



Meeting Date: August 25, 2021

Agenda Item: D.2

## AGENDA SUMMARY REPORT

**SUBJECT:**

Discussion and Possible Approval of MTA Procurement Policy

**SUMMARY:**

The purpose of this policy is to establish guidelines that meet or exceed the procurement requirements for the purchase of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when state or federal funds are being used in whole or in part to pay for the cost of the contract.

**STAFF RECOMMENDATION:**

Approve MTA's Procurement Policy dated August 25, 2021.

**ATTACHMENTS**

Draft Procurement Policy dated August 25, 2021



## **MTA Procurement Policy**

### **INTRODUCTION**

Mendocino Transit Authority (MTA) is a Joint Powers Agency, formed and operating in accord with the California Government Code, Section 6500, et seq., of the California Public Utilities Code.

### **LEGAL AUTHORITY**

Policies and procedures governing MTA procurements of supplies, materials, equipment, vehicles, services and construction are derived from and conform to:

1. Applicable Federal law including 49 Code of Federal Regulations (CFR) Part 18, specifically Section 18.36 , and the Federal Acquisition Regulation (FAR).
2. Federal Transit Administration (FTA) Circular 4220.1.F, "Third Party Contracting Requirements"
3. Applicable State of California laws
4. California Public Contracts Code
5. Rules and regulations established by the County of Mendocino and the MTA Board of Directors

Certain standards, regulations, orders of the United States Office of Management and Budget, and requirements for grants-in-aid to local governments mandated by the U.S. Department of Transportation, Federal Transit Administration (FTA), and the Office of Management and Budget apply to MTA for procurements financed wholly or in part with federal funds. Appropriate portions of those federal requirements, but not all, shall apply to procurements that are not funded with federal dollars.

### **POLICIES**

The procedures herein are designed to implement the fundamental principles of procurement as follows:

1. Foster maximum open and free competition;
2. Promote the greatest economy and efficiency;

3. Ensure adherence to proper standards of conduct by MTA officers and employees;
4. Maintain and implement procurement policies and procedures that comply with applicable federal, state, and local laws, and regulations;
5. Establish and maintain an arm's length relationship with all contractors and suppliers;
6. Treat all prospective contractors, consultants, and suppliers in an equal and equitable manner;
7. Provide opportunities for remedy and resolution of contract claims or disputes.

## OBJECTIVES

The Objectives below support the Policies listed above

1. Conserve public funds through reductions in cost and improvements in quality of supplies, equipment, materials, services, and construction procured.
2. Reduce the overhead cost of contracting, buying, and selling to the maximum extent possible.
3. Achieve and promote cost-effective procurements by:
  - a. Analyzing alternative approaches for each procurement, such as: purchase, lease, intergovernmental and interagency agreements.
  - b. Structuring each procurement through consolidation of similar products, services and separation of dissimilar ones.
  - c. Eliminating the purchase of unnecessary or duplicate materials and services.
  - d. Encouraging price and quality competition among suppliers, contractors and consultants.
4. Reduce the volume and streamline the flow of paperwork while maintaining accurate documentation of procurements.
5. Utilize outside competent technical expertise where needed in the initiation, administration and completion of procurements and contracts.
6. Adhere to participation goals and procedures incident to MTA's Disadvantaged Business Enterprise (DBE) Program.
7. Comply with federal, state, and local procurement laws and regulations.
8. Comply with applicable standards of conduct and ethics.
9. Administer contracts and monitor supplier performance to ensure that full value is received and desired quality is achieved.

## LOCAL PREFERENCE

In 2010, the MTA Board of Directors adopted a policy intended to help bolster the local economy by giving a preference to local contractors. That policy is repeated below and is included here as a part of this procurement policy.

### **PURCHASING, LEASING & CONTRACTING POLICY** **Local Vendor Preference**

In order to promote the economic health of the County, the Mendocino Transit Authority has established a local vendor preference. The following percentages will be added to a local vendor's evaluation or score:

Professional Services 5%

Construction 4%

Purchase of Goods or Equipment 2%

A Local Vendor is defined as:

1. Conducting business in an office with a physical location within the County of Mendocino; and

2. Holding a valid business license issued by the County of Mendocino or any City within the County.

The Executive Director is authorized to uphold or deny Local Vendor status if such status is challenged or considered a subterfuge.

Local Vendors must claim local vendor preference when submitting bids, proposals or qualifications, and also submit a copy of the business license.

For contracting opportunities for which federal or state law prohibit the use of local preference, no preference will be given.

In the case of the purchase of Goods or Equipment, the Executive Director is authorized to increase the local preference percentage to as high as 4%, upon request of a qualified local vendor, with a showing of higher-than-normal local economic impact.

## **DEFINITIONS**

Terms used throughout this document are defined below.

**Alternate.** In a construction solicitation, MTA may request a base bid for specified work, plus one or more Alternate bids for additional work to be awarded if sufficient funding is available.

**Bid** is a response to any IFB, RFPQ, or informal price quotation. The term bid is used interchangeably and has the same meaning as a price quotation.

**Bond** is an agreement to protect against loss from the actions or inactions of bidders and contractors. The firm presenting the bond forfeits the amount in the event the contractor fails to perform the work or provide the services for which the firm is contracted. Types of bonds used most frequently include:

**Bid bond** ensures that the bidder will execute any contract awarded within a specified number of days. It may be in the form of a money order, cashier's check or certification statement from a bonding agent.

**Proposal security bond** ensures that the proposer will execute any contract within a specified number of days. It may be in the form of a money order, cashier's check or certification statement from a bonding agent.

**Payment bond** is a promise by a surety (bonding agent) assuring payment to all persons supplying labor, services or materials in the work under contract.

**Performance bond** is a promise by a surety (bonding agent) assuring that once a contract is awarded, the contractor will perform its obligations under the contract.

**Capital Expense** is a purchase of any fixed asset costing \$1,000 or more, with a useful life of two years or more.

**Capital Project** is a procurement involving construction, or purchase of materials, services or vehicles (rolling stock) for which a specific budget is prepared and executed.

**Contracting Officer** has the same meaning as Purchasing Manager. For MTA, the Executive Director (ED) has these responsibilities.

**Contractor** refers to any bidder, proposer, offeror, supplier, business, company, or other enterprise that MTA has selected to perform work or provide products or services. This may be via Purchase Order and Agreement (PO) or other written commitment.

**Cost Analysis** is done by the Project Manager or Finance Manager if the price analysis is deemed inadequate by the ED. It determines if each element of cost (labor, materials, overhead, profit) proposed is an accurate and reasonable prediction of the actual cost to be incurred. All reasonable costs of performing the work can be considered.

**F.O.B.** means Free on Board and is used to determine the physical point and responsibility for payment of freight/shipping charges as well as the point at which title to goods or products passes to the buyer.

**Invitation for Bid (IFB)** is a solicitation of formal, sealed bids. The IFB clearly, accurately and completely describes the product and/or services to be procured using detailed technical specifications. An IFB requires advertising, distribution to all bidders on the bid list, bonds, sealed bids, etc. Any resulting contract is awarded to the lowest responsible and responsive bidder.

**Major Purchase** is a procurement expected to be worth \$100,000 or more.

**Micro Purchase** is a procurement of up to a maximum of \$3,000. One price quote is required if possible when selecting a supplier. If only one is available, a Sole Source purchase may be used.

**Option** is a unilateral right provided in a contract by which, for a specified time period, MTA may elect to purchase additional equipment, supplies or services or may elect to extend the term of a contract.

**Price Analysis** involves examining and evaluating a proposed price submitted by a bidder/supplier without performing a cost analysis. Price analysis does not evaluate separate cost and profit elements. The proposed price is evaluated and independently verified using industry data.

**Price Quote/Quotation** is a firm price obtained from a supplier or contractor in an informal manner (US mail, facsimile, email) in response to an MTA RFPQ. It shall be written, but no other details or submittals are required. The term "quote" and "informal bid" are interchangeable.

**Project Manager** is the person designated by the Executive Director to lead the project from conception to completion. Project Manager coordinates as necessary with staff, suppliers, and outside agencies/jurisdictions to insure successful project completion, and may be authorized to commit funds as necessary.

**Proposal** is an offer submitted to enter into a contract, contract modification or contract termination settlement, including specified price, and required details of scope of work or equipment, service or vehicle. A Proposal is a response received to a Request For Proposals (RFP).

**Purchase Order and Agreement (PO&A)** is an offer by MTA to buy certain supplies, equipment, service, vehicles or construction from commercial sources subject to the terms and conditions stated in the PO&A and any additional terms and conditions stated in the solicitation. The PO&A shall include, as binding attachments, the Solicitation and the bid or proposal.

**Purchasing Manager** or Contracting Officer is the MTA Executive Director or designee, who is authorized to sign the PO&A and commit funds on behalf of MTA. The Executive Director must be aware of and follow proper procurement procedures.

**Responsible** refers to the bidder's potential ability to satisfactorily complete the scope of work or services as evidenced by such factors as experience in the field, financial and physical plant capacity, satisfied former clients, insurance coverage and bonding capacity.

**Responsive** refers to the bidder's compliance and conformance with all aspects of the solicitation. It refers to the completeness of the submission in meeting the requirements and specifications of the solicitation such as bid/proposal form, bonds, insurance certifications, provision of information on prior experience and any other items required by the solicitation.

**Request for Price Quotation (RFPQ)** is an informal solicitation for a Small or Micro Purchase of materials, supplies, or equipment, but can be used for clearly defined services or construction. Three price quotes are required if possible. An informal solicitation has other, less stringent requirements:

- Expenditure amount is less than \$100,000
- No formal time or date when quote is due
- No sealed bid requirements
- No bond requirements
- The Executive Director may delegate award authority to the Project Manager.

**Request for Proposal (RFP)** is a formal solicitation for professional consulting services, supplies, materials, equipment and vehicles, designed for an award based upon criteria other than price alone. The RFP is an alternative to the IFB procurement method. It is most often used in negotiated procurements for hard to quantify or describe items or services because it allows the Proposer to suggest the item or service that might best suit MTA's needs. Selection must be based on factors such as proposed scope of work, quality of products, price and qualifications.

**Request for Qualifications (RFQ)** is used when procuring Architectural or Engineering (A&E) or related services that lead to construction or a remodel project. The RFQ is an alternative to both the RFP and IFB procurement methods where price/cost is not a determining factor in the selection process. In this process, Statements of Qualifications are requested from interested firms able to provide the scope of services desired by MTA. From those responding, MTA will evaluate and select the best qualified. This process may or may not involve in-person or telephone interviews.

After selecting the best-qualified firm, MTA will negotiate costs, fees, and specific deliverables. The Executive Director will award a contract if the project is budgeted and under \$100,000 or will recommend award to the MTA Board of Directors if \$100,000 or more.

**Small Purchase** is a procurement of up to a maximum of \$99,999 for supplies, materials or equipment. At least three price quotations must be received if possible, either via US mail, email or FAX, or from a catalog or established Government Rates, or in response to an RFPQ.

**Withholding** is a specified percentage of payments agreed to in a PO&A that are held by MTA until the project, generally construction or professional services, is completed.

## **RESPONSIBILITIES**

The Board and each Manager below plays a role and has responsibilities in ensuring that MTA complies with applicable laws, rules and regulations.

## **BOARD OF DIRECTORS**

The Board of Directors establishes policy, awards Purchase Orders & Agreements for all Major Purchases and hears appeals from potential contractors and the public.

## **EXECUTIVE DIRECTOR (ED)**

The Executive Director is responsible for the duties usually assigned to a Purchasing Manager or Contracting Officer. The ED ensures Board policy is implemented through oversight or audit of the procurement and purchasing functions and monitoring of each procurement. The ED may take on the duties of Project Manager for especially large or complex projects. The ED shall be responsible for:

1. Assigning Managers to be Project Managers for specific projects;
2. Verifying that sufficient funding is available, or will be available, for each project;
3. Approving all Purchase Orders & Agreements worth less than \$100,000, but may delegate that authority to a Project Manager;
4. Recommending to the Board award of contracts worth more than \$100,000;
5. Determining the need for and providing training to Project Managers and new Managers;
6. Selling surplus MTA property but may delegate to a Manager; and
7. Maintaining and revising standard terms and conditions, FTA clauses and generic enclosures necessary to produce a complete procurement document.

## **PROJECT MANAGERS (PM)**

**MTA Managers** may be appointed by the Executive Director as **Project Managers** for specific projects. They may initiate projects and, with approval of the project by the Executive Director or Board of Directors, and inclusion of sufficient funding in the appropriate budget, may issue an RFP, IFB, RFQ or RFPQ. Under the direction of the Executive Director, PMs shall be responsible for:

1. Ensuring that procurement actions within their Departments comply with the provisions of this document.
2. Establishing funding, short-term execution and long-range planning of procurements.
3. Taking the lead from planning through completion of the procurement, coordinating with other Managers as needed.



4. Determining the required quantities, delivery timeframes and other parameters.
5. Developing a scope of work or services.
6. Developing specifications that fully define the product or service desired.
7. Develop a bid form and bidder mailing list.
8. Conducting an Independent Cost Estimate.
9. Coordinating the publication of bid documents, public notices, and posting to the MTA web site.
10. Organizing the evaluation committee to review all bids received.
11. Preparing any Memorandum for the MTA Board of Directors' approval.
12. Preparing Purchase Orders for Executive Director's signature.
13. Coordinating with the Executive Director and the Contractor to finalize Contracts.
14. Monitoring contractor performance; documenting any problem areas.
15. Contract close-out.

## **FINANCE MANAGER**

In addition to the duties of potential PM work, the **Finance Manager** is responsible for:

1. Providing ED and PM's up-to-date information on budget, revenues and expenditures.
2. Processing payments and requests or drawing down revenues for all capital expenditures with proper and adequate documentation from PMs.
3. Maintaining a listing of procurement numbers and tracking issue and due dates.
4. Maintaining contract administration files; notifies PMs of needed and/or missing documents.

## **STANDARDS OF CONDUCT**

### **DUTY TO DISCLOSE**

The Executive Director and other MTA managers and supervisors shall not be involved in any purchasing decisions, tasks, or procedures, (including participation in initiation, award, or administration of a contract) in which they or persons related to them have a real or apparent conflict of interest. In cases where there may be such conflicts of interest, employees have

the responsibility to report in writing such conflicts to the Executive Director. If the conflict is with the Executive Director, the responsibility is to report to the Chair of the Board. Failure to make such disclosure is subject to disciplinary action.

## **CONFLICT OF INTEREST**

1. The MTA Board of Directors has adopted a Conflict-of-Interest code, under which certain designated employees are required to disclose economic interests and are prohibited from participating in decisions, which may have an effect on their financial interest. The terms and requirements of the Conflict-of-Interest Code are incorporated herein by reference.
2. No employee, officer or agent of MTA shall participate in procedures, tasks, or procurement decisions relative to initiation, award, or administration of a contract, if a conflict of interest, real or apparent, exists. Such a conflict of interest arises when any of the following has a financial or other interest in a firm that participates in an MTA bidding process or that is selected for a contract award involving:
  - a. The employee, officer or agent;
  - b. Any member of an employee's immediate family;
  - c. Business associate of a and b above;
  - d. An organization which employs, or which is about to employ a current MTA employee.
3. The standards governing the determination as to whether such an interest exists are set forth in Sections 1090, 1091, and 1091.5 of the California Government Code.

## **GRATUITIES AND CONTINGENT FEES**

No Director, officer, employee or agent of MTA shall knowingly solicit, accept, or agree to accept gratuities, favors or anything of more than a nominal monetary value in connection with actual or potential procurement and contracting activities. Under this policy, the term "nominal monetary value" shall be defined as a value of \$100 or less.

## **CONFIDENTIAL INFORMATION**

No employee of MTA involved in purchasing or procurement shall use confidential information for his or her actual, anticipated, or apparent personal gain, or for the actual, anticipated, or apparent personal gain of any person related to such employee. "Confidential Information" is defined as any proprietary, privileged, or nonpublic information, coming to the employee's attention as a result of employment by MTA, the knowledge of which makes financial gain possible.

## **DISCIPLINE FOR VIOLATION**

The violation of any of these Standards of Conduct will subject the violator to disciplinary proceedings or action deemed appropriate by the MTA Executive Director and HR Director, up to and including dismissal.

## **PROCUREMENT TYPES**

MTA is not required to engage in a formal competitive bid process for procurements that fall under the following categories:

Mini-Micro Purchases are under \$500.

Micro Purchases where the amount is not expected to exceed \$3,000. At least one price quote is needed.

Small Purchases where the amount is expected to equal or exceed \$3,000, but not \$100,000. At least three quotes are required.

Emergency Purchases where the equipment, materials, supplies, or services are needed on an emergency basis.

Sole Source where the procurement qualifies as a sole source procurement as defined in this document.

Major Purchases, which are expected to exceed \$100,000 for materials, supplies, professional services, vehicles and construction require formal, competitive bids.

### **MINI-MICRO PURCHASES**

Items costing less than \$500, such as fuel (for individual vehicles) office supplies, travel, lodging and meals, may be purchased either using an MTA-issued credit card, petty cash or by personal funds reimbursed by MTA. POs are not required for these purchases.

1. Credit Cards are issued to Managers and Supervisors to facilitate purchase of urgently needed items and to streamline business travel. Each card holder shall submit receipts, noting the purpose and account name or number, at least monthly.
2. When a credit card is not viable, employees, with their supervisor's approval, may make a purchase of less than \$50 and receive petty cash in advance if necessary, or reimbursement, by submitting the receipt, noting account name or number. Amounts over \$50 should be handled by credit card, but, with approval of a Manager, payment of approved purchases, with account number or name, by personal funds shall be reimbursed by MTA check.

### **MICRO PURCHASES**

Purchases up to \$3,000 are handled by a Project Manager and require one quote if possible. All micro purchases shall be made with adequate and reasonable competition for the supplies, material, equipment or service being purchased. Use of catalog prices and established Government Rates are acceptable sources.

### **SMALL PURCHASES**

Purchases of \$3,000 or more, up to \$99,999 do not require formal competitive bidding, but shall conform to the following:

1. Small purchases must have price quotations obtained from a minimum of three potential suppliers. Quotes may be obtained from current price lists or established Government Rates, by e-mail, by internet research, by facsimile, by telephone (confirmed in writing or by email), or in response to a RFPQ.
2. Care must be taken to ensure the price quotes compare the costs for the exact same product, service, or material from each of the potential suppliers.
3. A Request for Price Quotation (RFPQ) is a written solicitation to known qualified bidders. It can only be used where there is no more detail needed to describe the desired product or service, The RFPQ sets forth any terms and conditions of the procurement to potential bidders without formal advertising. MTA shall not arbitrarily split contracts or procurements so as to utilize the informal bidding procedures.
4. The RFPQ shall include technical specifications of the product or scope of work for the service required, FOB point, delivery date, components of bid prices, bid form, and the date and time by which informal bids must be submitted. Bonding and insurance requirements may also be set out in the RFPQ if appropriate.
5. On the date, time and location designated in the solicitation, in a setting open to bidders and the public, the ED and PM shall open and record the bids. They will then review bids for accuracy and check references if required.
6. The PM (and ED if desired) shall evaluate bids submitted and select one contractor based on the lowest bid by a responsible and responsive bidder as defined in the solicitation.
7. After review, the successful bidder and any remaining bidders shall be notified of MTA's selection. In all cases, the DBE Liaison Officer shall be notified of the bid results.
8. Upon selection and notification, and receipt of required documentation (such as Insurance certificates) if any, a PO&A, shall be issued to the successful bidder. The terms of the agreement shall be substantially those specified in the RFPQ.

## **EMERGENCY PROCUREMENTS**

MTA is not required to engage in either informal or formal competitive bidding when making emergency purchases of supplies, equipment, materials or services. "Emergency purchases" are those procurements required to prevent the immediate interruption or cessation of necessary MTA services or to safeguard life, property, or the public health and welfare.

1. Emergency decisions should be made by Managers who have expertise related to the emergency giving rise to the need for the procurement. Upon approval by the ED, the designated Manager may contact one or more suppliers by telephone, and, as expeditiously as possible, determine the best price and quality of product or services available from the supplier(s).

2. The PM shall prepare a PO&A document and a report explaining that an emergency procurement has been affected, the nature of the emergency, justification of the emergency procurement, the process, and the name and location of the supplier.
3. The ED may authorize an emergency purchase up to an amount of \$99,999 and sign the resulting PO&A.
4. When the procurement will exceed \$100,000, the emergency must be so declared and approved by the Board of Directors before the purchase has been made if possible, or after, if deemed necessary by the ED and Board Chair.
5. At the next Board meeting following an emergency purchase exceeding \$100,000, the Board of Directors shall be presented with the PM's report and ratify the procurement.

## **SOLE SOURCE PROCUREMENTS**

A sole source procurement is one that can be made from only one source of supply or a procurement for which no competitive advantage can be gained through competitive bidding. Such procurements often arise where the specifications for the items or services to be procured are unusual or distinct, narrowing possible sources down to one. This may be the case, for example, with replacement parts for brand name machinery, equipment or vehicles. Sole Source Procurements may be of any dollar value, but must conform to the following:

1. The sole source must be the only known source of supply with the capability of meeting the bona fide specification requirements. A sole source decision is not permitted merely upon the grounds that such approach is the most convenient, or that the subject product (1) demonstrates technical or administrative superiority, (2) is preferred by staff, or (3) shows superior performance potential at lowest cost.
2. A non-competitive proposal is a type of sole source. To qualify as a sole source procurement the contractor must be the only source known to be able to perform a contract. Procurements by non-competitive proposals can be used only when the award of a contract is not feasible under Small or Major Purchase procedures, and at least one of the following circumstances applies:
  - a. The item is available from only one source;
  - b. Public emergency-no time for competitive solicitation;
  - c. FTA has specifically approved non-competitive negotiations;
  - d. After solicitation of a number of sources, only one bid is received, or competition is inadequate;
  - e. The item is an associated capital maintenance item.
3. The PM shall obtain a price for the proposed procurement from the sole source. Unless the reasonableness of the price can be established on the basis of a catalog or market price for a similar commercial product sold in substantial quantities to the general public, or on the basis of prices set by law or regulation, a cost analysis shall be conducted. A cost analysis is required to verify the proposed cost data, to verify the projections of the data, and to evaluate the specific elements of cost and profit.

4. A cost analysis is a detailed evaluation of the cost elements that comprise the proposed price to determine whether the contractor is applying sound management and appropriate resources to the procurement and whether the costs are proper, allowable and allocable. It may involve verification of cost data, evaluation of specific cost elements including labor hours, quantities, tooling, testing, etc. and projection of the cost data to determine its effect on prices. To form a judgment as to whether the price offered is reasonable, the following factors may be considered: the necessity for certain costs, the reasonableness of amounts estimated for necessary cost, the bases for allocating overhead costs, allowances for contingencies and the appropriateness of allocations of particular overhead costs to the contract.
5. In cases where the sole source procurement exceeds \$100,000, the purchase must be approved by the Board of Directors. Following Board approval, the ED shall prepare an Agreement containing all applicable terms and conditions of the procurement.
6. If the item is valued at \$100,000 or more and is an Associated Capital Maintenance item that is procured directly from the original manufacturer or supplier of the item to be replaced and is funded by FTA, MTA must first certify in writing to FTA: (1) that such manufacturer or supplier is the only source for such item; and (2) that the price of such item is no higher than the price paid for such item by like customers.
7. For sole source procurements over \$100,000 FTA must authorize the procurement.

## MAJOR PURCHASES

Formal Bids/Proposals (sealed bids and competitive proposals) are required for all procurements expected to cost \$100,000 or more, and the MTA Board of Directors formally awards such contracts. Contract modifications or change orders for more than \$25,000 shall be approved by the Board of Directors. Modifications or change orders over \$100,000 in federally funded projects shall be reported to FTA in regular quarterly financial reports.

In all cases the Procurement Documents shall be drafted so as to foster competition and the participation of Disadvantaged Business Enterprises (DBE). The DBE Liaison Officer shall be notified of the existence and the general parameters of the project. The CalTrans supplier database may be used to generate a list of potential bidders as well as other sources.

Procurement documents must identify 1) all requirements that potential bidders must fulfill, 2) fully define the scope of work, products, materials, services, vehicles or construction and 3) list factors/criteria to be used in evaluating bids and proposals. Specific guidance for types of projects include:

1. **Supplies, Materials and Equipment:** Contracts for procurements of materials and supplies on an annual basis, with a cost of \$100,000 or more (e.g. parts, tires) must be formally bid. Purchases on a monthly, bi-monthly or irregular basis, may be made by Small Purchase RFPQ if under \$100,000, except for vehicle parts or other purchases that qualify for Sole Source procurement.
2. **Professional Services:** For architectural, engineering and related services, MTA shall issue a Request for Qualification (RFQ). Qualifications must include licensing,

and recent relevant experience. For planning, compensation, organizational or other consulting services, MTA shall issue a Request for Proposals (RFP). The RFP shall explain the outcome product in detail, but leave the professionals to propose a precise scope of work and means of accomplishing the result. The price or price range may be listed in order to give proposers an accurate sense of the size of the project.

3. **Vehicles** (buses, vans, trolleys, staff vehicles etc.): Procurements may be accomplished by RFP, by Piggybacking or by Joint Procurement. All vehicle purchases require the completion of federal Pre-Award and Post-Delivery certifications. These must meet federal requirements provided in Title 49 of the Code of Federal Regulations, Part 663, including Buy America certification, description of final assembly and Federal Motor Vehicle Safety Standards (FMVSS) certification. These certifications may be done by contractors hired for such purpose or by MTA.
4. **Piggybacking:** Usually for a small fee, Piggybacking is the use of options available within an existing contract by another transit agency to purchase vehicles. Very specific procedures are required in completing such transactions at both the state and federal level. The fee is usually less costly than writing specifications in-house.
5. **Joint Procurement:** Again, usually for a small fee, an outside organization handles the bidding process and allows other transit agencies to purchase off their results. Currently, CalTrans' process offers the lowest priced vehicle in each of several categories, each with optional equipment. The California Association for Coordinated Transit, in partnership with Morongo Basin Transit Authority (CalACT/MBTA) have created a purchasing cooperative which allows other transit systems to choose among different vehicle manufacturers for several different vehicle categories at competitive prices, including optional equipment.
6. **Construction:** For large construction projects, separate architectural and engineering services must be procured in order to produce the details required for the Invitation for Bids (IFB). Many other federal rules apply to construction projects exceeding an expected \$100,000 project.

## **PROCUREMENT PROCEDURES AND DOCUMENTS**

### **PROJECT INITIATION**

1. **Assignment:** When the need for procurement is determined, the Executive Director (ED) will be the Project Manager (PM), or will designate another Manager as PM. Working with the ED, the PM will draft technical specifications and scope of work which adequately describes the products or work required, shall provide an independent cost estimate and a proposed project schedule, including advertising and contract commencement dates. The PM must also determine whether or not there are two or more qualified potential bidders to compete effectively for the project, and that selection of the successful bidder can be made principally on the basis of price.

2. **Decisions:** The ED, Finance Manager and PM will determine if sufficient funding is available, projected to be available or needs to be budgeted. They will write and submit grant applications if necessary. When funding is secured, they will determine the type of procurement to be used (Micro, Small, Emergency, Sole Source or Major) and the type of solicitation to be used (RFPQ, RFQ, RFP or IFB) and will assign a procurement title and number. The procurement number and title shall be listed on all pages of the contract documents and referred to in all communication concerning the procurement and contract, including budgeting and financial management.

## SOLICITATIONS

MTA will formally advertise and publicly solicit for the submission of sealed bids, on a competitive basis for Major Purchases expected to cost \$100,000 or more.

1. For projects using RFP, RFQ or IFB solicitations, the PM shall arrange for the **public advertisement** of the Notice Inviting Bids/Proposals in one or more local news papers of general circulation published in Mendocino County. The Notice shall state the time and place for the receiving and opening of sealed bids, shall describe in general terms the work to be done and shall refer readers to the MTA website or other source (e.g. MTA's or Architect's office) for copies of the complete document. Where a particular contract involves a trade or expertise for which there are special industry publications, the Notice shall be advertised in appropriate trade journals if sufficient time permits. The complete document may be sent directly, via email, FAX or US mail, to known qualified contractors. For construction contracts, the complete document shall also be sent to Builder's Exchanges in San Francisco and the North Bay Area at a minimum. The complete document shall be posted on MTA's website.
2. The **complete document** shall include the Notice Inviting Bids/Proposals. If a pre-bid conference is planned, the Notice shall advise of the date, time and location for the conference. Other inclusions are the Technical Specifications, Instructions to Bidders, General Conditions, Standard Terms and Conditions, Special Provisions, FTA requirements and other documents as may be required by the procurement, such as certificates or proposal documents concerning qualifications, bonding, and compliance with applicable requirements of state and federal laws. Details of these inclusions are provided in the next section of this document. The terms and conditions contained in the entire package of Contract Documents constitute the contract, which governs the contractual relationship between the successful bidder and MTA.
3. **Unbiased:** Care must be taken when writing or hiring outside consultants/contractors to assist with the development of specifications. MTA must manage the project so that specifications developed are not biased toward a particular firm or product. Also, consultants developing specifications may not be allowed to compete for a product or service they helped define. This must be clarified with the consultant when entering into any such contract.
4. **Addendum:** Once the solicitation has been advertised, all changes necessary to correct any errors in the document, to extend deadlines for the benefit of MTA or the bidders, or to otherwise revise the document, shall be accomplished through the



issuance of addenda. All addenda shall be drafted by the PM, and shall be reviewed and approved by the Executive Director. Each addendum shall contain the bid number and title, the date of issuance, the addendum number, specific reference to the provision of the document that is being amended, and the substance of such amendment. The Purchasing Manager shall issue the addendum to all firms who have received a copy of the procurement documents.

## CONTENT OF SOLICITATION

This section contains a lengthy list of components that should be included in the solicitation documents for the Major Procurements. Some are not needed for smaller projects.

1. **Notice Inviting Bids:** The Notice Inviting Bids (Notice) is a publicly advertised document, which notifies potential bidders of the title and nature of the contract, and the date, time, and place of the opening of bids. The Notice shall also inform bidders of the applicable DBE requirements and other significant requirements under federal or state laws. The Notice shall refer to and incorporate by reference all the other contract documents. A Pre-Bid conference may be held if a procurement is of considerable complexity or scope. If a Pre-Bid Conference is scheduled, the Notice shall advise of the date, time and location.
2. **Specifications.** This describes the material, product, or service being purchased and sets forth the minimum essential characteristics and standards to meet MTA's needs. They must be of sufficient detail so that suppliers are able to submit a valid bid/proposal that is within the expected range of the independent cost estimate. However, they must not be so restrictive as to limit the number of potential suppliers and thereby hinder open competition. In addition, they must describe the testing, inspection and acceptance criteria MTA will use in determining compliance with specifications. Types of specifications and other guidance include:
  - a. **Design** – Spells out the details of how a contractor will accomplish the work and instructs them on how to complete it. These often include drawings, diagrams, measurements and tolerances describing the finished product.
  - b. **Performance** – Spells out the end result desired by MTA but leaves the details to the contractor. These specify the performance of the end result but not how the contractor will do the work.
  - c. **Initial responsibility** for drafting the technical specifications lies with the PM staff having technical expertise relating to the procurement sought. The Executive Director shall review and approve the specifications.
  - d. **Brand Names.** The use of brand names (specific suppliers, models, or products) may be used only as a basis of establishing a standard of desired material or products. In all cases where brand names are listed, the characteristics that define the desired material, product or service will be provided. This allows for full and open competition among all potential suppliers.

- e. **Approved Equal(s).** If a brand name and salient characteristics are listed for a given product, material, or service, procurement documents must allow for “approved equals.” That is, MTA must define under what conditions and terms it will consider materials or services other than those specified.
  - f. **Technical specifications** shall include detailed descriptions of the qualitative and quantitative nature of the supplies, equipment, materials, services, or construction to be procured. They must also set forth the minimum essential characteristics and standards to which the products, services or work must conform in order to satisfy MTA's intended use. Where it would be of assistance in clarifying the specification requirements, the use of blueprints, diagrams, charts and maps will be used.
  - g. **Required Documentation.** Information, forms, and technical details required from prospective bidders must be specified so that interested suppliers are fully aware of the requirements they must meet for their bid to be considered responsive, full and complete.
3. **Evaluation Criteria.** The method and factors by which bids will be evaluated in selecting a contractor must be completely stated so all suppliers have a fair and equal chance to be awarded any contract. Evaluation criteria are tailored to each procurement and will include only those factors affecting the selection decision. Criteria must be clear, concise, objective and unbiased.
4. **Bidding/Proposing procedure:** The solicitation, whether for a simple price quote or a major vehicle or construction procurement, must include a clear description of the method for responders to submit their bid or proposal. For most projects, an official bid form should be used to ensure accurate comparisons. The bidder's completion of the bid form shall constitute its acceptance of all the terms and conditions contained in the Procurement Documents and shall also indicate the bidders quoted prices. The form shall seek separate cost quotations for all relevant aspects of the procurement, including, where applicable, unit price, extended price, sales or use taxes, and cost of installation and delivery. In all cases, the bid form shall be so structured as to allow MTA to make an objective comparison of all bids.
5. **Liquidated Damages:** The nature of the procurement may call for establishing a timeframe within which the whole or any specified portion of the work called for under the contract shall be completed.
- a. Each day completion is delayed beyond the specified time performance, the Contractor shall pay to MTA a specified sum of money, to be deducted from any payments due or to become due to the Contractor.
  - b. Liquidated damages shall be included in contracts when it would be inconvenient, difficult, or impracticable to otherwise obtain an adequate remedy for the delay, or to prove the losses or to assess the actual quantity of damages. The amount to be established as liquidated damages shall be reasonable in light of the anticipated harm that may be caused by a delay in the

contract performance. The Purchasing Manager, with input from the requesting department, shall evaluate these factors, and set a sum as liquidated damages. Liquidated damages shall not be assessed against a Contractor that is terminated for default; nor shall liquidated damages be used as a penalty. The contract files shall contain the justification for liquidated damages and calculations of how the amount was determined.

- c. The calculation of damages must account for delays NOT caused by the contractor. That would include weather (which must be tightly defined) and delays caused by MTA or other public entities
6. **Bonding Requirements.** Various bonds may be required for the principal protection of MTA's interest in the case of default or other failure to perform by a contractor. As a minimum, the following bonding requirements apply to construction or facilities improvement procurement actions of \$100,000 or more:
  - a. A **Bid Bond** or Bidder's security of a value up to 10% of the bid amount is commonly required for major procurements to ensure that a bidder or proposer will sign a contract if one is awarded to it.
  - b. A **payment bond** and a **performance bond**, both equal to as much as 100% of the contract price, shall be required for construction projects valued at more than \$100,000. These bonds are intended to guarantee completion of the project and payment of all labor, materials and supplies. The higher the contract price, the higher the amount or percentage of the bond. Note that bonding costs the contractor money which will be recovered through the bid price and payment by MTA.
  - c. For **vehicle procurement** projects, a performance bond equal to 20% of the contract price may be included. The necessity for this performance bond shall be documented in the procurement records.
7. **Insurance and Indemnification (Hold Harmless):** For all capital projects, MTA shall protect its financial interests by requiring contractors to carry adequate insurance coverage, usually up to \$1 million (or \$2 million for projects worth \$2 million or more) for Commercial General Liability, Auto Liability, Builder's Risk (construction only) and Workers Compensation, and other insurance that may be required by State or Federal regulations. In addition, an indemnity (or hold harmless) clause must be included that requires the contractor to defend MTA in court against third party claims made against MTA that are the fault of the contractor. Often a reciprocal indemnification is also included.
8. **Qualification of Bidders:** In procurements where the nature of the work is such that the qualifications of the bidders is an essential criterion for evaluating the bidders' qualifications, the Special Provisions shall contain a clause setting the required qualifications of bidders. Construction, professional services and operations solicitations shall contain such clauses.

Such provisions shall clearly state the MTA may reject bids from any potential suppliers that do not meet the requirements stated in the qualification clause. Included in such clause shall be requirements that bidders demonstrate they are regularly engaged in the manufacture, construction, or provision of the work or product called for in the procurement and that they have the necessary resources, facilities and personnel to perform the contract. Bidders shall be required to furnish adequate references to verify their qualifications.

## **SAMPLE AGREEMENT**

A Proposed Agreement should be included in the solicitation. The evaluation, selection, potential negotiations or other factors may require amendment of the proposed version.

1. **Contents:** Agreements will contain, as a minimum, reference to or revised versions of the following elements. See Appendix C for further detail.
  - a. Description of the Scope of Work, product or service;
  - b. Price and payment terms;
  - c. Delivery schedules;
  - d. Provisions for: termination for cause, termination for convenience and the basis for determining settlement costs;
  - e. Applicable FTA clauses;
  - f. Administrative, contractual or legal remedies in cases where contractors violate or breach contract terms, to include sanctions and penalties;
  - g. Termination for cause and termination for convenience provisions as well as the manner in which settlement costs will be determined;
  - h. Amendment provisions.
2. **Contract Modification.** Whenever a change is required to an existing contract, whether determined by MTA or a contractor, a cost change proposal will be submitted. The proposal will be in such detail and clarity to be understood by MTA as to its impact on: existing scope of work; dollar value of the contract; and time required to complete work.
3. **Exercise of Options.** If options in contracts are available, such options shall be in accordance with the terms and conditions stated in the solicitation and in the initial contract. The option price should be equal to or better than prices available in the market, or the option should be more advantageous at the time the option is exercised.

## **SELECTION OF CONTRACTOR**

1. **Opening:** Bids, Proposals and Statements of Qualifications shall be opened at the exact time and location advertized, and the opening shall be open to the general public, including bidders or proposers. Pertinent portions of Bids or Proposals shall be read aloud and recorded. Staff shall document the names and affiliation of those present and the results in the project file.
2. **Evaluation of Responses:** The PM and not less than one other staff member shall

form a committee to evaluate Bids, Proposals and Statements of Qualifications. For larger or more complex projects, additional participants may be engaged, including relevant staff, representatives of outside agencies and stakeholders.

3. **Detailed evaluation criteria** included in the solicitation shall be applied by the evaluation committee, either separately or jointly as determined by the PM. The PM will coordinate this evaluation. Care must be taken to ensure that any contracts requiring the payment of prevailing wages have those wages for the various trades taken into account when calculating labor costs, and that the time required to complete the work is acceptable to MTA.
4. **Basis for Selection and Recommendation:** For any contract worth \$100,000 or more, the PM will formulate a recommendation to the MTA Board of Directors for contract award, based on results of the evaluation and factors below.
5. **For IFB and RFPQ** solicitations, the selection will be awarded to the lowest responsive, responsible bidder as defined above and below.
  - a. **Responsive:** Selection will only be made for those bidders with the ability to successfully perform and provide the specified materials, services and products under the terms and conditions stated in procurement documents. Among factors to be considered in evaluating the responsiveness of bidders are: completion and accuracy provided in the bid, lack of any conditions in the bid and conformance with detailed specifications. For any findings of a potential bidder being determined as not responsive, a memorandum will be sent and placed in the project file noting the basis for this determination. Such memorandum will include documents, reports, and analyses to support the determination.
  - b. **Responsible:** Solicitations will be structured so as to obtain information to be used in determining if potential contractors are responsible, to include:
    - 1) Financial resources adequate to perform the contract; or the ability to obtain them.
    - 2) Ability to meet the required delivery or performance schedule.
    - 3) Satisfactory record of performance.
    - 4) Satisfactory record of integrity and business ethics.
    - 5) Necessary organization, experience, accounting and operational controls and technical skills, or the ability to obtain them.
    - 6) Compliance with applicable licensing, tax laws and regulations.
    - 7) Necessary production, construction, technical equipment and facilities, or the ability to obtain them.
    - 8) Compliance with Affirmative Action and Disadvantaged Business Program requirements.
    - 9) Other qualifications and eligibility criteria necessary as determined by MTA.
6. **For an RFP solicitation**, the published evaluation criteria will allow for numerically valued scoring. The highest score determined by the evaluation committee would determine the successful proposer. The proposer offering the best overall value and

being the closest in meeting the criteria designated in the Solicitation would be selected. This may or may not be the supplier offering the lowest price. Price as well as other factors will be considered in the selection. Attempts may be made to negotiate a lower price with potential contractors and results documented.

7. **For an RFQ solicitation**, the published evaluation criteria will allow for numerically valued scoring to determine the firm best qualified to meet MTA's needs. The highest score determined by the evaluation committee would determine the most highly qualified proposer. The ED and/or PM would initiate negotiations with that firm. If an acceptable dollar amount can be achieved, a PO&A would be awarded. If negotiations with the highest qualified firm do not result in an acceptable dollar amount, negotiations will be undertaken with the next best qualified. This process will continue until a supplier and acceptable dollar amount have been agreed upon.

## **AWARD**

1. After the selection process, the PM will notify the selected contractor. For Micro, Small, or Emergency procurements, the PM will ensure that all required submittals have been received, the terms are correct and will send it to the selected contractor for signature and documentation of insurance coverage as required.
2. For Major procurements, subject to the approval of the ED, the PM shall ensure all required submittals are received, including insurance certificates, and shall write a staff report to the Board of Directors recommending award of the contract to the selected contractor. The ED is authorized to execute all agreements, except Major Procurements which require approval of the Board of Directors first.

## **CONTRACT ADMINISTRATION SYSTEM**

The intent of the contract administration system is that each procurement file, standing alone and without need of interpretation or augmentation by the PM, ED or other staff member, demonstrates that MTA and the contractor have complied with the terms of the contract. Further this system will fully document that any contractual or administrative issues in dispute have been addressed and settled.

## **PROJECT FILES**

Each Project File, maintained during the project by the PM or ED and Finance Manager (and by the Finance Manager in the long term) is a record detailing the history of each procurement.

Files maintained by PM or ED:

1. Rationale for the method of procurement;
2. Independent Cost Estimate;
3. Cost/Price analysis; record of determination that cost is fair and reasonable;
4. Evaluation of submittals received;

5. Written record of selection of suppliers for negotiation and contract award;
6. Summary of cost/price negotiations, as appropriate;
7. Determination of reasonable contract cost compared to independent cost estimate;
8. All correspondence between MTA and contractor.

Files maintained by the Finance Manager:

9. Copies of published public notices of proposed contract action;
10. A list of all bidders and proposers contacted and DBE status;
11. All quotes, bids and proposals received;
12. Purchase orders;
13. Contract close-out documents.

Files maintained by both:

14. Procurement documents;
15. Justifications of sole source, emergency procurement, single bid received, etc.;
16. Staff reports prepared for approval by MTA Board of Directors and minutes reflecting approval granted or other direction by the MTA Board;
17. Contracts and contract modification documents.

Upon closeout, all files will be consolidated and filed.

## **FILE AUDITS**

The Finance Manager may conduct random audits of the contract administration system. The intent of the audit is to ensure that each procurement file is complete and does not require interpretation or augmentation of the contract administrator, program manager or other staff member.

## **APPENDIX A**

### **SAMPLE FORMS AND FORMATS**

This appendix contains sample forms and formats for use by MTA personnel in meeting requirements contained in these Procurement Procedures.

Any recommendations for improvement should be submitted to the Executive Director.

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**MENDOCINO TRANSIT AUTHORITY  
COST/PRICE ANALYSIS**

Date \_\_\_\_\_ Analysis/Review done by: \_\_\_\_\_

IFB/RFP/RFPQ # \_\_\_\_\_ Project \_\_\_\_\_

Item(s) reviewed

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Cost comparison(s) obtained/source \_\_\_\_\_

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Rationale/Conclusion

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Above analysis/review conducted and cost determined reasonable on date noted.

\_\_\_\_\_  
(Signature)

**MENDOCINO TRANSIT AUTHORITY (MTA)  
SOLE SOURCE JUSTIFICATION**

Product/Service/ Salient Characteristics

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Rationale/Reason for Sole Source (see sole source justification in Procurement Procedures)

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Quantity \_\_\_\_\_

Analysis of labor, direct, overhead costs and profit (see sole source justification)

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Other factors

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Method of determining fair/reasonable cost:

- \_\_\_\_\_ Project Manager previous experience
- \_\_\_\_\_ Company lowest price guarantees (e.g. Home Depot, Circuit City)
- \_\_\_\_\_ Past purchasing history with same contractor
- \_\_\_\_\_ Newspaper ads
- \_\_\_\_\_ Internet
- \_\_\_\_\_ Price book/catalog
- \_\_\_\_\_ Marketplace location limitations
- \_\_\_\_\_ Single source area procurement (e.g. franchise, distribution territories)
- \_\_\_\_\_ Other \_\_\_\_\_

Completed by \_\_\_\_\_ Date \_\_\_\_\_

## MENDOCINO TRANSIT AUTHORITY CONTRACT CLOSEOUT CHECKLIST FOR MAJOR PURCHASES

Date \_\_\_\_\_

Contract Number \_\_\_\_\_ Contract Value \_\_\_\_\_

Effective date of contract \_\_\_\_\_

Change order(s) date and dollar amount (if none, so state) \_\_\_\_\_

Project Manager  
(name/signature) \_\_\_\_\_

Completion of this Checklist certifies that contractor/supplier/supplier has completed work/services described in the contract and any change orders. Note the status (e.g. "received;" "completed;" "accepted" etc.) and the date for each work item. After completion, form is to be placed into Contract File.

WORK ITEM	STATUS	DATE
1. Resolution of all contract changes		
2. Determination of any liquidated damages		
3. Review of insurance claims. Determination if funds need to be withheld from final payment to cover unsettled claims against Contractor/Supplier		
4. Settlement of all sub-contracts by prime contractor/supplier		
5. Performance of required inspections/tests/etc.		
6. Contractor Performance Report		
7. All submittals/deliverables/services completed: -Reports -Final payroll records/wage rate certifications -Warranties/Guarantees -"As-Built" Drawings, Blueprints -Manuals and publications		
8. Final invoice -Consent of surety to release final payment		
9. Contractor's Affidavit of release of liens (Construction contracts)		
10. Contractor's general release (to MTA) from any further claims/liabilities (Construction)		
11. Notification to Surety of release from any performance bonds		
12. Post-Delivery Audit (rolling stock)		

## **APPENDIX B REFERENCES**

These policies and procedures reflect guidance contained in

- a. Federal Acquisition Regulation (FAR)
- b. FTA Circular 4220.1F, Third Party Contracting Requirements
- c. Code of Federal Regulations (CFR) Part 49, Parts 18, 19, 20, 26, 661, 663, 665, and 5325.
- d. State of California law
- e. California Public Contracts Code
- f. Policies and Rules established by the County of Mendocino where appropriate, and by the MTA Board of Directors

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