

## **SECTION 5311 PROCUREMENT HANDBOOK**

All purchases reimbursed with Section 5311 funds must be conducted in accordance with Federal procurement requirements. The contracting requirement for grant subrecipients is defined in 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. 49 CFR 18.36 requires grantees to use their own procurement procedures that should reflect applicable State and local laws provided the procedures conform to applicable Federal law. The requirements for procurement, award and contract administration of third party contracts are contained in the FTA Circular 4220.1F. An electronic copy of the Circular can be found at [http://www.fta.dot.gov/laws/circulars/leg\\_reg\\_8641.html](http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html).

The FTA Best Practices Procurement Manual is an excellent tool and provides suggestions on conducting third party procurement that meets the standards of FTA Circular 4220.1F. The manual includes suggested procedures, methods, and examples as well as the Federal contract requirements. An electronic copy can be found at [http://www.fta.dot.gov/funding/thirdpartyprocurement/grants\\_financing\\_6037.html](http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html).

**ALL PURCHASES MUST BE APPROVED BY DMT PRIOR TO INCURRING COSTS.**

### **Responsibilities**

#### Subrecipient

- Procurement planning
- Determine method of procurement
- Conduct fair and open competitive procurement process
- Maintain record of procurement activities

#### DMT

- Review procurement documents for compliance to Federal and State requirements.
- Provide technical assistance to subrecipients in procurement and contract compliance.

### **Methods of Procurement**

- A. **Micro Purchase** – Micro purchase may be made without obtaining competitive quotations if the subrecipient determines that the price to be paid is fair and reasonable<sup>1</sup>. Amount limit for micro purchases shall be based on the agency's established threshold and local requirements provided and under the Federal limit of \$3,000. There should be equitable distribution among qualified suppliers in the local area and no splitting of procurements to avoid competition.

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<sup>1</sup> Fair and Reasonable – A cost is fair and reasonable if, in its nature or amount, it does not exceed what would be incurred by an ordinarily prudent person in the conduct of competitive business.

- B. **Small Purchase** – Small purchases are those relatively simple and informal procurement methods for securing services supplies, or other property that cost more than the micro purchase threshold. Federal limits for small purchase is anything above \$3,000 but not more than \$100,000. Local procurement guidelines may have lower threshold limits. Small purchases may be accomplished by written price or rate quotations from at least three qualified sources.
- C. **State Procurement** - Whenever possible and available, subrecipients are encouraged to purchase vehicles using the California Department of General Services (DGS) State Vehicle Contracts. The benefits of using the State Vehicle Contracts are lower vehicle costs and a significant reduction in administration costs. State Procurement also assures compliance with all Federal contract requirements.
- D. **Competitive Proposals** – Competitive proposals or sealed bid process is required to be used for purchases above the small purchase threshold. Competitive procurement methods may include Invitation for Bid, Request for Proposal or Request for Qualifications. Competitive proposal method of procurement requires advertising and publicizing the solicitation process.
- E. **Joint Procurements** – Cooperative partnership with other purchasing agencies may be beneficial as it can result in better pricing through larger purchases, as well as being able to obtain goods and services that exactly match each agency’s requirements.
- F. **Piggyback** – Purchase of goods and services may be made from other contracts if the primary contract contains the appropriate assignability provisions and includes all required applicable contracting requirements.
- G. **Sole Source** – Procurement by noncompetitive proposals is accomplished through either 1) solicitation or acceptance of a proposal from only one source; or 2) after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contract is considered a sole source. Complete the sole source justification form posted on our website: <http://www.dot.ca.gov/hq/MassTrans/Procurement-Grants-Management.html>. Submit the form to Sharlie Kessler for review and approval prior to the purchase.

## **Procedures**

- A. **Micro Purchase** – Determine the item and quantity to be purchased and ensure availability of funding. Contact vendor/supplier and request written price quotation. Make determination that the price is fair and reasonable. Determination of whether the price is fair and reasonable can be based on a current price list, catalogs, market prices from advertisements, similar items in related industry, personal knowledge of the item procured or from a recent purchase.

The subrecipient must submit a letter to the HQ liaison identifying the project, vendor name and address, the price paid for the items, and how the determination that the price was fair and reasonable was made. Subrecipients must also ensure that compliance with applicable Federal contract requirements are met.

B. **Small Purchase** – Determine the item and quantity to be purchased and ensure availability of funding. The subrecipient should have a clear and detailed description of the item to be purchased. Using an established written description or specification will help to achieve consistent price information. Depending on the local agency’s procurement procedures, price quotations should be obtained from at least three qualified sources and can be either verbal or written. Analyze quotations and determine if there is adequate price competition price and if the price is fair and reasonable. Documentation should be maintained for audit purposes and should include a description or specification of the item to be procured, who, when and what quotations were received, how the determination that the price was fair and reasonable was made and the purchase order.

The subrecipient must submit a letter to the HQ liaison identifying the project, vendor name and address, the price paid for the items, and the rationale for how the agency determined that the price is fair and reasonable. The subrecipient must provide an explanation if the lowest price vendor is not selected.

C. **State Procurement** –Advantages of purchasing from the State Contract (when available) are lowest possible price; saves time; and meets all State and Federal contracting requirements.

To purchase from the State Contract, the subrecipient must have receipt of a fully executed Standard Agreement from DMT. According to the procurement schedule identified in the Standard Agreement, the subrecipient will submit a letter and completed purchase order (PO) directly to the authorized vendor. The letter must identify the contact person, a brief description of the equipment being purchased, and the price. The PO must indicate that the purchase is an approved Section 5311 project and should detail the quantity, specific type of vehicle, any optional equipment being purchased, and specific pricing information (signed price quote and floor plan). A copy of the letter and PO should be sent to the DTR to be forwarded to DMT.

D. **Competitive Proposals** – Local procurement is a process whereby subrecipients develop and complete an open, fair, and competitive solicitation process. Sealed bidding (sometimes called “Invitation for Bid”) and competitive proposals (sometimes called, “Request for Proposal” or “Request for Qualifications”) are the two primary types of local procurement methods.

1. **Invitation for Bid (IFB)** is a more simple process without requiring complex evaluation criteria, repeated requests for and receipt of offers or extensive discussions or negotiations with the bidders. In order for sealed bidding to be feasible, the following conditions should be present:
  - (a) A complete, adequate, and realistic specification or purchase description is available;
  - (b) Two or more responsible bidders are willing and able to compete effectively for the business;
  - (c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and
  - (d) No discussion with bidders is needed.

The IFB must be publicly advertised and bids shall be solicited from an adequate number of known suppliers. The IFB should include a detailed specification, bid submittal instructions and pertinent attachments and certifications. The IFB should provide sufficient time for inquiries and bid preparation prior to established bid opening date. All bids will be publicly opened at the time and place described in the IFB and a firm fixed-price contract award will be made in writing to

the lowest responsive and responsible bidder. The objective is to create a document that will facilitate a smooth solicitation and contract award process with little or no controversy and assist the agency to ensure timely contract performance, within budget, while complying with the terms of the contract.

All of the following documents associated with the IFB and contract award process must be submitted and approved by the DMT before agency board action:

- All documents associated with the solicitation package should be submitted either with the grant application or soon after according to the procurement schedule.
- Bid addendums or amendments.
- All correspondence related to the solicitation.
- After bid opening and bid evaluation, submittal of the bid analysis or summary and proposed contract award.

2. **Request for Proposals (RFP) or Request for Qualifications (RFQ)** typically contains all of the elements of an IFB, and in addition shall contain the evaluation factors and their relative importance. The RFP method is intended to permit competition on quality and other factors, as well as price. Discussions or negotiations may be needed to address technical requirements as well as proposed costs or price aspects of the offeror's proposals. The RFP method may include an opportunity for offeror's to revise the proposal and to submit a final proposal at the completion of the discussion phase of the process.

A required feature of an RFP is the listing of evaluation factors. These factors not only include responsibility (such as financial, human, and physical capacity to perform), but also include technical factors (such as the degree to which the proposer is expected, based on information submitted and available, to achieve the performance objectives, to provide the quality expected, and on the relative qualifications of the proposer's personnel). The RFP may also include the order of importance and/or weight for each factor and describe in the detail the evaluation process and scoring method. Disclosure of the evaluation process will allow offerors to accurately respond to your needs and be able to clearly present the information and dispel the appearance of favoritism or unethical practice in the selection process.

**NOTE:** Architectural and Engineering Services - In procuring architectural and engineering services (A&E), a competitive RFP or RFQ process must be used based on the Brooks Act, which requires selection based on qualifications and excludes price as an evaluation factor provided the price is fair and reasonable. Price is excluded as an evaluation factor and negotiations are conducted with the most qualified firm only. If agreement cannot be reached on price with the most qualified firm, negotiations are formally terminated and negotiations are then conducted with the next most qualified firm. This process continues until a negotiated agreement is reached which the subrecipient considers to be fair and reasonable.

A&E services include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services. This procedure cannot be used to procure other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

An RFP or RFQ requires the following solicitation and contract award elements:

- (a) Public advertisement;
- (b) Identification of evaluation factors including their relative importance;
- (c) Proposals will be solicited from an adequate number of qualified sources;
- (d) Established technical evaluation and selection process; and
- (e) Award to be made to the responsive and responsible firm whose proposal offers the greatest business value upon evaluation of the technical factors and price/cost and is most advantageous to the subrecipient's program.

All of the following documents associated with the RFP or RFQ and contract award process must be submitted and approved by the DMT before agency board action:

- All documents associated with the solicitation package should be submitted either with the grant application or soon after according to the procurement schedule.
- Bid addendums or amendments.
- All correspondence related to the solicitation.
- After bid opening and bid evaluation, submittal of the bid analysis or summary and proposed contract award. Documentation should include the list of responsive and responsible proposals received; what written or oral discussions were held with proposers, if any; how the determination of the competitive range was made; whether best and final offers were submitted; and the recommended award.

- E. **Joint Procurements** – Subrecipients are encouraged to jointly procure goods and services with other transit agencies. Joint procurements (sometimes known as group purchase or consortium) may result in better pricing through larger purchases as well as being able to obtain goods and services that exactly match each cooperating agency's requirements. Joint procurements can be accomplished through the competitive proposal process with all of the solicitation and contract award requirements identified above.

The bid advertisement should specifically identify the agencies involved in the group purchase. Joint procurement for rolling stock should identify how many buses are being purchased (including options or specification differences) for each individual agency. It would be practical to identify a lead agency that will be responsible for developing the solicitation documents and technical specifications as well as ensuring that all federal requirements, required contract clauses, and certifications are properly obtained and/or followed.

In the initial solicitation for a joint procurement, the following documents should be submitted and approved by the DMT **before** the contract is awarded.

- All documents associated with the solicitation package should be submitted either with the grant application or soon after, according to the procurement schedule.
- Bid addendums or amendments.
- All correspondence related to the solicitation.
- After bid opening and bid evaluation, submittal of the bid analysis or summary and proposed contract award. Documentation should include the list of responsive and responsible

proposals received; what written or oral discussions were held with proposers, if any; how the determination of the competitive range was made; whether best and final offers were submitted; and the recommended award.

If a subrecipient wants to use an existing contract that was awarded based on a joint procurement process, the following documents should be submitted and approved by the DMT **before** entering into a formal agreement with a vendor or issue a purchase order.

- A letter explaining the purchase is from a joint procurement including the quantity in the initial contract award, the quantity already filled to date and the available number remaining.
- Copy of the original contract and all amendments.
- Copy of the original solicitation and all amendments.
- Copy of applicable certifications associated with contract award, i.e., Buy America; Bus Testing; Pre-Award and Post-Delivery; Lobbying; and Debarment and Suspension.

F. **Piggyback** - The term "piggybacking" is defined as the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies or equipment through the original document/process.

Piggybacking is permissible when: (a) the solicitation document and the resultant contract contain an assignability clause that provides for the assignment of all or part of the specified deliverables as originally advertised, competed, evaluated, and awarded. This includes the base and option quantities. In addition, the original solicitation and resultant contract typically must contain both a minimum and a maximum quantity, which represent the reasonably foreseeable needs of the parties to the solicitation.

For a subrecipient to piggyback on another agency's vehicle contract the following documents must be submitted to the DMT **before** entering into a formal purchase agreement:

- A letter from the subrecipient requesting approval to purchase through another agency's contract.
- A letter from the agency allowing the subrecipient to purchase from their contract. The letter must include the quantity the subrecipient is allowed to purchase, the quantity already filled to date and the available number remaining that may be purchased from the contract.
- Copy of the original contract and all amendments. The contract must contain an assignability clause that provides for the assignment of all or part of the specified deliverables.
- Copy of the original solicitation and all amendments and applicable certifications associated with contract award, i.e., Buy America; Bus Testing; Pre-Award and Post-Delivery; Lobbying; and Debarment and Suspension. If DMT previously reviewed and approved the bid document, submit a copy of the DMT letter approving the procurement and contract award.
- Piggybacking worksheet.

G. **Sole Source** – Sole source procurements are accomplished through acceptance of the only proposal after solicitation, or when competition is determined to be inadequate after a publicly advertised

solicitation, or if the item to be procured is available only from one single source, or to respond to a public emergency which would not permit a delay as a result of a competitive solicitation. Sole source procurements must be **pre-approved** by the DMT before entering into a formal purchase agreement. The following documents must be submitted to the DMT:

- A sole source justification form identifying the type of procurement and the selected contractor/vendor and an explanation of the rationale for not completing a competitive solicitation process. Justification should include information such as but not limited to: the circumstance(s) that caused the inability to conduct a competitive procurement; how the determination was made that only one source (proprietary) is available; how the determination was made that after competition was inadequate after a publicly advertised solicitation; and/or whether compatible parts (or equals) were considered or available from any other source.
- Technical specifications used and how they were developed. Did the vendor or contractor assist in the development of the specification or statement of work? If so, will they benefit from the sole source contract?
- Cost Analysis. This includes verifying the proposed cost data, the projections of the data, and the evaluation of specific elements of costs and profit.