



**EVERYTHING YOU  
WANTED TO KNOW  
ABOUT PROCUREMENT  
BUT WERE AFRAID TO  
ASK**



# EXECUTIVE STATEMENT

**The procurement process is a critical part of the success of every business operation. Understanding the basic tenets of the process is paramount for its practitioners. A grounded foundation in the process allows for growth in understanding, executing, processing, negotiating, awarding, and administering contracts. Repeatedly, procurement findings top the list in the various oversight reviews conducted by the FTA. Many reasons are apparent for this. Among them are rapid turnover of personnel, inability to attend training courses, limited number of training courses, and the complexity of the process.**

# CONTRACTING/PROCUREMENT REQUIREMENTS

**Where Federal Transit Administration (FTA) funds are used in procurements for services or supplies, or where FTA-funded facilities or assets are used in revenue contracts, the Super Circular, 2 CFR, Part 200 and FTA Circular 4220.1F apply. FTA funds, even operating assistance, can be segregated from local funds. FTA Circular 4220.1F does not apply to wholly locally-funded capital procurements.**

# TOP TEN AREAS OF CONCERN

- **Written Procurement Policies and Procedures**
- **Written Standards of Conduct**
- **Written Protest Procedures**
- **Determination of Responsibility**
- **Full and Open Competition**
- **Solicitation Methods**
- **Exercise of Options**
- **Buy America**
- **Geographical Preference**
- **Documentation – Cost/Price Analysis**



# TOP TEN AREAS OF CONCERN

## Written Procurement Policies and Procedures



### ✓ BASIC REQUIREMENT

- **All Tribal Transit Program (TTP) recipients must have written procurement policies and procedures**

### ✓ Explanation

- **Policies and procedures must explain how the TTP recipient will ensure compliance with the standards and requirements identified in 2 CFR 200.318 (General Procurement Standards) through 200.326**



# TOP TEN AREAS OF CONCERN



## ***GENERAL PROCUREMENT STANDARDS***

**CONTRACT OVERSIGHT:** Recipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

## **GOVERNING DIRECTIVES**

### **2 CFR 200.318 General procurement standards**

- ✓ (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements
- ✓ (b) Conform to applicable Federal law and the standards identified in this section.
- ✓ (c) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

# TOP TEN AREAS OF CONCERN

## *GENERAL PROCUREMENT STANDARDS*

- **Unnecessary or duplicative items**: The recipient's procedures must avoid the acquisition of unnecessary or duplicative items.
- **Award to responsible contractors**: The recipient must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.





# TOP TEN AREAS OF CONCERN



## ***GENERAL PROCUREMENT STANDARDS***

- **Procurement history**: The recipient must maintain records sufficient to detail the history of the procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- **Contract dispute resolution**: The recipient alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.



# TOP TEN AREAS OF CONCERN



## **GENERAL PROCUREMENT STANDARDS**

### **Bid Protest Procedures**

#### **BASIC REQUIREMENT:**

- ✓ **The TTP recipient must have and follow written protest procedures in compliance with all applicable Federal, state, and local laws and regulations.**
- ✓ **TTP recipients must have written procedures that allow bidders to protest a procurement action. Notice of protest procedures must be available to all potential bidders, either by inclusion in the solicitation documents or available to the public.**
- ✓ **TTP recipients are responsible for resolving all contractual and administrative issues arising out of their third-party procurements, including source evaluation and selection, protests of awards, disputes, and claims using good administrative practices and sound business judgment.**



# TOP TEN AREAS OF CONCERN



## **GENERAL PROCUREMENT STANDARDS**

### **Determination of Responsibility**

#### **BASIC REQUIREMENT:**

- ✓ **The TTP recipient must only contract with responsible firms.**
- ✓ **49 U.S.C. Section 5325 (j) requires recipients to make FTA-assisted contract awards only to “responsible” contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement. Before making an award to a contractor, a recipient shall consider the integrity of the contractor; the contractor’s compliance with public policy; the contractor’s past performance; and the contractor’s financial and technical resources. Responsibility is determined by the recipient after receiving bids or proposals and before making contract award.**

# TOP TEN AREAS OF CONCERN



## **GENERAL PROCUREMENT STANDARDS**

### **Determination of Responsibility**

#### **BASIC REQUIREMENT:**

- ✓ **TTP recipients also are required to ensure, to the best of their knowledge and belief, that none of its principals, affiliates, third party contractors, and subcontractors is suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. For each third-party contract expected to equal or exceed \$25,000, recipients must verify that the bidder is not excluded or disqualified.**
- ✓ **FTA notes that affirmative actions, such as checking SAM.gov or including a requirement for a signed certification, are preferred. A best practice is for the recipient to print the screen with the results of the search to include in the award or procurement file, or to have a checklist noting when the SAM was reviewed.**

# TOP TEN AREAS OF CONCERN



## ***GENERAL PROCUREMENT STANDARDS***

### **Full and Open Competition**

#### **BASIC REQUIREMENT:**

- ✓ **Procurement transactions must be non-restrictive.**
- ✓ **Recipients must conduct procurement transactions in a manner providing full and open competition. Recipients are prohibited from restricting competition in federally supported procurement transactions.**

# TOP TEN AREAS OF CONCERN



## ***GENERAL PROCUREMENT STANDARDS / Full and Open Competition***

**Some of the situations considered to be restrictive of competition include but are not limited to:**

- **Placing unreasonable requirements on firms for them to qualify to do business;**
- **Requiring unnecessary experience and/or excessive bonding;**
- **Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement;**
- **Having overly burdensome requirements for approval of “an equal” product;**
- **Noncompetitive pricing practices between firms or between affiliated companies;**
- **Noncompetitive contracts to consultants that are on retainer contracts;**
- **Organizational conflicts of interest; and**

**Any arbitrary action in the procurement process.**



# TOP TEN AREAS OF CONCERN



## **GENERAL PROCUREMENT STANDARDS**

### **Solicitation Methods**

#### **BASIC REQUIREMENT:**

- ✓ **The non-Federal entity must appropriately use one of the following methods of procurement: micro-purchase, small purchase, sealed bid, competitive proposals or non-competitive proposals.**
  - **Micro-purchases may be made without obtaining competitive quotations if the recipient determines that the price to be paid is fair and reasonable. These purchases should be distributed equitably among qualified suppliers in the local area and should not be split to avoid the requirements for competition above the micro-purchase threshold.**
  - **Small purchase procedures require that price or rate quotations be obtained from an adequate number of qualified sources (at least two). The solicitations and quotations may be either oral or written.**



# TOP TEN AREAS OF CONCERN



## **GENERAL PROCUREMENT STANDARDS**

### **Solicitation Methods**

#### **BASIC REQUIREMENT:**

**For procurements exceeding the Federal simplified acquisition threshold (currently \$250,000), sealed bids or competitive proposals are generally required.**

- **Sealed Bids/IFB – Bids are publicly solicited, and the award is made to the lowest (best price), responsive (meets all specifications), and responsible (is qualified to perform the work) bidder.**
- **Competitive Proposals/RFP – Proposals are publicly solicited from an adequate number of sources and the award is made to the responsive and responsible proposer whose offer is most advantageous to the recipient, with price and other factors considered. Recipients must identify their evaluation factors and indicate the relative importance that each has towards the award.**

# TOP TEN AREAS OF CONCERN



## **GENERAL PROCUREMENT STANDARDS**

### **Solicitation Methods**

#### **Competitive proposal:**

**Review selected procurements to determine if:**

- **requests for proposals were publicly advertised in accordance with State and local laws,**
- **evaluation criteria and their relative importance were identified,**
- **proposals were solicited from an adequate number of qualified sources,**
- **there was a written method for conducting technical evaluations of the proposals received and for selecting recipients, and**
- **contracts were awarded to the responsive and responsible firm whose proposal is most advantageous, with price and other factors considered.**

# TOP TEN AREAS OF CONCERN



## **GENERAL PROCUREMENT STANDARDS**

### **Solicitation Methods**

**Non-competitive proposals: When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole-source award. In the case of a sole-source award, the recipient should prepare a written cost analysis and justification. The property or services are available from one source if one of the conditions described below is present:**

- **Unique or Innovative Concept. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and is available to the recipient only from one source and in the past, has not been available from another source.**

# TOP TEN AREAS OF CONCERN



## *GENERAL PROCUREMENT STANDARDS*

### **Solicitation Methods**

### **Indian Preference**

- ❖ **Contracting with Indian Owned businesses in accordance with Tribe policies (Tribal Employment Rights Ordinance)**

# TOP TEN AREAS OF CONCERN



## GENERAL PROCUREMENT STANDARDS

### OPTIONS

#### BASIC REQUIREMENT:

- TTP recipients may use another recipient's contract rights if the original contract was procured in compliance with Federal requirements, contained required Federal provisions, included an **assignability provision**, does not contain excessive options, the optioned vehicles do not include cardinal changes to the original vehicles, and the contract price is fair and reasonable.
- For reasons of economy, FTA permits the assignment of unneeded contract rights or options. This practice is sometimes called "piggybacking." FTA discourages the assignment of another recipient's contract rights as a substitute for a stand-alone procurement. Assignments are intended to be used only when a recipient has inadvertently acquired contract rights in excess of its needs due to changed circumstances or honest mistakes.





# TOP TEN AREAS OF CONCERN



## **GENERAL PROCUREMENT STANDARDS**

### **BUY AMERICA**

#### **BASIC REQUIREMENT:**

**Recipients must include required certifications in its procurements and receive signed certifications from bidders.**

#### **Buy America statute applies to:**

- **All purchases of steel, iron, and manufactured products greater than \$150,000, regardless of whether they involve capital, operating, or planning funds,**
- **Contractors and subcontractors if the contract or subcontract is more than \$150,000, including labor and options,**
- **Purchases made using an intergovernmental agreement and jointly purchased manufactured products, and**
- **Purchases of used items.**

# TOP TEN AREAS OF CONCERN



*GENERAL PROCUREMENT STANDARDS*

**GEOGRAPHICAL PREFERENCE**

**BASIC REQUIREMENT:**

**Recipients are prohibited from specifying in-state or local geographic preferences or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by state or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-state dealers.**

# TOP TEN AREAS OF CONCERN



*GENERAL PROCUREMENT STANDARDS*

**GEOGRAPHICAL PREFERENCE**

**BASIC REQUIREMENT**

**Exceptions expressly mandated or encouraged by law include the following:**

- **A&E Services.** Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project. Although geographic preferences are permissible in procurements for A&E services, the reviewer should ensure that their use does not restrict competition (i.e., the use of geographic preference leaves only one or two qualified firms to bid on the contract).



# TOP TEN AREAS OF CONCERN



## *GENERAL PROCUREMENT STANDARDS*

## **GEOGRAPHICAL PREFERENCE**

**Exceptions expressly mandated or encouraged by law include the following:**

- **Licensing.** A state may enforce its licensing requirements, provided that those requirements do not conflict with Federal law.
- **Major Disaster or Emergency Relief.** Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in an area affected by a major disaster or emergency.

# TOP TEN AREAS OF CONCERN



## *GENERAL PROCUREMENT STANDARDS*

### **COST / PRICE ANALYSIS**

#### **BASIC REQUIREMENT:**

- **Cost or price analysis: Recipients must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications.**
- **The method and degree of analysis is dependent on the facts surrounding the procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.**



# TOP TEN AREAS OF CONCERN

## **GENERAL PROCUREMENT STANDARDS**

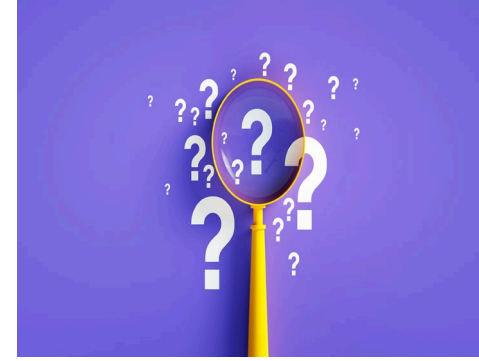


## **PRICE ANALYSIS**

- **Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.**
- **Price analysis may include evaluating data other than certified cost or pricing data obtained from the offeror or contractor when there is no other means for determining a fair and reasonable price.**
- **Contracting officers shall obtain data other than certified cost or pricing data from the offeror or contractor for all acquisitions (including commercial acquisitions), if that is the contracting officer's only means to determine the price to be fair and reasonable.**



# TOP TEN AREAS OF CONCERN



## COST ANALYSIS

**The review and evaluation of any separate cost elements and profit or fee in a contractor's proposal, as needed to determine a fair and reasonable price, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.**

# DISCUSSION



# CONTACT INFORMATION

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