



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.”

~ Commissioner George P. Bush

Procurement Session (6/8/2020)



Agenda

- Methods of Procurement
- Request for Qualifications (RFQ) for Engineering Services
- Non-Competitive Proposals/ Sole Source
- Questions/Answers

Presenter

Robby Bizot



Methods of Procurement



Procurement Type	Reasonable-ness Method	Solicitation Method	Applications	Dollar Thresholds, if applicable	Different from TX Government Code?
Non-Competitive Proposals 2 CFR 200.320(f)	Cost Analysis	Submitted Proposals	Produced Items Single-task Services Professional Services Multi-task Services Designed Items	No particular threshold, but may only be used when other methods are not feasible.	YES: Exceptions allowed to the competitive bidding or proposal requirements for discretionary items, such as a public calamity, to preserve public health, safety or welfare and other exemptions.

Examples of True Sole Source Vendors: Railroads, SCADA equipment when using close loop systems such as deigned by Siemens

Methods of Procurement



Procurement Type	Reasonable-ness Method	Solicitation Method	Applications	Dollar Thresholds, if applicable	Different from TX Government Code?
<p align="center">Architect and Engineering 2 CFR 200.320(d)(5)</p>	<p>Cost Analysis, Subject to Negotiation of Fair and Reasonable Compensation</p>	<p>Submitted Proposals (Requests for Qualifications)</p>	<p>Architectural and/or Engineering Professional Services</p>	<p>No threshold</p>	<p>YES: Cannot use competitive bidding procedures for services of architects, engineers, CPAs, land surveyors, physicians, optometrists, landscape architects, geoscientists or state-certified appraisers.</p>



RFQ for Engineering Service

The Subrecipient may need to procure engineering services for the design and estimated costs of the infrastructure project.

Engineering services are acquired through a “qualifications-based” procurement and must comply with 2 CFR 200.320 (d)(5). Under these procedures there is a 2-step process for evaluating and awarding the work.

- The first step is to evaluate the competing firms based on their qualifications to successfully complete the work in compliance with CDBG-DR regulations.
- The second step is to negotiate a fair and reasonable price.

This method of procurement can only be used for engineering and architectural services. The Grantee must award contracts to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Procuring Engineering Services



Determine the qualifications the engineer will need to design a CDBG-DR compliant infrastructure project. Considerations can include:

- What is being built? Is this a public facility or a road/bridge project?
- Has the firm provided engineering services for other CDBG or CDBG-DR projects and understands the types of documentation required for a successful project?
- Is the engineering firm licensed in Texas?
- Is the firm able to immediately begin the work?
- Does the firm have sufficient qualified staff to complete the job in a timely manner?
- Past experience associated with the work to be done?

Prior to issuing the procurement solicitation, the subrecipient will need to perform an Independent Cost Estimate to pre-determine the reasonable pricing range for the proposal responses.

Independent Cost Estimate



- The same as for any contract. First, the subrecipient should perform an Independent Cost Estimate/ cost analysis, as required by 2 CFR 200.323(a). To perform a cost analysis, the subrecipient must analyze the three factors that go into every contract: Direct costs, indirect costs, and profit.
- Direct costs are costs that can be tied specifically to the project. Generally, these costs will consist of material and labor costs. For strictly A&E purposes (i.e., not design-build), this will mostly consist of labor hours.
- Indirect costs are costs that cannot be tied to a specific project. These include office utility costs, fringe benefits, etc. These costs are usually calculated as a percentage of the direct cost. Any business that has worked directly with a federal entity should have an approved indirect cost rate. If not, the subrecipient can estimate a reasonable indirect cost rate by inquiring among other jurisdictions or the GLO.
- Profit. This is the fee being charged by the vendor

Independent Cost Estimate (Example)



Example: A subrecipient estimates that a construction project will require the oversight of an Engineer I and an Engineer III for 100 hours each, and there are no material costs for the project. The subrecipient performs research that shows that the going rate for an Engineer I is \$150/hour, and an Engineer III is \$200/hour. So, the total direct cost for the project is \$35,000 ($\$150 \times 100 + \200×100). More research shows that the average indirect cost rate is 127%. Therefore, the total cost of the project is \$85,095.

An A&E firm is then procured based on qualifications alone. During contract negotiation, the firm states that it desires \$130,000 for its services. Because the subrecipient has done a thorough cost analysis, it can reasonably ascertain that the A&E firm is seeking a profit in excess of 50% ($(\$130,000 - \$85,095) / \$85,095 = 52.7\%$), barring additional information from the vendor regarding its actual labor category rates and indirect cost rate.

Independent Cost Estimate (Example)



2 CFR 200.323 states that when negotiating profit, consideration should be given to:

- The complexity of the work to be performed
- The risk borne by the contractor
- The contractor's investment
- The amount of subcontracting
- The quality of its record of past performance, and;
- Industry profit rates in the surrounding geographical area for similar work

Therefore, a profit margin of 52% might be justified in certain unlikely scenarios, but at least the subrecipient knows what it is buying. If the subrecipient decides that a profit margin of 25% is more in line with the 2 CFR 200 requirements for "necessary and reasonable costs", and the A&E firm will not negotiate down from its position and/or convince the subrecipient that it underestimated its cost analysis (perhaps by underestimating the number of labor hours or labor categories needed), then the subrecipient is free to end negotiations and either begin negotiations with the next highest-rated firm or recompile entirely.

RFQ for Engineering



The Scope of work for the RFQ is for qualified engineering services which include:

- Developing the engineering plans for the project
- Estimating costs and a construction timeline for the project (this will be used as the Independent Cost Estimate for the construction services)
- Providing construction oversight once the construction contractor is procured
- Providing plans and “as-builts” to the subrecipient for the project files

The RFQ will include scoring criteria and scores to be applied to all requirements within the RFQ.

Example of Scoring Criteria

- | | |
|--|--------|
| • Contractor Qualifications and Capacity | 40 pts |
| • Schedule of delivery | 10 pts |
| • Contractor Past Performance | 20 pts |
| • Contractor Technical Approach | 30 pts |

The RFQ must include other requirements such as liability and workers compensation insurance, liquidated damages, date time and place to submit proposals, etc.

Scoring the RFQ



- All responses to the RFQ should be summarized in a spreadsheet allowing a side-by-side comparison of the scoring.
- All scores for all sections must be totaled and the highest score should be the winning proposer; however, if two or more engineering firms are close in score, you can invite them to provide an oral presentation to further assess their fit for your project.
- Once a firm has been chosen based on qualifications, the subrecipient will need to negotiate a contract price and will use the Independent Cost Estimate prepared prior to solicitation to help determine cost reasonableness.
- If the highest scoring proposer is not chosen, the subrecipient will need to create a written justification and put into the procurement file to explain why the chosen proposer was not the highest score but was the best fit for your project.
- Perform a debarment check on the engineering firm.

Conduct a Cost Analysis



For competitive proposals with costs over the \$50,000 Simplified Acquisition Threshold, a Cost Analysis must also be performed to meet the requirements of 2 CFR 200.

The major categories of costs include both direct costs (direct labor, equipment, supplies, travel and per diem, subcontractors and other direct costs) and indirect costs (overhead, general and administrative expenses and profit).

In the process of analyzing costs, profit should be analyzed separately, based on complexity of the work, risk to the contractor, investment required, amount of subcontracting involved, and typical profit in the industry.

Contract Award



- Develop the contract to include complete scope of work, staff hourly rates, start date, completion date, liquidated damages, MBE/WBE and Section 3 requirements, insurance, licenses, insert 2 CFR 200 and HUD clauses. See [Implementation Manual-Chapter 5](#) for all required clauses.
- Include the RFQ and proposal as part of the contract
- Verify there is no conflict of interest chosen vendor
- Follow local procedure for official action to award
- Notify proposers of the winning proposal
- Issue Notice to Proceed to vendor
- Submit the [Financial Interest Report](#) to GLO-CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.