and how you will ensure that costs are reasonable and justifiable
4. **Inadequate Competition:** the pass-through entity determines that competition is inadequate after the subrecipient requested proposals or bids from multiple sources; generally occurs when subrecipients issue an RFP at least twice and receive:
  - A single response from the same provider in every occasion that proposals were submitted
  - No responses

# Non-Competitive Approval



- GLO must approve non-competitive procurements
- Subrecipients must support their use of the non-competitive methodology via a written request to the GLO
- The approval process determines whether proper due diligence has occurred, and if documentation exists to support the circumstances for a non-competitive approval
  - Functions as a control to prevent a risk or error from materializing
  - Minimizes the likelihood of re-procurement and/or recapture of program funds
- Approval from GLO is contingent on the documentation provided by a subrecipient

# Non-Competitive Checklist



- Helps subrecipients ensure they have adequate support documentation when requesting non-competitive approval
  - Does *not* replace or substitute the procurement documents necessary to establish the circumstances for non-competitive procurement
  - Do *not* submit the form or request for approval if key items have not been documented
- GLO uses the checklist to validate that subrecipients have adequate documentation to support a non-competitive procurement
- GLO approval is contingent on the documentation provided by a subrecipient
- [GLO Non-Competitive Checklist](#)

# Non-Competitive Procurement Issues



- Non-competitive procurements have increased in Texas, and they do not always include sufficient documentation or justification
- GLO often issues monitoring findings because subrecipients lack sufficient documentation to support noncompetitive solicitations when one bid is received
- The following slides give specific guidance on how subrecipients should handle possible non-competitive situations



# Publication & Competition



- Is the public advertisement reaching the widest audience?
- Have other means to solicit bids been performed?
- Was solicitation period sufficient for solicitation document to circulate and for respondents to assemble their submission response?
- Was a bidder list compiled and used?
- Have the necessary steps been taken to assure that minority businesses, women's business enterprises (M/WBEs), and labor surplus area firms were identified and included as part of the bidder list?
- Was outreach conducted to identify why a response was not provided?
- Has sufficient action been taken to obtain and maximize full and open competition?

# Non-Competitive Scenario



## Pleasantville

Releases and posts an RFP for Grant Administration (GA) Services to assist with administering Housing, Multifamily and Infrastructure projects for 10 days at City Hall, holds a mandatory pre-bid conference 3 days before bids are due, and only receives one bid in response.

Should they move forward with a non-competitive procurement with the single source respondent?

## Sleepytown

Issues and advertises an RFP for GA Services to assist with administering Housing, Multifamily and Infrastructure projects for 28 days on their website, at City Hall, and via email blasts to M/WBEs and other interested vendors. They also hold an optional pre-bid conference and site visit 2 weeks prior to the proposal due date, yet only receive one proposal in response to the RFP.

Should they move forward with a non-competitive procurement with the single source respondent?

# Independent Cost Estimate (ICE)



- An ICE is created before bids are received and is used to evaluate the reasonableness of a proposal's costs or prices
- Develop ICE using past prices paid for the same or substantially similar item(s), and consider obtaining data from the marketplace and/or other communities
- An ICE is especially significant after receiving a single source proposal and is key for establishing that the proposed amount is reasonable and corresponds with the subrecipient's expectation of financial feasibility
- The single bid proposal *cannot* be the source for establishing ICE

# ICE Scenario



## Pleasantville

Used GA Services for Hurricane Ike at a cost of \$3.5M to complete a road and drainage infrastructure project.

## Sleepytown

Used GA services for Hurricane Ike for (\$3.75M):

- Housing: \$1.5M
- Multifamily: \$750K
- Infrastructure: \$1.25M
- Pricing reflects 12% profit

Estimate the Harvey grant will require \$5M for GA services to manage multiple activities.

# Sample ICE



## Sample ICE

UNIT: Cost to process Request for Payments for contractor payments, and required reporting	Frequency	# of Hours SME	Total SME Hours	# Hours SPM	Total SPM Hours	# of Hours AA	Total AA Hours	Overall Total Hours	SME RATE	SPM Rate	AA Rate	Total costs	
<b>Direct Labor</b>													
Draft and submit request for payment per CDBG regulations (per invoice)	24	1	24	0.5	12			36	\$60	\$ 120	\$ 25	\$ 2,880.00	
Review payrolls for compliance with Davis Bacon, Section 3, Section 504	24	5	120	0.5	12			132	\$60	\$ 120	\$ 25	\$ 8,640.00	
Implementation and coordination of AFFH	3	1	3	0.5	1.5			4.5	\$60	\$ 120	\$ 25	\$ 360.00	
Create and submit required reports to GLO	54	0.5	27	0.25	13.5			40.5	\$60	\$ 120	\$ 25	\$ 3,240.00	
Respond to GLO in regards to project questions	48	0.5	24	0.25	12			36	\$60	\$ 120	\$ 25	\$ 2,880.00	
Assist in preparation of contract revisions (Amendments, Changes order, etc.)	2	4	8	2	4			12	\$60	\$ 120	\$ 25	\$ 960.00	
Review project files to ensure compliance with CDBG regulations	3	16	48	8	24			72	\$60	\$ 120	\$ 25	\$ 5,760.00	
Attend and prepare for monitoring visits	6	4	24	2	12			36	\$60	\$ 120	\$ 25	\$ 2,880.00	
<b>General Administrative Costs</b>													
Assist in tasks related to direct labor functions	24					3	72	72	\$60	\$ 120	\$ 25	\$ 1,800.00	
<b>Overhead Costs</b>													
Travel Related to the above ( Hotels \$250, Rental Car \$35, Per Diem) Total \$325.00	24											\$ 7,800.00	
<b>Total Costs</b>												<b>\$37,200.00</b>	
<b>Profit (8.5%)</b>												<b>\$ 3,162.00</b>	
<b>Total</b>			32	278	14	91	3	72	369	480	960	200	\$40,362.00

## Sample vendor costs via the RFP

Cost Type	Price
Total Direct & Indirect Costs	\$37,200.00
Profit (12%)	\$ 4,464.00
<b>Total Cost</b>	<b>\$41,664.00</b>

# Cost/Price Analysis



- There is no price competition when a competitive procurement results in a sole source proposal
- Without price competition to determine reasonableness, you must obtain a breakdown of the proposal amount that identifies the elements of the proposed amount to complete a cost analysis
- Consider the appropriate cost principles to establish that the proposed costs are allowable, reasonable and allocable
- You may need to re-procure if you cannot obtain an itemization of the proposed amount from the bidder

# Cost Price Analysis Scenario



## Pleasantville

A vendor submitted a single source proposal for \$5.5M that is all inclusive

Can Pleasantville proceed?

## Sleepytown

A vendor submitted a single source proposal for \$5.5M itemized as follows:

- Housing Activity: \$2.5M
- Multifamily Activity: \$1.0M
- Infra Activity: \$1.5M

Can Sleepytown proceed?

# Contract Negotiation



- Negotiate the contract award utilizing the ICE and cost analysis
- When negotiating a contract price with the single bidder, utilize the complete cost breakdown to negotiate a fair and reasonable offer for itemized costs (including profit)
- Perform a cost analysis of the proposed price for each item
- Document, document, document the rationale for your award decision



# Contract Negotiation Scenario



Sleepytown Programs	Ike Negotiated Amount	Harvey GA Proposal	Harvey Negotiated Amount
Housing	\$ 1,500,000	\$ 2,500,000	\$ 2,142,857
Multifamily	\$ 750,000	\$ 1,000,000	\$ 1,000,000
Infrastructure	\$ 1,250,000	\$ 1,500,000	\$ 1,500,000
<b>Total</b>	<b>\$3,500,000</b>	<b>\$ 5,000,000</b>	<b>\$ 4,642,857</b>

# Contract Negotiation – Profit



Considerations include:

- The contractor's level of investment required to complete the contract (greater investment can justify higher profit)
- The amount of subcontracting (if any)
- Quality of contractor's past performance
  - Profit should reward contractors with a record of high-quality performance
  - A consistent record of delivering quality goods or services on time and within cost indicates that the contractor will likely "deliver the goods" within established timeframes
- Industry profit rates in the surrounding geographical areas for equivalent work



*Sufficiently document negotiations (e.g., meeting minutes, initial offer vs. BAFO, negotiation of cost between categories)*



# Profit Negotiation Scenario

- The ICE identified a 12% profit margin for previous work
- The profit broken down by category is:
  - Housing: 15%
  - Multifamily: 18%
  - Infrastructure: 13%
- Final negotiated profit was:
  - Housing Activity: 15% (no change due to complexity of the Housing Assistance Program)
  - Multifamily Activity: 12% (reduced to reflect ICE)
  - Infra Activity: 13% (conceded due to market rate trends)

# Reasonableness of Cost



- A single bid proposal amount cannot be the source for establishing a reasonable cost
- The reasonableness of a contract award is achieved when documentation supports:
  - An ICE was created before bids were received
  - A cost analysis was performed based on a breakdown of the proposed amount
  - Contract negotiations were performed (including profit negotiation)
- These actions are vital in situations where there is no price competition to establish the reasonableness of a contract award and demonstrate that best value was received for the goods and services procured

# Due Diligence



- Establish timely market research and acquisition planning processes
- Limit the term of a sole source contract to mitigate the risk of overspending
- Educate your staff about ending any unnecessary reliance on non-competitive contracts
- Maintain a record of all sole source contracts
- Create a standard template for written justification to be submitted to GLO for approval
- Document, document, document

# Poll Question



Can price be negotiated under a sole source/non-competitive procurement?



# Common OIG Findings



Subrecipient did *not*:

- Seek review and approval by appropriate entities for non-competitive procurements
- Adequately demonstrate cost reasonableness as a result of failing to have full and open competition
- Adequately support sole source awards
- Provide any justifications or included inadequate justifications to make awards without full and open competition
- Have adequate oversight over sole source contracts

# Resources & Training



- 2 CFR 200 (Part 318-326 starts on page 117)
- [Buying Right Guide](#)
- [Quick Guide to Cost and Price Analysis](#)
- [GLO Website \(Procurement Section\)](#)
- [GLO Procurement Checklist](#)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Office of Community Planning and Development  
Community Development Block Grant Program

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## BUYING RIGHT

CDBG-DR and Procurement: A Guide to Recovery

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# Questions?

Contact GLO-CDR at

**1-844-893-8937**

**[cdr@recovery.texas.gov](mailto:cdr@recovery.texas.gov)**