
**Audit of WMATA's Office of Procurement & Materials
Noncompetitive Contract Actions**

Final Report



Contract Audit No. 16-001
December 17, 2015

**Washington Metropolitan Area Transit Authority
Office of Inspector General**

M E M O R A N D U M

FINAL AUDIT REPORT WITH RECOMMENDATIONS

Contract Audit No. 16-001



SUBJECT: Audit of WMATA's Office of
Procurement and Materials
Noncompetitive Contract Actions

DATE: December 17, 2015

FROM: OIG – Helen Lew /SI/

TO: CPRO – John Shackelford

This Final Audit Report, entitled *Audit of the Washington Metropolitan Area Transit Authority's (WMATA) Office of Procurement and Materials (PRMT) Noncompetitive Contract Actions*, presents the results of our audit. The objectives of the audit were to (1) determine whether PRMT is using sufficient cost/price analysis methods for noncompetitive contracts awarded, and (2) assess PRMT's ability to adequately account for its noncompetitive contract awards. The audit covered noncompetitive contracts awarded from July 1, 2013 to May 31, 2015.

BACKGROUND

Noncompetitive awards include sole source contracts, contract modifications and change orders resulting in a cardinal change.¹ Based on data provided by PRMT's Branch of Policy, Records Management, 715 procurements totaling \$1.15 billion were awarded from July 1, 2013 through May 31, 2015. Of these, 43 were sole-source procurements totaling \$38.6 million (3.4 percent) and 401 were contract modifications totaling \$158.4 million (13.8 percent) that may or may not have been due to a cardinal change, as contract modifications with cardinal changes are not specifically identified by PRMT.

Noncompetitive awards increase overspending and supplier dependency risks. However, The Competition in Contracting Act of 1984 recognizes full and open competition is not feasible in all circumstances and authorizes noncompetitive sourcing under certain conditions. According to the WMATA Compact, examples of allowable exceptions to full and open competition include circumstances when the contractor is the only source capable of satisfying the needs of WMATA and when the need for goods and services is of such an unusual and compelling urgency that WMATA faces risks of serious financial or other injury unless sources are limited.

Washington
Metropolitan Area
Transit Authority

¹A Cardinal Change according to the FTA, is a significant change in contract work (property or services) that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. Such changes are "sole-source" procurements, and must be processed according to the requirements of FTA Circular 4220.1F, Chapter 6, Paragraph 3.I (1)(b).

As a recipient of Federal funds, specifically from the Federal Transit Administration (FTA), WMATA must comply with FTA regulations and Grant Management Common Rules (Common Grant Rules) for FTA funded procurements. These rules and regulations state that every contract award must include a determination that the price is fair and reasonable. This requires grantees and sub-grantees to perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must develop an independent cost estimate before receiving the contractor's bids or proposals. However, a cost analysis will be necessary whenever adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

PRMT is responsible for developing and implementing strategic sourcing strategies, and executing and facilitating all procurement actions on behalf of WMATA's Program Offices for goods and services. PRMT's Contract Officers (COs) are authorized to enter into, administer and terminate contracts, including noncompetitive awards. In addition, designated Contract Officer Representatives (COR) within the Program Offices have authority to award contracts within limits set by PRMT COs. To initiate a request for a noncompetitive contract, the Program Office submits a purchase request to PRMT and is required to provide certain documentation, including, a Determination and Finding, Statement of Work, and Independent Cost Estimate (ICE).

The Procurement Procedures Manual (PPM) includes cost and pricing analysis requirements for WMATA's procurement actions. WMATA's PPM states, "a cost analysis is used to evaluate the reasonableness of individual cost elements. A cost analysis consists of the review and evaluation of the separate cost elements; the proposed profit of a proposer's cost; or pricing data and the judgment factors applied in estimating costs. A cost analysis is generally conducted to form an opinion as to whether the proposed cost, including profit, represents what the performance of the contract should cost. WMATA must prepare a cost analysis when the proposer submits cost elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost."

The Program Office requesting the procurement is responsible for developing the technical requirements related to the source selection process. The Contracting Officer or designee is responsible for contractual actions related to the process. One such action is conducting or coordinating a cost analysis.

PRMT's Branch of Policy, Records Management is responsible for administrative records management work involving the receipt, maintenance, storage, disposition and research of contract files and related documents and records.

Prior Related Reports

There have been no audits performed of WMATA's noncompetitive contract actions related to the audit objectives by the WMATA Office of Inspector General (OIG). However, we did review FTA's Financial Management Oversight (FMO) report dated June 10, 2014. The FMO report found WMATA did not have adequate controls in place to ensure that goods and services were procured in accordance with Federal regulations. One specific condition noted in the report was ICEs were either not prepared or not done timely.

AUDIT RESULTS

OIG judgmentally selected 10 contracts (nine capital, one operating) from a listing of sole source procurements and contract modifications provided by PRMT covering our audit period. After a preliminary review of these contract files, six² contracts were deemed noncompetitive and within the scope of this audit. Overall, OIG found PRMT's cost/price analysis processes and controls for noncompetitive contract awards and related record retention practices require improvements to ensure contract award prices are fair and reasonable, adequate records are maintained, and noncompetitive procurements comply with relevant rules and regulations e.g. FTA, Common Grant Rules, and internal WMATA requirements.

Specifically, OIG noted some ICEs for noncompetitive contract awards were not adequately prepared by Program Offices and were accepted by PRMT and WMATA's Office of General Counsel (COUN).

OIG also found some contract price analyses for noncompetitive procurements were not prepared in accordance with FTA regulations and were approved by PRMT management and COUN.

OIG also determined WMATA cannot adequately account for its noncompetitive contract awards. One contract could not be located by PRMT and others were incomplete as they lacked adequate supporting documentation for the ICE and cost/price analysis.

In addition, OIG found a contract modification that did not constitute a cardinal change, exceeded the Program Office Contract Officer Representative's contracting authority limit and was inadequately supported. This is discussed in the "Other Matters of Concern" section of this report.

Based on the above findings, we made seven recommendations to the Chief Procurement Officer (CPRO).

² However, we reviewed and tested five of these six contract files because one contract file selected could not be located by PRMT. This matter is discussed in Finding 3 of this report.

We provided a draft of this report to the CPRO for review and comment on December 4, 2015. In the CPRO's December 14, 2015, response to the draft of this report, Management concurred with all of the findings. The complete text of Management's response is included as Attachment 1 to this report.

Details of these findings which are rated as High,³ Medium,⁴ or Low Risk⁵ and require management corrective actions to strengthen internal processes and provide for more effective and efficient operations follow:

Finding 1: Several inadequate ICEs prepared by Program Offices were accepted by PRMT. (Medium Risk).

ICEs accepted by PRMT for three of five noncompetitive procurements we tested were not adequately prepared by Program Offices. The contract value related to these inadequate estimates totaled approximately \$9.4 million. Specific deficiencies noted follow:

- One ICE lacked consideration of market factors and cost elements relevant to the procurement. The value of the related contract award was \$2.6 million.
- Two ICEs with contract values totaling \$6.8 million were prepared using historical noncompetitive procurement data, which is not an adequate basis to determine cost and pricing reasonableness. In one of these instances, a single source was used to develop the cost estimate for an acquisition of specialized equipment.

ICEs for procurement actions represent WMATA's best estimate of the most current price for the supplies, services, or construction being procured. Inadequate ICEs can result in increased procurement costs, fraud risks, inaccurate determinations of project complexity and benefits relative to cost, adversely affect financial planning and budgeting, and increase the risk of non-compliance with FTA and other rules and regulations.

FTA Circular 4220.1F, Chapter Six, Paragraph Six provides that grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. PRMT policy (PPM Section 3-5(c)) dated August 4, 2015, requires Program Offices to prepare ICEs for all procurement actions without input from contractors who may

³High - Exception is material to accomplishing organization objectives. Corrective action by appropriate Senior Management is required. Resolution would help avoid loss of material assets, reputation, critical financial information or ability to comply with critical laws, policies or procedures.

⁴Medium - Exception may be material to accomplishing organization objectives. Corrective action is required and the results are reported to management quarterly. Resolution would help avoid negative impact on the unit's assets, financial information, or ability to comply with important laws, policies, or procedures

⁵Low - Exception has a minor impact on the accomplishment of organization objectives but may result in inefficient operations. Resolution would help improve controls and avoid inefficient operations within the unit.

bid or propose on the procurement. ICEs should be based on product knowledge, prior experience and market factors. Contracting Officers are required to ensure preparation and documentation of estimates using appropriate sources such as published price lists; prices from past competitive procurements updated with inflation factors; and pricing data from other agencies. In the case of specialized equipment, care must be taken that the source of the estimates is not disproportionately obtained from one supplier.

OIG interviewed 14 personnel from PRMT, Program Offices and COUN responsible for developing and approving ICEs. In many instances, COUN, PRMT and Program Office representatives believed preparing an ICE using prior noncompetitive data was an acceptable method. In addition, Program Office staff identified concerns with the level of training provided.

Recommendations:

We recommend the Chief Procurement Officer (CPRO):

- 1.1 Establish and communicate a process to WMATA's Program Offices to adhere to PRMT requirements and ensure compliance with FTA regulations and Common Grant Rules relating to ICE development for FTA funded procurements. *(Medium Risk)*
- 1.2 Enhance training and awareness activities to ensure ICE's are properly prepared, approved and documented in accordance with WMATA and outside regulatory requirements. *(Medium Risk)*

Finding 2: Some contract price analyses were not prepared in accordance with PRMT/FTA requirements and guidelines. (Medium Risk)

Price analyses for all five noncompetitive procurements we tested were insufficiently prepared and approved by PRMT personnel. Contract value of the five procurements totaled approximately \$10.7 million. Specifically, we found the Contracting Officers performed price analyses by comparing the ICE to the contractor's proposal for federally funded procurements rather than using a cost analysis or an appropriate price analysis method to establish price reasonableness.

The WMATA PPM, Common Grant Rules, and Chapter 6, Paragraph 6 of FTA Circular 4220.1F require a cost or price analysis for every procurement action. The PPM and FTA circular further state a cost analysis is required when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. Further, a cost analysis must be obtained when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). A cost analysis is also required when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the

event of a change order. However, a cost analysis is not required if the price reasonableness of the proposed contract can be justified based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

While other price analysis techniques exist, including comparison to a valid Grantee's independent estimate, they are not considered by the FTA and Common Grant Rules as acceptable techniques for noncompetitive procurements. See the Appendix in the back of this report for a full description of price analysis techniques and their requirements.

PRMT personnel we interviewed responsible for cost/price analyses and supporting documentation stated, price analysis is the preferred method used for evaluating noncompetitive procurement actions. Many of the individuals stated it was too difficult to obtain the required elements from contractors to conduct a cost analysis and did not enlist OIG for assistance in pre-award cost reviews.

The use of inappropriate methods for performing price analysis for noncompetitive procurements appears related to a lack of clarity in the PPM regarding suitable price analysis techniques for noncompetitive procurements and the level of training and experience in performing cost analysis. For example, PPM 16-4(e) states, "in the event the Contracting Officer cannot obtain cost data from the contractor sufficient to perform a cost analysis, despite repeated attempts to obtain the data, a price analysis may be performed to establish price reasonableness utilizing a suitable price analysis technique." However, suitable techniques for noncompetitive procurements are not specifically identified and clarified in this section of the PPM.

Failure to obtain adequate cost or price analyses increases the risk of WMATA incurring unreasonable prices for goods and services, cost overruns, unreasonable estimates of future cost, and invalid determinations of cost incurred. Further, an inadequate cost/price analysis for FTA and other federally funded procurements can lead to grant noncompliance, unallowable costs, and potentially result in the loss of federal funds for mission critical operations and capital improvements.

Recommendations:

We recommend the CPRO:

- 2.1 Review the current process for the development and review of cost/price analyses and make appropriate changes, including PPM updates and clarifications to ensure appropriate cost/price analyses are applied to ensure compliance with applicable federal requirements. In addition, increased monitoring is needed to ensure cost/price analysis are properly completed, the cost/price technique is appropriate and the analysis is supported and accurate. *(Medium Risk)*

- 2.2 Ensure other WMATA resources are appropriately leveraged, including soliciting OIG for assistance with pre-award cost and pricing analyses. *(Medium Risk)*

Finding 3: One contract file maintained by PRMT could not be located and others lacked required supporting documentation. (Medium Risk)

One of six noncompetitive contract files we deemed noncompetitive was not produced by PRMT personnel upon request, and three of the five contract files we tested lacked the required supporting documentation for an ICE and/or cost/price analysis. Specific details follow:

- One contract file in our sample of 10, identified as a noncompetitive procurement could not be located by PRMT personnel. We interviewed PRMT personnel who were responsible for this contract file, and no one could account for it. In lieu of this, OIG received and reviewed the contract modification file associated with this contract and noted it included a Determination and Findings (D&F) document for the base contract but did not have the necessary approval signatures from the General Counsel and Chief Procurement Officer.
- Two noncompetitive contract awards totaling approximately \$3.4 million lacked supporting documentation for the ICE. For example, an ICE for a sole-source procurement did not have supporting documentation to identify the preparer, the method used to prepare the ICE, and support for the cost elements presented in the ICE. This condition was also noted for one contract modification totaling \$1.6 million that did not constitute a cardinal change.
- Three noncompetitive contract awards totaling approximately \$5.8 million lacked supporting documentation for the cost/price analysis. For example, a price analysis for a federally funded sole-source procurement was performed by comparing an ICE based on a GSA schedule to the contractor's proposal to establish price reasonableness. However, no supporting documentation was provided in the contract file to show if the GSA rates used in the ICE were applicable to the rates proposed by the contractor. Specifically, no supporting documentation was provided to satisfy the GSA schedule, performance, and delivery requirements (taking into account factors such as the individuals proposed by the contractor) met the required experience for the GSA rates used in the ICE. As a result, the contractor's proposal was compared to a GSA schedule that may not have been applicable to the contractor's proposed costs. According to the FTA, prices set by law or regulation (such as GSA schedules) are fair and reasonable. However, once these schedules are obtained, they must be verified that they apply to the grantee's situation and reviewed to ensure the grantee is being charged the correct price. This condition was also noted for three contract modifications totaling \$37.6 million that did not constitute a cardinal change.

Failure to adequately account for critical data in noncompetitive contract awards increases regulatory compliance risk and can result in a third party not being able to determine what critical contract actions (such as the ICE and cost analysis) took place. A third party should be able to evaluate contract documentation and ascertain the rationale for contract decisions. Contract file documentation is a key control and is useful in demonstrating what actions were taken with regard to a particular solicitation, proposal, or contract. The lack of proper maintenance of contract files also reduces WMATA's ability to manage projects and procurements effectively, efficiently, and economically. In addition, a noncompetitive contract awarded with an unauthorized D&F can result in an inability to determine if the decision for the contract to be noncompetitive was appropriate. This could potentially result in missed opportunities to benefit from the competitive market and unreasonable prices for goods or services.

FTA Circular 4220.1F, Chapter 3, Paragraph 3.d (1) requires grantees to maintain records detailing the history of a procurement according to Common Grant Rules. Further, the FTA Best Practices Procurement Manual Section 2.4.1 – File Documentation states, “a properly documented procurement file provides an audit trail from the initiation of the acquisition process to the beginning of the contract. The file provides the complete background, including the basis for the decisions at each step in the acquisition process. A well-documented file speaks for itself, without need of interpretation from the contract administrator. A well-documented file also supports actions taken, provides information for reviews and investigations, and furnishes essential facts in the event of litigation or legislative inquiries.” In addition, section 11-4(a) of the PPM states, “the sole source justification must be approved in writing by the Chief Procurement Officer and General Counsel prior to soliciting proposals. The D&F is required in the procurement file when awarding a contract under “other than full and open competition.”

PRMT personnel interviewed stated supporting documentation for the ICE and cost/price analysis were not included in the contract file because they believed it was not required. In addition, some PRMT personnel informed us supporting documentation may not be included in the contract file due to time constraints or the perceived criticality of the procurement.

According to PRMT personnel, COs are responsible for the manual process (scanning, copying, etc.) of digitalizing assigned contract files and inputting them into PRMT's current contract management system, PeopleSoft. Because of the manual nature of this process, there may be contract files within a CO's office that have not yet been uploaded into PeopleSoft. PRMT is aware of this issue and has developed a Contract Lifecycle Management (CLM) initiative to improve the quality of contracts, standardize business practices, and improve status reporting. In an update on the CLM submitted by the CPRO on August 7, 2015, efforts are currently being made to finalize the CLM, and once finalized, a training program for all users will be implemented. According to the CPRO, the CLM will “go-live” in the spring of 2016.

Regarding the D&F, PRMT personnel we contacted believed the contract would not have been processed without an approved D&F. Based on this response, we asked PRMT personnel to provide us a signed copy of the D&F, however, after multiple requests a copy was not provided. We also contacted COUN personnel for a signed copy of the D&F and were informed COUN's practice is to return signed procurement packages back to PRMT after review. COUN personnel could not confirm if a copy of the D&F is retained in this process and did not have a copy to produce to OIG.

Recommendations:

We recommend the CPRO:

- 3.1 Ensure quality control functions are being utilized on a continual basis to make certain complete files are maintained for each procurement action including all relevant and original contract documentation and adequate support for contract actions (including the D&F). *(Medium Risk)*
- 3.2 Provide needed training and/or guidance to PRMT personnel to ensure supporting documentation is maintained in contract files. *(Medium Risk)*

OTHER MATTERS OF CONCERN

Finding 4: A contract modification exceeded the Program Office Contract Officer Representative's (COR's) contracting authority limit and was inadequately supported. (Medium Risk)

During our audit, we identified a matter of concern regarding a \$136,405 contract modification that exceeded the COR's authority and was inadequately supported as follows:

- The contract modification was awarded at an amount that exceeded the COR's contracting authority (\$100,000).
- A \$131,333 ICE used by the Program Office to negotiate the contract did not include any supporting documentation. Additionally, an ICE in the amount of \$105,828 was also prepared by the Program Office's estimating department. However, while this ICE lacked the appearance of independence (as the Program Office submitted the contractor's proposal in their request to the estimating department), the amount of the ICE was lower and more supported than the ICE used in contract negotiations. The improperly supported ICE used to negotiate the procurement exceeded the value of the estimating department's ICE by \$25,505 (19 percent).

- The COR did not perform a cost analysis that verified all the cost elements of the contractor's proposal. Instead, the COR used the price analysis technique of comparing the ICE to the contractor's proposal to establish price reasonableness. However, as a federally funded procurement, this method is not acceptable for procurements requiring a cost analysis according to FTA regulations.

Exceeding contracting authority and failure to support cost estimates and analysis can result in increased costs to WMATA and fraud risks. Further, an inadequate cost/price analysis for FTA and other federally funded procurements can lead to grant noncompliance, unallowable costs, and potentially result in the loss of federal funds.

PRMT's memo appointing the COR limited the COR's contracting authority for contract modifications and change orders to \$100,000. PRMT's Contracting Operating Procedure 5(a) and 5(b), dated October, 2014 for Senior Project Manager's, supports the \$100,000 limit. OIG was not provided any additional documentation to reflect an increase in authority for the COR who approved the modification.

Section 3-5(a) of the PPM states, "the establishment of an independent cost estimate must be independent of the pricing of prospective bidders or proposers and must be done prior to the receipt of bids or proposals." Paragraph 6(a) of FTA Circular 4220.1F requires a cost or price analysis for every procurement action. The FTA circular further states, "a cost analysis must be performed when the offeror submits elements (that is, labor hours, overhead, materials, etc.) of the estimated cost, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation."

The use of an improperly supported ICE could reflect inadequate communication and coordination between the COR and the Program Office's estimating department. According to the Summary Record of Negotiations memo reviewed by the COR, the COR accepted the ICE that was not prepared by the Program Office's estimating department because the ICE from the estimating department was received after the negotiation was completed. According to documentation in the contract file, the Program Office made a request to their estimating department, (along with an attachment of the contractor's proposal) two days prior to reaching a signed agreement with the contractor. However, the ICE used was not prepared by the estimating department and was developed six months prior to reaching a signed agreement with the contractor. OIG also noted the Summary of Negotiations memo prepared by the COR was signed two months after the contract modification was executed.

PRMT personnel responsible for the oversight of this contract informed us they were unaware of the Program Office's procurement actions with respect to this modification since the Program Office did not contact them for guidance. Additionally, the contract modification had to be accepted by PRMT since it was submitted with a legally binding agreement (form C-35) between the contractor and the COR even though it exceeded the COR's contracting authority and was inadequately supported.

Further, PRMT managers we interviewed informed us Program Offices often challenge PRMT policy and circumvent PRMT policy through exceptions approved by executive management. However, one PRMT manager informed us, for the past six months, they have been in the process of cultivating relationships with their respective Program Offices to improve procurement planning and move from "spot procurements to strategic procurements." The PRMT manager also informed us in order for this to be accomplished, support from WMATA's GM and upper management is needed to enforce PRMT policy.

Recommendation:

We recommend the CPRO:

- 4.1 Ensure PRMT personnel perform periodic reviews of its delegation (Program Office Representatives) authority limits, procurement activities and related contract files to ensure the authority is still required, the amount is appropriate and they are acting within their authority and policy parameters. (*Medium Risk*)

OBJECTIVES, SCOPE AND METHODOLOGY

The objectives of the audit were to (1) determine whether PRMT is using sufficient cost/price analysis methods for noncompetitive contracts awarded, and (2) assess PRMT's ability to adequately account for its noncompetitive contract awards. The audit covered noncompetitive procurements awarded from July 1, 2013 to May 31, 2015.

Subsequent to the entrance conference, a review of the procedures set forth in the PRMT Policy and Procedure Manual (PPM) was conducted, and an outline of the audit was prepared. OIG efforts focused on identifying and reviewing rules and regulations⁶ governing noncompetitive contract actions. Specifically, requirements for cost/price analyses and the techniques used to conduct such an analysis were identified. This allowed OIG to determine if sufficient cost/price analysis methods were applied by PRMT for noncompetitive contract awards.

⁶FTA Regulations and Guidance/Best Practices for Grantees, Grant Management Common Rules, Federal Acquisition Regulations, the Federal Office of Budget Management Super Circular, the Government Accountability Office's Best Practices and Leading Practices in Acquisition Management, US Laws and Regulations, and training materials from the National Contract Management Association (NCMA).

To select contracts for detailed testing, OIG attempted to extract the population of noncompetitive awards for the period under review from WMATA's PeopleSoft contract database. However, a review of the database by the OIG IT Specialist concluded the contract universe in the PeopleSoft database⁷ is incomplete and, therefore, determined to be unreliable for sampling techniques. This conclusion was confirmed by PRMT's Technology Support Manager.

As an alternative, we requested and received a list of noncompetitive procurements awarded for the scope of our audit from PRMT's Branch of Policy, Records Management. In this list, PRMT identified 43 sole-source procurements and 401 contract modifications for the period under review.

Using the list provided by PRMT, OIG judgmentally selected 10 noncompetitive contracts to review for compliance with the PPM and other doctrine governing the contract actions. The judgmental sample was designed to include a mix of contract files based on the following attributes: the award date, procurement type (sole-source and contract modifications), the initiating Program Office, and the amount of the award.

Survey instruments were developed and utilized to ensure consistency in the gathering of information from WMATA personnel. Using those survey instruments, interviews were conducted with personnel within PRMT, COUN, Department of Bus Services, Rail Car Maintenance, and Chief Engineer Infrastructure Services regarding cost/price analysis methods for noncompetitive contracts awarded and the maintenance of the contract records. Specifically, we focused on the preparation and approval of ICE and cost/price analysis techniques applied to noncompetitive procurements and corresponding supporting documentation. The results were recorded and converted into auditor work papers.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We held an Exit Conference on November 20, 2015, to discuss the preliminary results from the audit with management personnel.

⁷Procurement is in the process of developing and implementing the Contract Life Management System (CLM) with an expected implementation date of spring, 2016. Based on a memo, dated August 7, 2015, this system will provide one system for all types of procurement activities including contract development, standardization, and automate the collection, storage, and flow of information.

ADMINISTRATIVE MATTERS

Corrective actions proposed (resolution phase) and implemented (closure phase) by the affected Departments/Offices will be monitored and tracked through the OIG's Audit Accountability and Resolution Tracking System. Department policy requires that you develop a final corrective action plan (CAP) for our review within 30 days of the issuance of this report. The CAP should set forth specific action items and target completion dates necessary to implement final corrective actions on the findings and recommendations contained in this report.

We appreciate the cooperation and assistance extended by your staff during the audit. Should you or your staff have any questions, please contact Andrew Clemmons, Assistant Inspector General for Audit, on (202) 962- or me on (202) 962-2515.

Attachment

cc: CHOS - B. Richardson
COUN - M. Pohl

PRICE ANALYSIS¹

Price Analysis is the most used method to determine a fair and reasonable price because it is less complex and time consuming than other methods. In order of preference, the accepted forms² of price analysis are:

1. Adequate price competition.
2. Prices set by law or regulation.
3. Established catalog prices and market prices.
4. Comparison to previous purchases.
5. Comparison to a valid Grantee independent estimate.
6. Value analysis.

Each form of price analysis is discussed in the following paragraphs.

ADEQUATE PRICE COMPETITION is dependent upon the following:

1. At least two responsible offerors respond to a solicitation.
2. Each offeror must be able to satisfy the requirements of the solicitation.
3. The offerors must independently contend for a contract to be awarded to the responsive and responsible offeror submitting the lowest evaluated price.
4. Each offeror must submit priced offers responsive to the expressed requirements of the solicitation.

If the four conditions just outlined are met, price competition is adequate unless:

1. The solicitation was made under conditions that unreasonably deny one or more known and qualified offerors an opportunity to compete.
2. The low competitor has such an advantage over other competitors that he/she is practically immune to the stimulus of competition.
3. The lowest final price is not reasonable, and this finding can be supported by facts.

¹ This price analysis outline was obtained from FTA's Pricing Guide for FTA Grantees.

² According to the FTA, a cost analysis is necessary whenever adequate price competition is lacking and for sole source procurements, including contract modifications and change orders, *unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.*

PRICES SET BY LAW OR REGULATION are fair and reasonable. Acquire a copy of the rate schedules set by the applicable law or regulation. Once these schedules are obtained, verify that they apply to your situation and that you are being charged the correct price. For utility contracts, this policy applies only to prices prescribed by an effective, independent regulatory body.

ESTABLISHED CATALOG PRICES are dependent on the following:

1. Established catalog prices exist.
2. The items are commercial in nature.
3. They are sold in substantial quantities.
4. They are sold to the general public.

The idea behind catalog prices is that a commercial demand exists and suppliers have been developed to meet that demand. We are just trying to ensure we get at least the same price as other buyers in the market for these items. You need to be sure that the catalog is not simply an internal pricing document. Request a copy of the document or at least the page on which the price appears.

ESTABLISHED MARKET PRICES are based on the same principle as catalog prices except there is no catalog. A market price is a current price established in the usual or ordinary course of business between buyers and sellers free to bargain. These prices must be verified by buyers and sellers who are independent of the offeror. If you do not know the names of other commercial buyers and sellers, you may obtain this information from the offeror.

COMPARISON TO PREVIOUS PURCHASES. Changes in quantity, quality, delivery schedules, and the economy cause price variations. Each differing situation must be analyzed through trend analysis. Also, ensure that the previous price was fair and reasonable. This determination must be based upon a physical review of the documentation contained in the previous files.

COMPARISON TO A VALID INDEPENDENT ESTIMATE. Verify the facts, assumptions, and judgments used. Have the estimator give you the method and data used in developing the estimate. For example, did prices come from current catalogs or industry standards? Be sure that you feel comfortable with the estimate before relying on it as a basis for determining a price to be fair and reasonable.

VALUE ANALYSIS requires you to look at the item and the function it performs so you can determine its worth. The decision of price reasonableness remains with the Contracting Officer. Also, contact the requiring activity for their expertise so they can participate in making the decision.

M E M O R A N D U M

SUBJECT: Response to OIG Audit of the
Washington Metropolitan Area
Transit Authority's (WMATA)
Office of Procurement and
Materials (PRMT)
Noncompetitive Contract Actions

DATE: December 14, 2015

FROM: PRMT – John S. Shackelford *JShack*

TO: OIG – Helen Lew

This is in response to the Office of Inspector General (OIG) Draft Audit Report entitled Audit of the Washington Metropolitan Area Transit Authority's (WMATA) Office of Procurement and Materials (PRMT) Noncompetitive Contracts Actions. The Objectives of the audit were to (1) determine whether PRMT is using sufficient cost/price analysis methods for noncompetitive contracts awarded and (2) assess PRMT's ability to adequately account for its noncompetitive contract awards. The audit covered noncompetitive contracts awarded from July 1, 2013 to May 31, 2015.

OIG found that PRMT is using insufficient cost/price analysis methods for noncompetitive contracts awarded and WMATA cannot adequately account for its noncompetitive contract and awards. OIG made seven recommendations to improve compliance with FTA policy.

Response:

Office of Procurement and Materials (PRMT) concurs with these findings with comments to follow during the requisite time frame.

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