

11/01/2008

Rev. 1, 04/14/2009

Rev. 2, 07/01/2010

Rev. 3, 02/15/2011

Rev. 4, 03/18/2013

## CHAPTER VI

### **PROCEDURAL GUIDANCE FOR OPEN MARKET PROCUREMENTS**

1. **COMPETITION REQUIRED.** Except as permitted by Federal law or regulations, the Common Grant Rules require a recipient of Federal assistance to use third party procurement procedures that provide full and open competition. The Federal Transit Administration's (FTA) enabling legislation at 49 U.S.C. Section 5325(a), also requires an FTA recipient to conduct all third party procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition as determined by FTA. The recipient may make third party contract awards on the basis of:
  - a. **Solicitation by the Recipient.** Compliance with the solicitation procedures described in this Chapter will fulfill FTA requirements for "full and open competition."
  - b. **Unsolicited Proposals.** A recipient may also enter into a third party contract based on an unsolicited proposal, as defined in Chapter I of this circular, when authorized by applicable State or local law or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, FTA expects the recipient to seek competition. To satisfy the requirement for full and open competition, FTA expects the recipient to take the following actions before entering into a contract resulting from an unsolicited proposal:
    - (1) **Receipt.** Publicize its receipt of the unsolicited proposal,
    - (2) **Adequate Description.** Publicize an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought,
    - (3) **Interest in the Property or Services.** Publicize its interest in acquiring the property or services described in the proposal,
    - (4) **Adequate Opportunity to Compete.** Provide an adequate opportunity for interested parties to comment or submit competing proposals, and

(5) Contract Award Based on Proposals Received. Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, the recipient may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offer or to provide the specific property or services proposed.