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
Requests for Proposals (RFP)

Agenda

• Procurement Scenario
• Ground Rules
• RFP Elements & Requirements
• Evaluation & Selection
• Contract Award Phase
• Common Pitfalls, Concerns and Findings
• Questions & Answers
• A community is applying to receive a $1 million CDBG-DR grant from GLO to fund a drainage improvement project

• The grant allows up to 6% for project delivery activities and it has a 15% engineering cap tied to the construction budget

💡 Project delivery percentage should be negotiated (Ex: reserving a portion to pay for part of a single audit)
Procurement Scenario

• Cost must be **allowable** (2 CFR 200.403) – is this an eligible activity for CDBG-DR funds?
  - Yes, drainage improvements are an eligible CDBG-DR activity

• Cost must be **reasonable** (2 CFR 200.404) – are the costs reasonable and necessary for the activity scope?
  - Yes, costs align with the ICE

• Cost must be **allocable** (2 CFR 200.405) – is the cost allowed for CDBG-DR?
  - Yes, the need for drainage improvements ties back to the disaster impacts
Procurement Scenario

Evaluate the best method to procure Grant Management services in accordance with 2 CFR 200.318-200.326:

1. Does the Subrecipient know how long the project will take to be completed?
   - No, the number of projects and length of time to complete them is unknown, so the Sealed Bid Solicitation (SBS) method is not appropriate

2. Does the Subrecipient intend to review vendors’ services against the best cost?
   - Yes, competitive proposals are used when Sealed Bids are not appropriate (2 Part 200.320(d)) and when more than one source is submitting an offer for a fixed price or cost-reimbursement type contract

✔️ Use a competitive proposal (2 CFR 200.320 (d)(1-5)): Request for Proposals (RFP)
Procurement Scenario

RFP Requirements

1. Publicize RFP and identify all evaluation factors and their relative importance
2. Solicit proposals from an adequate number of qualified sources
3. Consider any response to publicized RFPs to the maximum extent practical
4. Follow a written procedure to evaluate and select respondents
5. Award contract to the responsible firm whose proposal is most advantageous to the program, considering price and other factors
Planning/Pre-Release Phase
2 CFR 200 Compliance

• Follow procurement policies and procedures that reflect applicable federal, state and local laws and regulations that comply with 2 CFR 200

• Ensure that contractors perform work in accordance with the terms, conditions, and specifications of their contracts, task orders, or purchase orders

• Document the process for procurement and oversight in policies and procedures

• Maintain written standards of conduct covering conflicts of interest and governing actions of employees engaged in the selection, award and administration of contracts

💡 Ensure procurement policies and oversight practices have the information for procurement staff to avoid costly, wasteful, and unenforceable contracts
Maintain Separation of Duties:

• Clearly define responsibilities of each position in the procurement process
• Formal system of authorization and review

Subrecipients are responsible for all procurement actions and should describe their oversight of any Grant Administrators involved in procurement.
Ground Rules Cont’d.

Provide Competencies and Training:

• Review your procurement policies and procedures to ensure that they meet HUD and Office of Management and Budget (OMB) requirements

• Complete the procurement checklist and place it in the procurement file with corresponding documents

• Train subrecipient staff to perform their procurement duties and responsibilities
Maximize Competition: look out for potential red flags and investigate further

- Non-competitive contracts
- Insufficient price or rate quotes from qualified sources
- Lack of ICEs or cost analyses
- Failure to rotate vendors on lower priced purchases
- Unreasonably narrow or specific qualification criteria or bid specifications
- Splitting procurement activities to circumvent formal procurement methods
- Short timeframes for responding to offers
- Insufficient number of responsive bidders
- Failure to check debarment lists and labor surplus area firms
- Lack of M/WBE Outreach
- Excessive number of small purchase contracts close to the small purchase dollar limit
Uphold Ethics and Bar Conflicts of Interest (COI):

• Include a written code of standards in the procurement policy

• Explain what “appearances of conflicts” entails
  o Vendor or contractor donations to employee fund-raising drives
  o Event tickets, meals, or giveaway gifts to an employee-affiliated organization
  o Immediate family members, business partners, or organizations where they may be employed or seeking employment

• If there is a real or apparent COI, do not proceed before mitigating the conflict
• **Purpose:** Summarize responsibilities of the selected consultant (e.g., for a Grant Administrator, list assigned duties and responsibilities administratively and otherwise)

• **Role of Selected Consultant:** Describe responsibilities of the consultant or developer in relation to other parties (parallels the discussion of roles of the parties)

• **Statement of Work:** List the tasks the consultant will perform, including enough details that the consultant can provide a price for the services

• [Example Grant Management SOW](#)
Subrecipients may use multiple sources to develop an ICE, including:

- Price last paid for similar procurement
- Comparison of previous prices paid for similar services
- Personal experience
- Other historical information
- Detailed analyses
- Information from other communities regarding similar bid outcomes
Subrecipient Responsibilities

• Select the committee before drafting the RFP to get their input in defining the needs and evaluation/selection criteria

• Include members with relevant expertise (e.g., Project Managers, Engineers, Procurement/Contracts) and establish roles and milestone dates based on the project schedule

• Require members to sign a letter concurring to no conflict of interest and confidentiality during the RFP process

Committee Responsibilities

• Review relevant information (e.g., scope of work, purchase description/specifications) and develop weighted evaluation criteria
Subrecipient requests unit quantity pricing for the following tasks:

- Develop the implementation plan and host the project kick-off meeting
- Perform environmental review and receive release of funds
- Acquire the project site
- Develop Invitation to Bid for construction services to implement the project
- Process request for payments for contractor payments
- Monitor project for compliance with cross-cutting federal requirements
- Close out the project
### Scenario: Submission and Evaluation Requirements

- Summarize submission requirements (outline is recommended) in the RFP
- List the proposal evaluation criteria and include the weighting for each criterion

<table>
<thead>
<tr>
<th>RFP Section</th>
<th>Page Limit</th>
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</thead>
<tbody>
<tr>
<td>Approach to accomplish each task in the SOW</td>
<td>3 pages</td>
</tr>
<tr>
<td>Project Staffing</td>
<td>3 pages</td>
</tr>
<tr>
<td>Qualifications</td>
<td>4 pages</td>
</tr>
<tr>
<td>Fee Proposal – sealed and opened after qualitative proposal selected</td>
<td>No page limit</td>
</tr>
<tr>
<td>Financial Information</td>
<td>No page limit</td>
</tr>
<tr>
<td>References</td>
<td>3 pages</td>
</tr>
</tbody>
</table>
Scenario: Scoring the RFP

- Include scoring criteria and the weighting for each RFP requirement

<table>
<thead>
<tr>
<th>Scoring Criteria</th>
<th>Weighting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contractor Qualifications and Capacity</td>
<td>20 pts</td>
</tr>
<tr>
<td>Contractor Past Performance</td>
<td>20 pts</td>
</tr>
<tr>
<td>Contractor Technical Approach</td>
<td>30 pts</td>
</tr>
<tr>
<td>Price</td>
<td>30 pts</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100 pts</td>
</tr>
</tbody>
</table>

- Include other requirements (e.g., liability and worker’s compensation insurance, liquidated damages, performance and payment bonds)
Schedule and Required Information

- Explain the selection process and the schedule for each step (e.g., proposals due, firm under contract)
- Give date(s) of any pre-proposal conference(s), the location, and whether attendance is mandatory
- State the requested contract type (e.g., fixed price) and include a copy of the draft contract in the RFP
- List any rules, regulations, and licensing requirements that apply to the selected respondent
- State Section 3 and disadvantaged business requirements and your commitment to implementing these requirements
- Include your statement of equal opportunity employment
Schedule and Required Information

- Acknowledge that questions may arise about the RFP and require them in writing
- Include the following language in the RFP:
  - Subrecipient reserves the right to cancel the RFP, reject any or all proposals, and waive minor informalities for proposers if in the public interest
  - Procured consultants will not be considered Subrecipient personnel and the proposal of certain personnel is a statement of their availability to do the work for the entirety of the contract term
  - Contact between respondents and Subrecipient staff, board members, or residents is prohibited during the selection process
Attachments

Include the following attachments:

- Form for each respondent’s fee proposal *(optional)*
- Copy of draft contract with contractual obligations for selected respondents (include required contract provisions)
- Copy of required forms (e.g., Byrd Anti-Lobbying)
- Copy of applicable federal riders
Take all necessary affirmative steps to use small businesses, minority owned businesses, women’s business enterprises, and labor surplus area firms when possible

- Include solicitation lists
- Ensure they are potential sources of products or services to be bid
- Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum M/WBE participation (i.e. provide alternative bidding scenarios)
- Establish delivery schedules to encourage M/WBE participation (i.e. flexibility)
- Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency, U.S. Dept. of Commerce
- Require the Prime Contractor to take affirmative steps to subcontract with M/WBE, if they award subcontracts
Additional RFP Considerations

After creating the RFP:

- Advertise the bid in local and regional newspapers
- Make it available at the local level (city hall, website, etc.)
- Submit it to various vendors in the field of services
- Cast a broad net of communication to bid to show fair competition

Do not:

- Allow a vendor to create the RFP and bid on it (COI; subject to re-procurement)
- Award a geographic preference to respondents
- Break up a competitive bid to circumvent the simplified acquisition threshold
Addenda

• Issue addenda before proposals are received
• Once a solicitation is released, it may only be changed via addendum. Potential changes include:
  o Information to accommodate additional requests
  o New due date
  o Correction of a mistake
  o Clarification of an ambiguity in the SOW
• Respondents must submit signed addenda with proposals as part of the submission package
Evaluation and Selection of Proposals
Selection and Responsiveness

Respondent must be responsive and responsible:

- Complies with all material terms and conditions of the solicitation and all requirements of the specifications and was submitted in form specified in the solicitation
- Does not have any liens and is not debarred or otherwise excluded from completing the work

Other RFP requirements:

- Time, date, and place
- Bid, performance or payment security bonds
- Samples, literature, or other information
- Disclosure statements
- Attendance at mandatory (if made mandatory) pre-bid conference or site visit/inspection
# Scoring the RFP Responses

## Weighted Scoring Matrix

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Weighting</th>
<th>Company A</th>
<th>Company B</th>
<th>Company C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qualifications and Capacity</td>
<td>20</td>
<td>16</td>
<td>14</td>
<td>13</td>
</tr>
<tr>
<td>Past Performance</td>
<td>20</td>
<td>15</td>
<td>17</td>
<td>14</td>
</tr>
<tr>
<td>Technical Approach</td>
<td>30</td>
<td>24</td>
<td>27</td>
<td>22</td>
</tr>
<tr>
<td>Price</td>
<td>30</td>
<td>26</td>
<td>25</td>
<td>21</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>100</strong></td>
<td><strong>81</strong></td>
<td><strong>83</strong></td>
<td><strong>70</strong></td>
</tr>
</tbody>
</table>
Scoring the RFP Responses

- Insert a written justification in the procurement file if you do not select the highest scoring respondent
- Perform a debarment check on the contractor and subcontractors and check their references
- Prepare a Notice of Award for the selected respondent before moving into the contract execution phase of the procurement process
Scenario: Conduct Price Analysis

- In this scenario, the winning proposal is $58,500 which is below the Simplified Acquisition Threshold
- The proposal requires a Price Analysis:
  - Compare prices quoted by suppliers, contractors, etc. to each other
  - Show that the price is fair and reasonable
- Compare to the ICE performed prior to issuing the RFP
• Profit is the amount paid to a contractor above the total cost of the contract
• Consider the following when negotiating profit:
  o Complexity of the work to be performed
  o Risk borne by the contractor
  o Amount of subcontracting
  o Quality of the contractor’s past record
Sample ICE

### Cost/Price Analysis for Profit Negotiation (Cont.)

#### Sample vendor costs via the RFP

<table>
<thead>
<tr>
<th>Cost Type</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Direct &amp; Indirect Costs</td>
<td>$37,200.00</td>
</tr>
<tr>
<td>Profit (12%)</td>
<td>$4,464.00</td>
</tr>
<tr>
<td>Total Cost</td>
<td>$41,664.00</td>
</tr>
</tbody>
</table>
Contract Award
Contract Award

- Include RFP, complete scope of work, selected proposal, unit pricing, start date, completion date, liquidated damages, MBE/WBE and Section 3 requirements, insurance, 2 CFR 200 and HUD clauses
- Verify that the chosen vendor has no conflicts of interest
- Notify proposers of the winning proposal
- Issue Notice to Proceed to vendor
All contracts must:

• Be signed by all required parties, including the vendor/contractor and Subrecipient representative
• Be notarized
• Include required contract reports (submitted to GLO monthly)
Contract Provisions

All contracts executed between the subrecipient and a contractor must include the following CDBG program requirements:

• Performance requirements and penalties
• Project schedule including the performance period and completion date
• All Section 3 covered contracts shall include the Section 3 Clause 22
• Mandatory standards and policies relating to energy efficiency in the state energy conservation plan (in compliance with the Energy Policy and Conservation Act 23)
• May not be a cost-plus contract award
Contract Revisions

- Make any permitted changes via change order
- Categorize changes by type and number them sequentially
- Maintain a log of all executed change orders for each procurement that includes:
  - Name of the vendor and the original contract amount
  - Reason(s) for and the dollar amount of the change order
  - Running total of the value of the changes and the revised contract amount
- Subrecipients may not make material alterations to the SOW or insert a renewal clause in the contract (must be made via new procurement)
Common Pitfalls

• Poor planning and preparation
• Lack of documentation
• Lack of “separation of duties”
• Not engaging in ICEs
• Misunderstandings of “conflict of interest” (specifically the appearance section)
• Failure to perform cost and price analysis on contract modifications or change orders and ensure that the work is necessary
Common Findings or Concerns

- Prohibited use of cost-plus percentage of cost contracting (subrecipients should be entering into fixed-price contracts for competitive procurements)
- Failure to prepare ICE prior to receiving proposals
- Failure to perform cost and price analysis on contract modifications or change orders
- Inclusion of non-competitive practices/requirements in procurement documents (e.g., geographic preference, minimal public advertisement, etc.)
- Failure to have an adequate contract administration system to track the history of each procurement action
Resources & Training

**Resources**
- 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

**Upcoming Training**
- Requests for Qualifications (RFQ)
- WebEx invite to come soon
Questions?

Contact GLO-CDR at
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cdr@recovery.texas.gov