PROCUREMENT CASE STUDIES
Key issues

New Copier:

- The specs should define the features or functionality you want – naming a specific model doesn't do that. What exactly about the cited Xerox model would make another printer "equivalent"? Number of pages per minute, physical dimensions, type of Internet connection (Ethernet, WiFi?), copy resolution, paper capacity, etc.?

Good Specs or Bad? (Roof replacement):

What's good?

- The agency incorporated many elements of project (cleanup, permits, etc.). You need to think about the **entire** project.

What's bad?

- Specs are too vague regarding type of shingles desired. If this is a bid – where you have to award based on price – the low bid may be for shingles of a lower quality or lifespan than you want.
- What does "coordinate" mean? Do they have to be identical to, match, complement? Be specific - avoid words that are subject to different interpretations.

Replace an engine:

This looks like a sole-source procurement, which requires prior MDOT approval. It might or might not be OK. For approval as a sole source:

- Can they justify it as an emergency procurement? If it's TRULY an emergency, a sole-source procurement is justified. But you still have to complete a price or cost analysis to demonstrate why the price was fair and reasonable and get MDOT approval.
- Is this "associated capital maintenance parts"? In order to use this circumstance to justify sole source:
    - The item must be an associated capital maintenance item (equipment, tires, tubes, or material, each costing at least 0.5% of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used).
    - The item must be procured directly from the original manufacturer or supplier of the item to be replaced.
    - Prior to execution of the contract with the vendor, you must first certify in writing to the FTA (MDOT) that the manufacturer or supplier is the only source for the item and that the price is no higher than the price paid for such item by like customers. Approval of the FTA is not required -- just certification of the grantee (as grantee, MDOT would then have to submit certification to FTA).

Maybe this isn't a sole source. Was it a blanket service agreement done through a competitive procurement? (The agency anticipated needing engine replacements and did a competitive procurement in advance. Then they can use that procurement to purchase each engine as the need arises.)

More or less than $100,000? (Which clauses to use):

While the agency has the responsibility to determine which clauses apply and to weed out the ones that are irrelevant to the purchase, it's best to err on the side of including clauses that might or might not apply, depending upon what the bid amounts are. The particular clauses will say "For projects over $100,000," so the contractor will be able to tell if that clause applies, based on the amount of their bid.

Buy America Certification:

This certification is a condition of responsiveness. If the bidder does not submit a signed certification with the bid, submits the wrong certification of compliance, or certifies both compliance and noncompliance, that bid is non-responsive and cannot be considered. (An exception may be granted if it was inadvertent or a clerical error, but this requires the bidder to provide a detailed explanation to the FTA Chief Counsel explaining the circumstances within 10 days. Approval is not common.)

If the bid was under $100,000, Buy America doesn't apply, so it doesn't matter if the contractor filled form out incorrectly. However, it might make you question the bidder's technical expertise during the responsibility determination. If over $100,000, you may not consider their bid.

What A Great Price! Or Is It? (Dramatically different bids):

- Because two offers were similar, the $140,000-$145,000 is probably reasonable. You need to compare them to the independent cost estimate (ICE). Was the ICE valid? Have market conditions changed? Have material costs changed?
- Why is the low bid so much lower than the ICE and the other offers?
- You need to ensure the low bidder understood the project, can really meet all requirements, meets the responsibility determination, etc. Items you can you look at to determine these things: compare the bidders' derivation of costs; review the bidders' financial data and references; examine their subcontractors, etc.
- What factors could legitimately make the low bid lower than the others? Lower overhead, operating at a small margin just to stay in business, ability to piggyback on another project (already have crew in the area, for example) – but you need to determine if those factors really justify a bid that is so much lower.