

## Chapter Eight

Contents. We're gonna talk about the process of justifying noncompetitive proposals. When HUD approval is required and the justification form Introduction. Now You see on the over here, we've talked about micro-purchases, chapter five. We've talked about quotes which is also in chapter five which is a competitive solicitation method. We've talked about IFBs, RFPs and RFQs. These four processes right here are the competitive solicitation method. Now we're going to talk about two more ways where you don't have to do a competition or you cannot do one. And that first one is the non-competitive chapter 8. Now, a non-competitive includes sole source and single source procurement. A sole source is when the item is only available from one source. A single source is when we choose to go to one source. Non-competitive also occurs when, you do a bid, a quote an RFP and you only get one and it's justified. And we'll talk about how it can be justified.

When is it used? Non-competitive procurement typically occur when it's only available from a single or a sole source. Now Let's talk about examples. I had told you earlier that some of your largest procurements were single or sole source. What are they? You don't recognize them as procurements but you pay the most money to these sources than anybody else you pay 'em to. Utility companies, thank you Richard. Utilities. Most of your utilities are probably a sole source because they're provided by a government agency. Now remember, in chapter 14 of the handbook, HUD says, any time you buy something from another government agency, it is automatically exempt from bidding. You don't have to bid with another government agency. Examples; Sewer and water are only available from government agencies. Is that not correct? Do you recognize that? Yes, sewer and water. Sometimes In the rural areas, electricity is only available from a rural electrical corporation. Now in the big city, like Albuquerque, like Las Cruces, like Santa Fe, you might have competition for utilities. We're gonna talk about that in chapter 17, the last chapter. But I'm gonna give you a forewarning.

You can do all of the competitions you wish. You probably aren't going to save much money at all. A lot of housing authorities have done RFPs for utilities and the brokers that win it take all of the profit and they get a minuscule profit. There's another thing that we buy from a single or sole source that each one of you has. Who's the largest in the room right now, Albuquerque, yeah, most likely. Where are you Albuquerque? Who is your software provider? MRI, used to have TenMass but MRI bought them. So, how much do you spend with them every year to oversee your software? How many units do you have? 900? I bet you you're spending about 50-60 thousand. Good guess, okay good. And every year, you spend 50 or 60 thousand. Now you know bids have to be redone every how many years? Five years. Five years. And you've had, I know it. I gave you your answer. (laughter) - [Male Narrator] Well I didn't want you to be wrong. Here we go. And it's been over five years since you've had MRI though you've been there since then, right? - [Male Narrator] Okay, were you there when I visited some time ago? No, okay. Well that's about eight, nine years ago. So here we go. Have you done another bid for MRI, for your software? So you are buying those services, 50,000 dollars a year from MRI, hold on a minute, don't give me that guilty look, you've done nothing wrong. - [Female] Oh it could be better. - [Male Narrator] Oh there she is. I didn't see her. I would have been beating up on her. So you all have been spending 50,000 dollars a year with MRI and you've done no bid since then.

Well a cost analysis- Okay, I'm going to repeat. What she said was, they did an analysis of the cost and part of their analysis was, how much would it cost us to replace it? And it would be a half a million. Or more, right? So, so, they decided not to replace it. Complete, this is a joke, completely ignoring the HUD rules that you have to re-bid every five years. No, just a minute, I

just told you it's a joke. Let me tell you why it's a joke. Because you don't have to rebid it. The sole source justification is because they're not buying a new source. A new software. Since they're buying a new software and MRI and who has YARDI? And who has Lindsey? And who has Emphasys? See, all these other softwares are there and you're not doing bids because you can only do a bid or an RFP to replace it. You can't do a bid or RFP to see if another company, a competitor will take care of YARDI and Emphasys and MRI, which yours is TenMast. So it is a justified sole source. Now remember, if you ever do replace it, then you have to do a competition. In fact, if you do an upgrade, I remember my provider at my agency said we've done a new upgrade to the system. And I said okay, how much is it? And they said 50,000 dollars. And I said okay, let me do some analysis. And I analyzed the cost of buying a new software and the cost of buying a new software was much more expensive than the upgrade, so we decided we would stay with the upgrade. Except that we didn't want to pay 50,000 dollars.

I didn't at the time, we weren't that pleased with the software and we started considering that maybe we'll just buy a new software anyway. It's called spending good money to chase bad. Are you with me? We didn't really like our software. We thought we could do a lot better with something else. So we told the company, you know what, we're not gonna give you 50,000 for the upgrade. We're gonna do a new RFP and we're gonna look at other products to see if they're better. Do you know what the company said right then? Oh Richard, you are so smart. The company said okay, we'll give it to you for free. For no charge. Oh, did that make us feel warm about them? No, because they were trying to charge us 50,000 dollars for something they were willing to give us for no charge. And we found out that they had done the same thing for other people. Yet they were still trying to get the 50,000. Not nice, but that's okay. We won for the moment, yeah. Okay. We did. We were only lukewarm. We were only lukewarm a full integration of your old data. And still alive. We had a number of people just walk out the door in the middle of it. It's just so stressful. So we were lukewarm about the thought, yes. Full source. Now, the second item is, the public exigency emergency does not permit a delay. If the creek is rising and water's gonna come through the door, you better not be on the telephone taking bids for sand bags when the water comes through the door. That makes no sense, correct?

Yeah, so you have to take care of emergencies. However, however- your lack of action is not an emergency, a justified emergency. For instance, I've had people tell me yeah, I had to get the sandbags and I had to do the same thing last year. Well wait a minute. Is this a shock to you, that the water was rising? He goes no, we've been hearing about it for weeks, but I've just been too busy to take bids, to make arrangements. That's not a true emergency. Your lack of planning does not an emergency make. You with me on that thought? Yeah. HUD expressly authorizes non-competitive proposals. They've done it a number of times. And remember, don't do this folks. We have never seen anybody else who provides these services. We've never heard of anybody else. That doesn't work. Those loose kind of justifications that we like to write about things will do you more harm than good. We just say we continue to explain. The public emergency. HUD approved it. We did a bid and only got one. Now we're on the issue of we only did one. Statement is the unique circumstances that require an award and we only did one bid. We only got one bid. We will say we did a bid. We advertised it, we did outreach, we only got one. Descriptions of the efforts made to find competitive resources. Now, for me and my clients, when we have a deadline approaching and we only have one bid or one proposal, we automatically do an extension. We issue addendum and tell everybody, we hereby extend for two weeks and then statement for the efforts made to find. We double up our outreach efforts.

We call all the firms that we had sent outreach to that didn't go get the documents. We call everybody who did get the documents I've done an extension, will you plan to respond? And if they say no, we ask them why and we write it down. Several years ago in Illinois, I had a guy who waited way too long on his obligation deadline. And he had about 250,000 dollars left. And HUD of course was all over him. You gotta obligate, I've been telling you, you've gotta obligate. Does that ring a bell? You've got to obligate. Well, finally we got it together and did a bid. And he was up against the deadline so we did big outreach and we only got one. And we had time for one extension. So we did it and we actually hired a temp and he made 70 calls to all of the firms he could find, explaining about his bid and they all said I can't respond. In this area of Illinois, the economy had just started booming, we had a new administration in and everybody was too busy. And he still only has one. And it was about 250,000. We had to let it expire two weeks before the obligation deadline we had to let the bid expire. And we had done actually two extensions and made all these calls. Do you know that HUD approved that in 15 minutes? 70 phone calls to contractors with a detailed spreadsheet of what date and time and what each one of them said. It was obvious that even if they were to extend again, they weren't going to get any bids because of this condition about the booming economy at that moment. Are you with me on those thoughts? Now remember, that particular issue of a booming economy kind of wears thin because now three and a half years later, there are a lot more construction companies that have been formed or in business. You know what happens when the economy booms?

Really good people at construction companies, superintendents divide off from that company and start their own because they say ooh, I can make all that money, I don't have to work for somebody else. But that takes two or three years. So that excuse that we used before isn't as applicable today. But it was applicable then and they approved him in 15 minutes. And then the HUD people said sign the contract. Because that's how you obligate. Yeah, we put resources in and had the contract signed in a couple of days. Yeah, okay. But, he had this whole form, back up and he attached to this form when he sent it to HUD, all the spreadsheets, everybody who they called. He attached copies of the bids, copies of all the original outreach. Everything, the copy of the bid documents. Yeah, let me ask you John, if you were to get something that extensive, with 70 calls to vendors, would that give you confidence? Yeah? Yeah, I think so. Yeah, that HUD person said that- Well what could you do because we want three bids, right John? Oh yeah, well let's go back to that, yeah. And in fact, when the guy approved it in 15 minutes, he called me and said look at the letter, I got it. And the HUD guy who approved it said great outreach, but- and then the HUD guy said this was all caused by your lack of action on this issue for the past two years that these funds have been available. I said touche. Because you put me through a lot of work too these last couple of months.

I had to drop a bunch of things and put it aside. He learned his lesson. He's been more timely in his stuff. Consistently use the same form, following the procedure exactly set in that area of the handbook. This area right here, end of the CFR. Now, that form has all of the additional stuff on it that you have to do, including the independent cost estimate and the cost price analysis and the licensing and the insurance. All of your due diligence is on the second page of that form, okay? You have costs, you've gotta be reasonable. We are so lucky that during this booming time, with him up against a deadline to allocate, that this contractor who was a common construction contractor for that housing authority. We are so lucky that they did not jack up their price because they knew that most likely, see when you start doing extensions, the contractor knows that you don't have enough bids. He didn't jack up his price. He left his price reasonable. And it was within budget. It was within the obligation money. Yeah, everything worked out for him. Don't think that you're gonna get lucky when you let obligation deadlines start to get real close and you've got to obligate funds. Contractors don't always

cooperate that way. In fact, typically they do not. Okay? Remember, that form has to go to HUD anytime the procurement is over 250,000 dollars. It does not revert to the 60,000 for New Mexico or the 50,000 for Texas. The HUD will do it, cover it in chapter 12. It has to be approved, but it still has to be in your file and filled out no matter what the amount. Are you with me on that thought? It still has to be on file. Okay? We've already gone over all of this. This is all right off the HUD form. The justification documentation form. Justification must clearly be documented and indicate necessity and circumstances including these items that we just went over on that HUD form. Are you with me?