



Meeting Date: August 28, 2024

Agenda Item: D.3

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. MTA worked with Paul V Bravo = Associates, Inc. on a comprehensive policy. The policy will help MTA navigate future projects. The projects include Zero-Emissions Infrastructure, A Transit Center and Administrative Facilities along with guiding the agency with procurement of goods and/or services.

STAFF RECOMMENDATION:

Approve MTA's Procurement Policy dated August 28, 2024.

ATTACHMENTS:

Draft Procurement Policy dated August 28, 2024



Mendocino Transit Authority (MTA) Procurement Policy



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May 13, 2024

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1 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.

1.1 Legal Authority

Policies and procedures governing MTA procurements of supplies, materials, equipment, vehicles, services, and construction are derived from and conform to a variety of statutes. For non-Federally funded purchases, the governing policies and procedures include but are not limited to:

1. Applicable State of California laws
2. California Public Contracts Code
3. California Public Utilities Code
4. Rules and regulations established by the County of Mendocino and the MTA Board of Directors

For projects that include Federal funds, the governing policies and procedures include compliance with:

1. Applicable Federal law including Title 49 Code of Federal Regulations (CFR), Title 2 CFR Part 184; and Title 2 CFR Part 200
2. Federal Transit Administration (FTA) Master Agreement – most current version
3. FTA Circular 4220.1.F, “Third Party Contracting Requirements” and other relevant Circulars
4. Annual Certifications and Assurances

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.

1.2 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 Board members, officers, agents, 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.

1.3 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, joint procurement, 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.

2 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.

3 DEFINITIONS

Terms used throughout this document are defined below.

Award Basis is the term used to define how the contract award is to be made.

Invitation For Bids is the Award Basis is defined as how the lowest responsive, responsible bid. See the procedure for IFBs.

Request For Proposals is the Award Basis defines how the RFP is to be evaluated. It will list the evaluation criteria in descending order of importance or with weights. See the procedure for RFPs and the procedure for Brooks Act Procurements.

Bid is a response to any Invitation for Bids, Request for Quotes, or other informal price quotation. The term bid is used interchangeably and has the same meaning as a price quotation.

Board of Directors is the governing body for Mendocino Transit Authority (MTA). The Board establishes policy and awards contracts for all procurements exceeding \$100,000. At its discretion, the Board may hear also Protest Appeals from potential contractors.

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 is required for construction bids and may be in the form of a money order, cashier's check, or certification statement from a bonding agent. For California public works bids, the required bid bond amount is ten percent (10%).

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. For Federally funded construction, a 100% payment bond is required.

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. For Federally funded construction, a 100% performance bond is required.

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. This is not a federal requirement and is rarely used.

Warranty Bond also known as a maintenance bond creates a contractual obligation that makes the builder financially responsible for correcting any defects in the project for a warranty period specified in the contract. This is not a federal requirement but might be imposed for projects involving new technology.

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

Claim is a written demand by one of the contracting parties for a time extension, an adjustment or interpretation of Contract terms, payment or money, or other legal, equitable or contractual relief.

Competitive Range is a term used in negotiated procurements and is a way to reduce the number of proposers being considered for award. It is determined on the basis of cost (if appropriate) and technical factors stated in the RFP to identify the proposals that have a reasonable chance of being selected for contract award.

Contract is a written document that contains terms and conditions stated in the solicitation. It shall include, as binding attachments, the Solicitation document, and the submitted bid or proposal as well as any negotiated provisions.

Contracting Officer has the same meaning as Purchasing Manager. For MTA, the Executive Director (ED) is the Contracting Officer. The ED may delegate their responsibilities to other MTA staff. The ED currently has authority to award and execute contracts up to \$100,000.

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 (PO) and Agreement or other written commitment.

Cost Analysis is an analysis of the costs being proposed to the MTA. It is only required when there is not adequate price completion or for any Federally funded work being done by Architects or Engineers under a Qualified Based Selection process. See appropriate procurement procedures for additional information.

Disadvantaged Business Enterprise (DBE) is the Federal program to increase opportunities for certified small businesses to participate in federally or non-federally funded transportation-related contracts and to address any potential discrimination against DBEs and SBEs in the awards of those contracts.

Dispute is a disagreement between the parties as to the merits, amount or remedy arising out of an issue in controversy, including a Claim or asserted default.

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.

Independent Cost Estimate (ICE) is an independent estimate of the expected cost to obtain the required goods or services. It is to be created prior to receipt of bids or proposals and is required for all Federally-funded projects exceeding \$250,000. It is recommended for all formal solicitations.

Invitation for Bid (IFB) is a solicitation for formal, sealed bids that are advertised. The MTA threshold for an IFB is greater than \$100,000. See procedures for IFBs for more details.

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

Micro Purchase is a procurement with a value of up to a maximum of \$3,000. One price quote is required. See procedures for Micro-Purchase for more details.

Notice of Intent to Award is a form letter that should be issued for all procurements over the Small Purchase threshold. It officially notifies bidders or proposers of the firm being recommended for contract award. See Appendix A.8 for sample notice.

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. See specific types of procurements for the procedures for handling and exercising options.

Post-Award Buy America Audit is an audit required for all Federally funded revenue service vehicles prior to transferring the title of the vehicle to the MTA. The procedures for conducting the audit and the required certifications are found in FTA Report 0106, Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements.

Pre-Award Buy America Audit is an audit required for all Federally funded revenue service vehicles prior to award of a contract to purchase the vehicle. The procedures for conducting the audit and the required certifications are found in FTA Report 0106, Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements.

Price Analysis involves comparing a proposed price submitted by a bidder/supplier without evaluating separate cost and profit elements. See appropriate procurement procedures for additional information.

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 RFQ. It shall be written and may include other necessary information such as the proposed delivery date. The term “quote” and “informal bid” are interchangeable.

Profit is to be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Project Manager is the person designated by the Executive Director to lead the project from conception to completion. This designation may include issuance of procurement documents. Project Manager coordinates as necessary with staff, suppliers, and outside agencies/jurisdictions to ensure successful project completion and may be authorized to commit funds as necessary.

Prompt Payment is the requirement that governs payment to contractors. For public works projects, the California Public Contract Code requires payment to a prime contractor within 30 days of the receipt of a valid pay request which is not in dispute. For non-public works projects, the parties may negotiate the payment provision.

Prompt Payment to Subcontractors is a requirement in the California Business and Professions Code that prime contractors pay subcontractors within 7 days following their receipt of a payment from the public agency if payment to the subcontractor is not in dispute. The Public Contract Code requires payment of retention to a subcontractor within 7 days following the prime contractor's receipt of retention from the public agency.

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. Award is not based on based exclusively on price or price-related factors. See RFP procedures for additional information.

Purchase Order (PO) is an offer by MTA to buy certain supplies, equipment, service, vehicles, or construction. It is typically used for informal procurements and is also subject to the terms and conditions stated on the back of the PO. It typically does not include attachments. However, attachments may be added but must be referenced on the face of the PO.

Purchasing Manager or Contracting Officer is the MTA Executive Director or designee, who is authorized to sign the PO and commit funds on behalf of MTA.

Qualifications-Based Selection (QBS) is the terminology used when procuring Architectural or Engineering (A&E) or related services. If Federally funded, this process follows procedures defined by the Brooks Act. If non-federally funded, the process follows procedures defined by the California Mini-Brooks Act. See procedures for the QBS selection.

Responsible refers to the bidder's or proposer'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. A formal determination of Responsibility is required for all federally funded formal IFBs and RFPs. It is recommended for all RFQs. See Appendix A sample forms.

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. See Appendix A sample forms.

Request for Quotation (RFQ) is an informal solicitation for materials, supplies, or equipment, but may be used for clearly defined services or construction with a total of less than \$100,000. Above the Micro-purchase threshold of \$3,000, three price quotes are required if possible. See Micro- and Small Purchase procedures.

Request for Proposal (RFP) is a formal solicitation that is advertised. It may be used for professional consulting services, supplies, materials, equipment, and vehicles, designed for an award based upon criteria other than price alone. See RFP procedures.

Retention is a specified percentage of payments agreed to in a PO or a contract that is held by MTA until the project, generally construction or professional services, is completed. On public works projects, retention is to be released within 60 days following completion of the project. See also Prompt Payment to Subcontractors.

Small Purchase is a procurement of up to \$100,000 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 RFQ.

4 RESPONSIBILITIES

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

4.1 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. The Board of Directors also passes required resolutions as may be needed to authorize the purchase of buses using a Request for Proposal (RFP) procedure.

4.2 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. Receive and approve or reject resolution of Claims or Disputes worth less than \$100,000 and recommend resolution of Claims or Disputes worth more than \$100,000 to the Board;
5. Recommending to the Board award of contracts worth more than \$100,000;
6. Determining the need for and providing training to Project Managers and new Managers;
7. Selling surplus MTA property but may delegate that authority to a Manager; and
8. Maintaining and revising standard terms and conditions, FTA clauses and generic enclosures necessary to produce a complete procurement document.

4.3 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 time frames, and other parameters.
5. Developing a scope of work for services.

6. Developing technical specifications that fully define the product or service desired.
7. Creating an Independent Cost Estimate for all formal bids and proposals.
8. For micro purchases, the PM is responsible for ensuring that purchases are distributed equitably among qualified suppliers.
9. For small purchases and formal procurements, responsible for creating the solicitation documents and ensuring that all required clauses and forms are included in the resulting documents.
10. Creates list of firms to compete for small purchases ensuring that qualified DBE firms all receive an opportunity to compete for that work. Coordinating the review of offers received, documenting all requirements, and awarding the purchase order according to the procedures found in the Small Purchases section.
11. Conducts outreach for formal solicitations to create a list of firms to be notified for those solicitations.
12. Coordinates the publication of bid documents, public notices, and posting to the MTA web site.
13. Organizing the review of all bids received in response to an IFB. Ensures that required responsiveness/responsibility documentation is created along with documentation on DBE compliance, debarment and suspension compliance, and Buy America compliance. The PM is responsible for following the appropriate procedure contained in the section on IFBs.
14. Organizing the evaluation committee to review all proposals for RFP responses that are received. Ensures that required responsiveness/responsibility documentation is created along with documentation on DBE compliance, debarment and suspension compliance, and Buy America compliance. The PM is responsible for following the appropriate procedure contained in the section on RFPs.
15. Preparing any required Memorandum for the MTA Board of Directors' approval.
16. Preparing Purchase Orders for Executive Director's signature.
17. Coordinating with the Executive Director and the Contractor to finalize Contracts.
18. Monitoring contractor performance; documenting any problem areas.
19. Conducts required contract close-out activities.
20. Manages post contract warranty issues to ensure that MTA's interests are protected.

4.4 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.
5. Maintaining and reporting on asset tracking as may be required by FTA.

5 STANDARDS OF CONDUCT

5.1 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.

5.2 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 Board member, 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 Board member, employee, officer, or agent;
 - b. Any member of an employee's immediate family including domestic partners;
 - 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.

5.3 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.

5.4 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 or entity other than MTA. "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.

5.5 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.

6 PROCUREMENT TYPES AND PROCEDURES

MTA is authorized to use the following types of procurements:

Type	Dollar Threshold	Procurement	Approval Authority
Mini-Micro Purchase	Less than \$500	Direct purchase	
Micro Purchase	Less than \$3,000	One quote	Project Manager
Small Purchase	\$3,000 – \$100,000	Three quotes	Executive Director
Sole Source	Any value	One quote	ED to \$100,000 Board of Directors – higher amounts
Emergency Purchase	Greater than \$3,000	One quote	ED to \$100,000 Higher amounts – Ratification by Board of Directors
Major Purchases	>\$100,000	Advertised	Board of Directors
Formal IFB	>\$100,000	Advertised IFB	Board of Directors
Formal RFP	>\$100,000	Advertised RFP	Board of Directors
Qualification Based Selection	Any value for A & E services	Advertised to obtain qualifications	ED to \$100,000 Board of Directors – higher amounts

6.1 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 whether 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.

6.2 Mini-Micro Purchase Procedure

6.2.1 Definition

Consistent with MTA Policy, items costing less than \$500 are considered “Mini-Micro” purchases.

6.2.2 Procedure

A procurement for an amount not to exceed \$500 may be purchased using an MTA-issued credit card.

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 to the **Finance Manager** who controls the issue and monthly reconciliation of MTA-issued credit cards.
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.

6.2.3 Documentation Required

The only file documentation required is a receipt credit card transactions and/or for petty cash or reimbursements.

6.2.4 Federal Requirements – Not Applicable

6.3 Micro Purchase Procedure

6.3.1 Definition

Consistent with current California legislation, micro purchases are defined as those purchases with a value not to exceed \$3,000.

6.3.2 Procedure

A procurement for an amount not to exceed \$3,000 may be accomplished by securing one quotation if the price is determined to be fair and reasonable. At the MTA, micro-purchases are to be handled by Project Managers.

6.3.3 Documentation Required

The only file documentation required is a determination that the price is fair and reasonable and how the determination was made. A sample form is contained in Appendix A.7. It is to be completed, signed by the Project Manager and put in the file as documentation for the Purchase Order.

6.3.4 Federal Requirements

For federally funded micro purchases, Buy America requirements do not apply. For construction contracts (repair or alteration of real property) greater than \$2,000, Davis Bacon requirements do apply.

- **Competition.** MTA will distribute micro-purchases equitably among qualified suppliers.
- **Prohibited Divisions.** MTA will not divide or reduce the size of its procurement merely to come within the micro-purchase limit.
- **Documentation.** FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the determination was made. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.

6.4 Small Purchase Procedure

6.4.1 Definition

Per the MTA, small purchases are defined as purchases with a value of \$3,000 and not to exceed \$100,000. These purchases are not advertised and are accomplished using informal methods.

6.4.2 Procedure

- Procurements for goods, supplies, equipment, and contractual services of a value between \$3,000 - \$100,000 may be accomplished by a Request for Quote (RFQ) process. This procedure **may not** be used to obtain Architecture or Engineering services. (See Section 9, Qualification Based Selection (QBS) Procedure.)
- The Executive Director, or designated person, shall solicit quotes by either written request via email, by telephone request with written confirmation or other appropriate method.
- 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 an RFQ.
- The preferred method of accomplishing this purchase is to issue an RFQ which is a written solicitation to known qualified suppliers. The RFQ shall include technical specifications of the product or scope of work for the service required, FOB point, delivery date, form for submitting pricing. The document is to also identify the date and time by which the RFQ must be submitted. If appropriate, bonding and insurance requirements must also be set out in the RFQ.
- MTA shall not arbitrarily split contracts or procurements so as to utilize the informal solicitation procedures.
- An RFQ does not require a public opening. If quotes are submitted electronically, the quote should not be opened until the specified date and time. It is an internal process where the ED and PM shall open and review the quotes for compliance with the MTA requirements. The PM (and ED if desired) shall evaluate quotes submitted and select one contractor based on the lowest price submitted by a responsible and responsive supplier as defined in the solicitation.
- After review, the successful firm and any remaining firms shall be notified of MTA's selection. In all cases, the DBE Liaison Officer shall be notified of the bid results.
- Upon selection and notification, and receipt of required documentation (such as Insurance certificates) if any, a PO shall be issued to the successful bidder. The terms of the agreement shall be substantially those specified in the RFPQ.

6.4.3 Documentation Required

An informal record shall be made of all quotes requested and those received. This record shall be included in the file with the other documentation. Appendix A.6 contains a form that may be used for documenting informal quotes.

6.4.4 Federal Requirements

For federally funded small purchases, the following additional requirements apply:

- The Executive Director or designee shall review the clause matrix contained in Appendix A.3 – FTA Clause Matrix. Depending on the estimated value of the purchase, the Request for Quote must include all appropriate clauses in the RFQ document and/or in resulting purchase order or contract.
- FTA requires that the file documentation include the Written Record of Procurement History. Appendix A.12 contains a sample form for this use.
- The MTA is also document that the awardee is a responsible vendor. For all procurements over \$25,000, the FTA requires that the Recipient verify that the selected supplier is not debarred or suspended. Appendix A.9 contains a form to document responsiveness and responsibility as well as debarment or suspension.

6.5 Sole Source Procurements

6.5.1 Definition

A sole source procurement is one that can be made from only one source of supply and no other sources or supplies will satisfy the requirement.

6.5.2 Procedure

A Sole Source may be of any dollar value, but must conform to the following:

If the supplier is a sole source, the firm 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.

6.5.3 Documentation Required

To qualify as a sole source supplier, the Project Manager must complete the Sole Source Justification form found in Appendix A.11. The completed form must be approved by the Executive Director.

Associated Capital Maintenance Items are no longer automatically considered to be a sole source items as the part may be available from multiple suppliers. In such cases, the PM is to document the requirement for a sole source item with no approved equal using the form in Appendix A.11. The PM will then conduct the required competitive procurement to obtain the item(s).

6.5.4 Federal Requirements

Consistent with FTA requirements, purchases of FTA funded goods and services valued at greater than \$10,000 will be competitively procured. Procurement by noncompetitive proposals (sole source) may only be used when the award of a contract is infeasible under small procurement procedures, sealed bids, competitive proposals, or inter-governmental cooperative procurements, and one of the following circumstances applies:

1. The item is available only from a single source.
2. The public emergency necessitating the requirement will not permit a delay resulting from competitive solicitation.
3. The FTA authorizes noncompetitive negotiations.
4. After solicitation from a number of sources, competition is determined inadequate.

Less than full and open competition is not justified based on:

1. The City's lack of advance planning; or
2. Limited Availability of Federal Assistance. Concerns about the amount of Federal assistance available to support the procurement (for example, expiration of Federal assistance previously available for award).

3. Associated Capital Maintenance Items are no longer automatically considered to be a sole source. Such procurements may involve situations where there is no “equal” for the item, but it may be available from multiple suppliers. For example, replacement parts for Cummins engines may be available from trucking companies. Replacement bus parts may be available from multiple sources but the part itself would be a sole source as there is no “approved equal.” In such cases, the PM is to document the requirement for a sole source item with no approved equal using the form in Appendix A.11. The PM will then conduct the required competitive procurement to obtain the item(s).
4. Requirement for Cost or Price Analysis: A cost analysis, verifying the proposed cost data, the projections of the data and the evaluation of the specific elements of costs and profit, is required for all Federally funded sole source procurements unless a price analysis can be performed. Unless the reasonableness of the price can be established based on pricing from other agencies, 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 must be performed. 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. For Federally funded projects, the cost analysis must be completed in accordance with FAR Part 31, Contract Cost Principles and Procedures.

A cost analysis is a detailed evaluation of the cost elements that comprise the proposed price. It involves 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.

6.5.5 Approval Process

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.

6.6 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 document and a report explaining that an emergency procurement has been initiated. The documentation shall include the nature of the emergency, justification of the emergency procurement, the process, the dollar amount authorized 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.
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.

6.7 Formal Procurement Procedures

6.7.1 Major Purchases

MTA classifies Formal Bids/Proposals (sealed bids and competitive proposals) as “Major Purchases” if the procurement is expected to cost \$100,000 or more. The MTA Board of Directors formally awards the resulting 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 if required.

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 procured using an Invitation to Bid procedure. Purchases on a monthly, bi-monthly, or irregular basis, may be made by Small Purchase RFQ if under \$100,000, except for vehicle parts or other purchases that qualify for Sole Source procurement.
2. **Professional Services.** Contracts for professional services may be procured using a Request for Proposal (RFP) or a Qualification Based Selection (QBS) depending on the type of service that is required. The use of a QBS procedure is restricted depending on the funding source. The MTA shall use the QBS procedure for architectural, engineering, and related services as defined in 49 U.S.C. Section 5325(b) or California Government Code Section 4525-4529.5. For other consulting services, MTA shall issue a formal Request for Proposal (RFP). See each procedure for details on how the process is conducted.
3. **Vehicles (buses, vans, trolleys, staff vehicles, etc.).** Procurements may be accomplished by IFB, RFP, by Piggybacking or by Joint Procurement. If MTA is directly procuring the vehicles, California Public Contract Code Section 2027 permits the use of competitive negotiation (RFP) process upon a finding by two-thirds vote of all members of the MTA Board that the purchase of those vehicles by sealed bid does not constitute a method of procurement adequate for the agency's needs.

Regardless of the method of procurement, all revenue service vehicle purchases require the completion of federal Pre-Award and Post-Delivery certifications if federal funds are used for the purchase. The vehicles 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 audits to verify compliance may be done by contractors hired for such purpose or by MTA. Only MTA's ED or PM may execute the required certifications.

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. It may also be used to obtain other products. 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 but the MTA must ensure that all required clauses and requirements are contained in the resulting solicitation document. Appendix A contains the Piggybacking Worksheet that should be reviewed and completed for piggybacking involving federal funds.
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 evaluate different vehicle manufacturers for several different vehicle categories at competitive prices, including optional equipment. The joint procurement requires agencies to document the basis for selection of a specific vehicle.
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.

6.8 General Information on 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. The following provides general information about the process. Additional information is available in the section on each specific type of solicitation.

1. For projects using RFP, QBS, or IFB solicitations, the PM shall arrange for the **public advertisement** of the Notice Inviting Bids/Proposals in one or more local newspapers of general circulation published in Mendocino County. For RFP and QBS solicitations, the Notice shall state the time and place for the receiving the sealed proposals. For IFBs, the Notice shall state the time and place for receiving and opening of sealed bids. The Notice 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 or pre-proposal 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 or Proposers, 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 sections 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 awardee 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 proposers, 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.

6.8.1 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 or Proposals.** The Notice Inviting Bids or Proposals (Notice) is a publicly advertised document, which notifies potential offerors of the title and nature of the contract, and the date, time, and place of the opening of bids. The Notice shall also inform firms 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 or Pre-Proposal conference may be held if a procurement is of considerable complexity or scope. If a Pre-Bid or Pre-Proposal 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 salient 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. For RFPs or QBS, the 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 or proposal form should be used to ensure accurate comparisons. The offeror's completion of the form shall constitute its acceptance of all the terms and conditions contained in the Procurement Documents and shall also indicate the quoted prices. (For Qualification Based Selection, pricing will only be requested from the top ranked firm.) 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 time frame 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.

- 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. Any request for a reciprocal indemnification should be referred to counsel for review.
8. **Qualification of Bidders.** In procurements where the nature of the work is such that the qualifications of the offerors is an essential criterion for evaluating qualifications, the Special Provisions may contain a clause setting the required qualifications. Construction, professional services, and operations solicitations may contain such clauses, but the requirements must be justified. However, the requirements may not be restrictive to permit limiting competition to a select group of firms and Federally funded procurements shall not contain geographic restrictions.

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.

6.8.2 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.
 - 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. If Federally funded, a cost analysis is required for all modifications exceeding the simplified acquisition threshold which is \$250,000.
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.

6.8.3 Selection of Contractor

1. **Opening.** Formal bids shall be opened at the exact time and location advertised, and the opening shall be open to the general public, including bidders. Pertinent portions of Bids shall be read aloud and recorded. Staff shall document the names and affiliation of those present and the results in the project file. Requests for Proposals or Qualification Based Selections involve receipt of confidential proposals. Those proposals are not to be opened publicly and the entire evaluation process is confidential until a recommend to award the contract is determined.
2. **Evaluation of Responses.** The PM and not less than one other staff member shall form a committee to evaluate Bids. For Proposals and Statements of Qualifications, the committee should be at least three people. 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 RFQ** solicitations, the selection will be awarded to the lowest responsive, responsible bidder as defined above and below. See also the detailed instructions in Invitation for Bid.
 - 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:

- i. Financial resources adequate to perform the contract; or the ability to obtain them.
 - ii. Ability to meet the required delivery or performance schedule.
 - iii. Satisfactory record of performance.
 - iv. Satisfactory record of integrity and business ethics.
 - v. Necessary organization, experience, accounting and operational controls and technical skills, or the ability to obtain them.
 - vi. Compliance with applicable licensing, tax laws and regulations.
 - vii. Necessary production, construction, technical equipment and facilities, or the ability to obtain them.
 - viii. Compliance with Affirmative Action and Disadvantaged Business Program requirements.
 - ix. 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. See also the detailed instructions in Request for Proposals.
7. **For an QBS 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. See also the detailed instructions in the selection on Qualification Based Selections.

6.8.4 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.
3. For construction contracts, the contract is executed following approval by the Board. The awardee is then requested to provide the required insurance certificate and the bonds within a specified time period. Failure to provide the required documents may result in termination of the contract for default.

7 INVITATION FOR BID (IFB)

7.1 Application

The following procedure is to be used for the purchase of supplies and equipment; and public works contracts exceeding the Small Purchase threshold established by the MTA Board of Directors. At this time, that limit is \$100,000. If appropriate, an IFB may be used for the purchase of services.

Award is made to the lowest responsive responsible bidder.

7.2 General Procedures

Formal IFBs shall be publicized at least once in a newspaper of general circulation at least 10 days prior to the receipt of bids.

In the solicitation document, MTA is to reserve the right to accept or bids, to cancel the procurement and/or to waive minor informalities.

Late bids will not be accepted and will be returned unopened to the bidder.

Bids that are received by the time specified shall be publicly opened and read aloud at the time and place identified in the Notice.

7.3 IFB Document Structure and Content

An IFB will typically contain the following sections:

- Notice of Invitation for Bids – includes purpose, period of performance, due date, submittal requirements, validity of bid, pre-bid meeting information and other relevant information.
- Instructions to Bidders – includes all instructions to bidder including protest procedures, preparation of bids, selection process including the Basis of Award and other necessary instructions.
- General Conditions – standard clauses including definitions, data rights, changes, legal clauses, and other specific clauses that typically do not change.
- Special Provisions – includes special requirements that specifically apply to the resulting contract. This includes period of performance, payment provisions, option information (if applicable), insurance requirements, and other special requirements.
- Scope of Work / Technical Specification.
- Forms and Certifications – all forms and certifications that apply to the IFB including the pricing forms.
- Contract – a draft contract may be included.
- Appendix – any other relevant documents that should be provided to proposers.

7.4 IFB Selection Process

Award is made to the responsive and responsible bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest in price.

In determining the identification of the lowest responsive bidder, MTA shall review the Bid Form and all certifications for completeness and accuracy. If applicable, this will include compliance with Buy America requirements.

MTA will also review relevant documents to determine that a bidder is considered responsible. This includes determining that the bidder has:

- Sufficient financial strength, resources, and capability to finance the work to be performed and to complete the Contract in a satisfactory manner,
- Has sufficient physical resources to perform the work,
- Evidence of satisfactory performance and integrity on prior contracts.

The IFB may include options for additional equipment, supplies or services. For option equipment, supplies or services to be purchased at a point in the future, the IFB must define how pricing for these items is to be established such as provision of a fixed price or by the use of a specific Producer Price Index. The IFB must also identify approximately when the MTA would exercise the options.

In the case of a construction IFB, the IFB may include one-time optional work items which are “stand alone” pieces of work that the MTA may include in the award if there is sufficient funding. The IFB must define the Basis of Award in the IFB instructions. For example, the Basis of Award will be the lowest Grand Bid Total submitted by a responsive, responsible bidder. The total will consist of the base bid amount weighted at 80% and any optional work elements listed in order of importance. The optional work elements will be weighted at a total not to exceed 20%.

The actual contract award amount will consist solely of the total price for the base bid and any option work elements which the MTA elects to exercise at the time of award. Any optional work item not exercised at the time of bid award is null. This process ensures that the bidder does not “low ball” either the base bid or the bids for the optional work items.

7.5 Documentation Required

A document which describes the selection process shall be created for each IFB. The document shall include a listing of all bidders and their bid prices. The document should describe the review process and the rationale for the proposed contract award.

7.6 Federal Requirements

For federally funded projects, the following additional requirements apply.

- The Purchasing Officer shall review the clause matrix contained in Federally Funded Purchase Procedures and include all appropriate clauses in the solicitation document and resulting contract.
- As appropriate, a Disadvantaged Business Enterprise goal may be set for the specific project.
- For construction contracts, the Infrastructure Investment and Jobs Act included the Build America, Buy America Act. It requires that no federal funds for infrastructure be used for projects unless all iron and steel, manufactured products and construction materials be produced in the U.S. The initial implementing guidance for these requirements is contained in 2 CFR 184. MTA’s IFB documents must ensure that bidders are aware of the requirements and certify compliance.

- The Purchasing Officer shall obtain an Independent Cost Estimate (ICE) prior to the issuance of the IFB. The ICE should be of sufficient detail to permit the evaluation of the bid prices. If an outside Architect or Engineer prepares the technical specifications, that firm should also provide the ICE and assist in the evaluation of the bids.
- FTA requires that the file documentation include the following minimum information:
 - the rationale for the procurement method used,
 - the contract type and the rationale for the selection of the contract type,
 - the reasons for contractor selection or rejection, and
 - the determination of price reasonableness. (In determining price reasonableness, a price analysis will be completed and documented.)
- The MTA must also document that the awardee is a responsive, responsible vendor. For all procurements over \$25,000, the FTA requires that the Recipient verify that the selected supplier is not debarred or suspended by checking the website sam.gov. Appendix A.5 contains information on how to perform that process. Screen prints of the resulting search are to be included in the procurement file. Appendix A.1 also contains a form to document responsiveness and responsibility which is to be completed prior to contract award.
- In the event the bid includes options for additional supplies or equipment, the Purchasing Officer shall insure that the options are “evaluated” as a part of the bid review process. A file memorandum should be created to document the evaluation of the options. This is to avoid having the options being considered as “sole source.”

8 REQUEST FOR PROPOSAL (RFP)

8.1 Application

The following procedure is to be used for competitively negotiated procurements for contracts:

- Not subject to the statutory requirements related to purchase and public works contracts; and
- Awarded on the basis of both price and non-price factors.
- Contracts exceeding the Small Purchase threshold established by the MTA Board of Directors. At this time, that limit is \$100,000 and the award is approved by the MTA Board of Directors.

In addition, this procedure does not cover any additional requirements required under the Brooks Act (federally funded) or the California Mini-Brooks Act. (See Section 9, Qualification Based Selection (QBS) Procedure for additional information on that type of procurement.) With Board approval of required Resolutions, this procurement may also be used for the procurement of rolling stock per California Public Contract Code Section 20217.

8.2 Procedures

Formal RFPs may be publicized by posting on the MTA website and/or by public notice posted in a newspaper of general circulation. Procurements being conducted under PCC 20217 shall be publicized at least once in a newspaper of general circulation at least 10 days prior to the receipt of proposals.

MTA shall reserve the right to award based on initial proposals, to accept or reject proposals, to cancel the procurement and/or to waive minor informalities.

Proposals that are not received by the date and time specified in the solicitation document will not be accepted and will be returned to the proposer unopened.

Proposals will not be publicly opened and all information regarding the proposals and the evaluation process shall be confidential until the recommendation for award is made.

8.3 RFP Document Structure and Content

An RFP will typically contain the following sections:

- Notice of Request for Proposals – includes purpose, period of performance, due date, submittal requirements, validity of proposals, pre-proposal information, and other relevant information.
- Instructions to Proposals – includes all instructions to proposers including protest procedures, preparation of proposals, evaluation and selection process including the Basis of Award and other necessary instructions.
- General Conditions – standard clauses including definitions, data rights, changes, legal clauses, and other specific conditions that typically do not change.
- Special Provisions – includes special requirements that specifically apply to the resulting contract. This includes period of performance, payment provisions, option information (if applicable), insurance requirements, and other special requirements.
- Scope of Work – technical requirements.

- Forms and Certifications – all forms and certifications that apply to the RFP including the pricing forms. If a firm fixed price contract is to be awarded, then only lump sum pricing should be requested. MTA should rarely request detailed cost data – (labor categories, number of hours, hourly rates, overhead, and profit) unless mandatory as federal regulations would then require that a cost analysis be done instead of a price analysis.
- Contract – a draft contract may be included with the solicitation document.
- Appendix – any other relevant documents that should be provided to proposers.

8.4 RFP Selection Process – Acceptably Technical – Low Price Selection Process

The Technically Acceptable Lowest Price (TALP) selection process is used when the MTA awards the contract to the technically acceptable proposal with the lowest evaluated price. It is an alternative to a sealed bid process. TALP is generally used when there will be no significant differences between the products or services offered by different vendors; the specifications are detailed; the proposer’s discretion on performing the work is limited; or the scope of responsibility of the successful contractor will not be extensive. Examples of some of the services where this procurement type could be used are drug testing, bus inspection services, security guard services.

For TALP, the RFP document must include specific evaluation criteria that are “pass or fail” and are provided in enough detail to enable a proposer to determine what documentation must be submitted to verify compliance with the requirement. The RFP shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for the non-cost factors.

The proposals are received and then evaluated against the “pass or fail” criteria. The price proposals are NOT opened until it is determined which firms “pass” the evaluation criteria. Once the acceptable proposals are identified, the price proposals of only those firms are opened. Unless otherwise authorized, the contract resulting from the use of the ATLP selection process shall be approved by the MTA Board of Directors.

8.5 RFP Selection Process – Weighted Guidelines (Explicit Factors) Process

The other type of RFP selection process is the Weighted Guidelines (Explicit Factors). This selection process is used when the MTA awards the contract to the proposal with the highest score. This proposal may or may not be the lowest cost. This process is generally used when there could be significant differences in the approach offered by different proposers; the specifications are not fully defined; the proposer has discretion on performing the work; or the scope of responsibility of the successful contractor is extensive.

For this type of procurement, the evaluation criteria must be listed in the RFP document. For example, the evaluation criteria may include:

- Past Performance
- Technical Approach or Project Plan
- Qualifications of the Firm
- Qualifications of Staff
- Cost or Price Proposal

The evaluation criteria may be listed in descending order of importance or may be listed with weights being assigned for each criteria area. Either is correct.

Internally, weights are always be assigned to each criteria including cost/price proposal.

When scoring the pricing, the prices are typically “normalized.” This is done using the following formula. The lowest price proposal receives 100% of the points established for pricing. Higher proposals are given proportionate amount of these points by using the following formula.

$$\text{Proposer Price Score} = \frac{\text{Lowest Proposed Price}}{\text{Proposer's Price}} \times \text{Total Number of Price Points}$$

If appropriate, the Purchasing Officer may also include minimum qualifications such as:

- “X” years of relevant experience for the Firm
- “X” years of relevant experience for the proposed Project Manager

If minimum qualifications are included, ONLY firms meeting the minimum qualifications will be evaluated further. However, the minimum qualifications shall not be used to exclude otherwise acceptable proposers.

If included in the evaluation process, the Purchasing Officer may require presentations. If presentations are expected, the evaluation criteria should include the scoring of presentations.

Once proposals are received, the following basic procedure is as follows:

1. An offeror's qualifications will be evaluated and the strengths/weaknesses noted on evaluation forms.
2. If required, a short list (competitive range) of the highest rated firms may be developed.
3. Negotiations may be held with all firms or the firms in the competitive range. If negotiations are held with one firm, they will be held with all firms or the firms in the competitive range. Negotiations will be used to resolve any outstanding issues.
4. Revised proposals may be requested.
5. Once negotiations are concluded, MTA may request a Best and Final Offer (BAFO). The BAFO will typically request final pricing and should document any agreements reached during negotiations.
6. The BAFOs will then be scored and award will be recommended to the highest rated firm.

The contract resulting from the use of the RFP Procedure shall unless otherwise authorized be approved by the MTA Board of Directors. All proposers shall be notified of the award recommendation in writing.

8.6 Debriefing

An unsuccessful proposer may request a debriefing to understand why it was not recommended for award. This is a post-award process. It should not include a point-by-point comparison of the proposal with other offerors but will focus on the strengths and weaknesses of that proposal. Any debriefing should not reveal any information prohibited from disclosure by law or exempt from release under the [applicable public records laws], including trade secrets, or privileged or confidential commercial or manufacturing information. A summary of any debriefing should be included in the contract file.

8.7 Documentation Required

A document which describes the selection process shall be created for each RFP. The document shall include a listing of all proposers and their ranking. The document should describe the strengths/weaknesses of each proposal and include the rationale for the proposed contract award.

8.8 Federal Requirements

For federally funded projects, the following additional requirements must be used:

- The Purchasing Officer shall review the clause matrix contained in Federally Funded Purchase Procedures and include all appropriate clauses in the solicitation document and resulting contract.
- The Purchasing Officer shall obtain an Independent Cost Estimate (ICE) prior to the issuance of the RFP. As appropriate, the ICE should be of sufficient detail to permit the evaluation of the price proposals or the cost proposals. In the rare event that cost elements (labor categories, estimated number of hours, estimated hourly rates, etc.) are being requested, the ICE must also show that same level of detail.
- FTA requires that the file documentation include the following minimum information:
 - the rationale for the procurement method used,
 - the contract type and the rationale for the selection of the contract type,
 - the reasons for contractor selection or rejection, and
 - the determination of cost reasonableness.

Appendix A.6 contains a sample form to document these items.

- The MTA must also document that the awardee is a responsive, responsible vendor. For all procurements over \$25,000, the FTA requires that the Recipient verify that the selected supplier is not debarred or suspended by checking the website sam.gov. Appendix A.5 contains information on how to perform that process. Screen prints of the resulting search are to be included in the procurement file. Appendix A.9 contains a form to document responsiveness and responsibility as well as debarment or suspension.
- In the event the RFP includes options, the Purchasing Officer shall insure that the options are “evaluated” as a part of the evaluation process. A file memorandum should be created to document the evaluation of the options.

FTA requires that when cost proposals are received, audits of the proposed cost proposals must be carried out under FAR Part 31 cost principles and profit will be negotiated.

The MTA will accept FAR indirect cost rates for the one-year applicable accounting periods established by a cognizant Federal or State government agency if those rates are not currently under dispute. MTA will negotiate these costs including the proposed profit. MTA will attempt to keep all such cost data confidential to the extent permitted by law.

9 QUALIFICATION BASED SELECTION (QBS) PROCEDURE

9.1 Application

The following procedure is to be used for service contacts conducted under the Brooks Act (federally funded) or the California Mini-Brooks Act.

9.2 Definition

Brooks Act – Applies to federally funded professional service contacts that are directly in support of, directly connected to, or directly related to, or lead to construction, alteration, or repair of real property. The services are described in 49 U.S.C. Section 5325(b) and includes program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services.

California Mini-Brooks Act – Applies to non-federally funded professional service contracts for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services. Government Code Section 4525-4529.5 requires the use of Qualification Based Selection procedure for the award of these type of service contracts.

9.3 Basic Procedures

A Qualification-Based Selection (QBS) is conducted using a Request for Qualifications (RFQ) process. The procedures for the RFQ are similar to the procedures for the Formal Request for Proposals except the no request for a cost proposal and cost cannot be a factor in the selection process. The requirement is to obtain qualifications of the firms to best suit the needs of the MTA. MTA may use a “fill in the blank” type form to obtain qualification information. Appendix A.4 contains GSA Standard Form 330 which is a sample form that can be used for this purpose.

Once proposals are received, the following procedure is followed:

1. An offeror's qualifications shall be evaluated and scored according to the criteria contained in the RFQ;
2. A Responsiveness / Responsibility Checklist should be completed for each firm.
3. Interviews may be conducted to clarify any weaknesses and/or to obtain additional information. If interviews are conducted, interviews will be held with all firms unless a competitive range was established to reduce the number of firms being considered for award.
4. A summary of the process will be created. It will describe the process and will list all firms that responded in order of the most qualified firm to the least qualified firm.
5. A cost proposal will then be requested from only the most qualified firm.
6. Cost negotiations will be conducted with only that firm.
7. Failing agreement on cost, the firm is officially notified that negotiations are at an impasse and thus the firm will no longer be considered. A cost proposal is then requested from the second most qualified firm. Serial negotiations with the next most qualified firm will be conducted until a contract award can be made to the most qualified firm whose cost is fair and reasonable to MTA.

8. For Federally-funded projects, an audit of the proposed costs **must** be conducted prior to contract award because there is no price competition. The audit must be conducted according to the Federal Acquisition Regulations (FAR) Part 31 – Contract Cost Principles and Procedures. Following resolution of any audit findings, the final contract amount and contract type are negotiated.
9. All proposers are notified in writing of the proposed award. See Appendix A.8 – Notice of Intent to Award form.

The contract resulting from the use of the QBS Procedure shall be awarded and approved according to the MTA Purchasing Policy.

9.4 Documentation Required

A document which describes the selection process shall be created for each QBS procurement. The document is to contain a list of all proposals and their ranking. The document shall describe the strengths/weaknesses of each proposal and shall include the rationale for the proposed contract award.

Appendix A.10 contains a sample evaluation form for RFPs that can be “customized” for a QBS process. Appendix A.9 also contains a Responsiveness/Responsibility form that should also be completed for each proposal. These forms should be used regardless of the type of funding.

9.5 Federal Requirements

For federally funded projects, the following additional requirements must be used:

- The Purchasing Officer shall review the clause matrix contained in Federally Funded Purchase Procedures and include all appropriate clauses in the solicitation document and resulting contract.
- The Purchasing Officer shall obtain an Independent Cost Estimate (ICE) prior to the issuance of the RFQ if the value of the proposed contract exceeds \$250,000. It is recommended that an ICE be created for small contract amounts to assist MTA in the negotiation process. The ICE should be of sufficient detail (labor categories, estimated number of hours, estimated hourly rates, etc.) to permit the evaluation of the cost proposal.
- FTA requires that the file documentation include the following minimum information:
 - the rationale for the procurement method used,
 - the contract type and the rationale for the selection of the contract type,
 - the reasons for contractor selection or rejection, and
 - the determination of cost reasonableness.

Appendix A.6 contains a sample form to document these items.

- The MTA must also document that the awardee is a responsive, responsible vendor. For all procurements over \$25,000, the FTA requires that the Recipient verify that the selected supplier is not debarred or suspended. Appendix A.9 contains a form to document responsiveness and responsibility as well as debarment or suspension.

Federally funded procurements usually prohibit geographic preferences. However, this prohibition does not apply if an adequate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project. (In this case, an adequate number of firms should be at least 2-3 firms.)

FTA requires that when cost proposals are received for procurements involving the QBS procedure, audits of the proposed cost proposals must be carried out under FAR Part 31 cost principles.

The MTA will accept FAR indirect cost rates for the one-year applicable accounting periods established by a cognizant Federal or State government agency if those rates are not currently under dispute. MTA will negotiate these costs including the proposed profit. MTA will attempt to keep all such cost data confidential to the extent permitted by law.

10 PROTEST PROCEDURES

- A. **Purpose.** The purpose of these procedures is to set forth the procedures to be utilized by the Mendocino Transit Authority (MTA) in considering and determining all protests or objections regarding solicitations, proposed award of a contract, or award of a contract whether before or after award.
- B. **General.** In order for a protest to be considered by MTA, it must be submitted by an interested party (as defined below in accordance with the procedures set forth herein). A protest which is submitted by a party which is not an interested party or which is not in accordance with the procedures shall not be considered by MTA, and will be returned to the submitting party without any further action by MTA.
- C. **Definitions.** For purposes of these Protest Procedures the following definitions apply.
1. Bid includes any bid or offer submitted by a bidder in response to an Invitation for Bid (IFB). For these specific procedures only, the term bid includes any proposal or revised proposal submitted by an offeror in response to a Request for Proposals (RFP).
 2. Contract means that document to be entered into between MTA and the successful bidder and offeror. It may include a separate written contract document or a Purchase Order.
 3. Days refers to normal business days of MTA staff offices.
 4. Interested party means any person: (a) who is an actual or prospective proposer, bidder, or offeror in the procurement involved; and (b) whose direct economic interest would be affected by the award of the contract or by failure to award a contract. Only firms that submitted a bid or proposal may protest a proposed contract award. (Interested parties do not include subcontractors or suppliers of an actual or prospective offeror, or joint venturers acting independently of a joint venture.)
 5. Protest is a written objection or complaint filed by an interested party to the terms, conditions or form of a proposed solicitation document or actual award of a contract.
 6. Solicitation means an Invitation for Bids (IFB), Request for Proposals (RFP), or other form of formal procurement used to procure equipment or services.
- D. **Grounds for Protest.** Any interested party may file a bid protest with MTA on the grounds that:
1. MTA has failed to comply with applicable Federal or State Law;
 2. MTA has failed to comply with its procurement procedures;
 3. MTA has failed to comply with the terms of the solicitation in question, including the failure to adhere to the evaluation criteria set forth in the solicitation, if applicable;
 4. MTA has issued restrictive or discriminatory specifications; or,
 5. Award is made to other than the lowest responsive and responsible bidder on formally advertised (IFB) procurements.
- E. **Contents of Protest**
1. A bid protest must be filed in writing and must include:
 - a. The name and address of the protestor and its relationship to the procurement in sufficient detail to establish that the protest is being filed by an interested party.

- b. The name and number (if available) of the procurement solicitation.
 - c. A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law, the provision of MTA procurement procedures, or specific term of the solicitation alleged to have been violated.
 - d. Any relevant supporting documentation the protesting party desires MTA to consider in making its decision.
 - e. The desired relief, action, or ruling sought by the protestor.
2. Protests must be filed with:
- Mendocino Transit Authority
Executive Director
241 Plant Rd
Ukiah, CA 95482
3. All protests must be received at the MTA address listed above during normal office hours of 8:00 a.m. to 5:00 p.m., Pacific Standard Time.
4. If any of the information required by this section is omitted or incomplete, MTA will notify the protestor, in writing, within one day of the receipt of the protest, and the protestor will be given one day to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.
- F. **Timing Requirements and Categories of Protests.** MTA will consider the following categories of bid protests within the time period set forth in each category:
1. Pre-Award Protest – This refers to any bid protest alleging improprieties in a solicitation process or in solicitation documents. This category does not include rolling stock being procured under the provisions of PCC § 20217.
 - a. Such protest must be filed no later than five (5) days prior to the scheduled bid opening or deadline for submittal for proposals, as appropriate, in order to be considered by MTA.
 - Any protest based on such grounds not filed within this period will not be considered by MTA. This category of protests includes, but is not limited to, allegations of restrictive or exclusionary specifications or conditions.
 - The date for receipt of bids or proposals may be extended to accommodate the resolution of the protest. In such cases, the list of plan holders (Offerors) for the solicitation should be informed of the protest. An addendum to the IFB or RFP shall be issued to extend the date for receipt of bids or proposals.
 2. Post-Award Protest – Refers to any bid protests regarding the evaluation of bids or proposals by MTA, or improprieties involving the approval or award or proposed approval or award of a contract. This category does not include rolling stock being procured under the provisions of PCC § 20217.
 - Must be filed with MTA no later than 72 hours after the protestor's receipt of MTA's written notice of its decision or intended decision to award a contract. Any protest filed after such date which raises issues regarding the bid proposal evaluation, or the contract approval or award will not be considered by MTA.

3. Rolling Stock Procurements conducted under PCC § 20217 – For rolling stock being purchased under the provisions of PCC § 20217, the statute contains the following provisions on Protests:
 - Pre-Award Protests: Protests based on the content of the request for proposals shall be filed with the MTA within 10 calendar days after the request for proposals is first advertised. MTA shall issue a written decision on the protest prior to opening of proposals. A protest may be renewed by refileing the protest with the agency within 15 calendar days after the staff recommendation for award has been made available to the public as required by [subdivision \(e\) of Section 20216](#).
 - Protests of Award - Any bidder may protest the recommended award on any ground not based upon the content of the request for proposals by filing a protest with the agency within 15 calendar days after the staff recommendation for award has been made available to the public as required by [subdivision \(e\) of Section 20216](#).
 - Protesters shall have an opportunity to appear and be heard before the MTA Board of Directors prior to the opening of proposals in the case of protests based on the content of the request for proposals, or prior to final award in the case of protests based on other grounds or the renewal of protests based on the content of the request for proposals.

G. Review of Protest by MTA

1. MTA will notify the protestor within 3 days of timely receipt of a bid protest that the protest is being considered.
2. In the notification, MTA will inform the protestor of any additional information required for evaluation of the protest by MTA and set a time deadline for submittal of such information. If MTA requests additional information, and it is not submitted by the stated deadline, MTA may either review the protest on the information before it, or decline to take further action on the protest.
3. In its sole discretion, MTA may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to MTA relative to the merits of the bid protest. MTA will set a time deadline for the submittal of such comments, which will be no less than 5 days after MTA provides notification of the protest.
4. In its sole discretion, MTA may schedule an informal conference on the merits of a bid protest. All interested parties will be invited to participate in the conference. Any information provided at the conference will only be considered by MTA in deciding the bid protest if it is submitted to MTA in writing within 3 days after the conference.

H. Effects of Protest on Procurement Actions

1. Upon receipt of a timely protest regarding either the solicitation process of the solicitation documents in the case of sealed bids, MTA will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however, change the date on which bids are due, unless MTA determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.
2. Upon receipt of a timely protest regarding evaluation of bid or proposals, or the approval or award of a contract, MTA will suspend contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.

3. Notwithstanding the pendency of a bid protest, MTA reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the contract in the following cases:
 - a. Where the item to be procured is urgently required;
 - b. Where MTA determines, in writing, that the protest is vexatious or frivolous;
 - c. Where delivery or performance will be unduly delayed, or other undue harm to MTA will occur, by failure to make the award promptly; or,
 - d. Where MTA determines that proceeding with the procurement is otherwise in the public interest.
- I. **Summary Dismissal of Protests.** MTA reserves the right to summarily dismiss all or any portion for a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by MTA in a previous bid protest by any interested party in the same solicitation or procurement action.
- J. **Protest Decisions**
 1. After review of a bid protest, the Procurement Officer shall make a recommendation to the Executive Director of the appropriate disposition of such protest.
 2. The recommendation shall be made on the basis of the information provided by the protestor and other parties, the results of any conferences, and MTA's own investigation and analysis.
 3. If the protest is upheld, MTA will take appropriate action to correct the procurement process and protect the rights of the protestor, including re-solicitation, revised evaluation of bids or proposals or MTA's determination, or termination of the contract.
 4. If the protest is denied, MTA will lift any suspension imposed and proceed with the appropriate state of the procurement process or the contract.
- K. **Judicial Appeals.** A protest adversely affected by a bid protest decision may appeal such decision to an appropriate court of the State of California located in Mendocino County.

11 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.

11.1 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. Rationale for selecting contract type;
3. Independent Cost Estimate;
4. Cost/Price analysis; record of determination that cost is fair and reasonable;
5. Contractor selection and rejection criteria;
6. Evaluation of submittals received;
7. Written record of selection of suppliers for negotiation and contract award;
8. Summary of cost/price negotiations, as appropriate;
9. Determination of reasonable contract cost compared to independent cost estimate;
10. All correspondence between MTA and contractor.

Files maintained by the Finance Manager:

1. Copies of published public notices of proposed contract action;
2. A list of all bidders and proposers contacted and DBE status;
3. All quotes, bids and proposals received;
4. Purchase orders;
5. Contract close-out documents.

Files maintained by both:

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

Upon closeout, all files will be consolidated and filed.

11.2 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.

11.3 Contractor Oversight

The PM must ensure contractors perform in accordance with contract requirements, producing services and products that meet MTA requirements delivered on time and within established budgets. While not exhaustive, the following are topics are areas of emphasis for the Agency.

11.3.1 Disadvantaged Business Enterprise (DBE) Program

DBE requirements must be included in every federally assisted solicitation. Unless fully funded with state and local funds (i.e., no federal assistance), no MBE, WBE, SBE, or other program may be included.

The PM must conduct oversight of contractor DBE compliance including monitoring and enforcement to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This must include a written certification that the PM has reviewed contracting records and monitored work sites for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract). See 49 CFR 26.37.

11.3.2 Prompt Payment of Subcontractors and Suppliers

49 CFR 26.29 requires, inter alia, that prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

California's Public Contracting Code generally requires contractors to pay their subcontractors, within seven days of receipt of each progress payment. MTA requires compliance with this stricter standard. The PM must collect sufficient records from the contractor to establish compliance with these prompt payment requirements.

11.3.3 Prevailing Wages

MTA requires its contractors to pay the highest of applicable federal or state prevailing wages. The PM must review certified payroll documents related to construction projects or similar records to ensure contractors comply with prevailing wage requirements.

11.3.4 Buy America

FTA assisted contracts must include appropriate Buy America (and *Build America Buy America Act*) certifications. The PM is responsible to conduct adequate checks on all materials affected by US content requirements to ensure compliance.

11.3.5 Time and Materials (T&M) Contracts

T&M should only be used when no other contracting method is appropriate. The nature of T&M contracts requires the PM to carefully oversee and track expenditures to ensure contractors perform diligently, within established not-to-exceed amounts, and make reasonable progress toward contract goals. Regular reviews of oral or written progress and expenditure reports are key to performance monitoring.

Appendix A Sample Forms

This Appendix contains sample forms that to be used by MTA personnel in meeting requirements contained in the MTA Procurement Policy.

- Appendix A.1 Bid Responsiveness – Responsibility Checklist
- Appendix A.2 Contract Closeout Checklist
- Appendix A.3 FTA Clause Matrix – February 2024
- Appendix A.4 GSA Standard Form 330
- Appendix A.5 How to Check Suspension and Debarment
- Appendix A.6 Informal Quote Form
- Appendix A.7 Micro-Purchase Fair and Reasonable Price Determination
- Appendix A.8 Notice of Intent to Award
- Appendix A.9 RFP – Responsiveness – Responsibility Checklist
- Appendix A.10 Sample Evaluation Form – RFP – QBS
- Appendix A.11 Sole Source Justification Form
- Appendix A.12 Written Record of Procurement History

Appendix A.1 Bid – Responsiveness/Responsibility Checklist

Use the following checklist to check responsiveness and responsibility for each bidder for every formal procurement. Use one form per firm. List any additional certificates in the space provided. Use additional pages if necessary.

RESPONSIVENESS	Y	N	NA
Bid Letter Signed by Duly Authorized Official & Notarized if required.			
Addenda ___ thru ___ acknowledged			
All Forms Completed (reference Bid Document Requirements)			
List of Proposed Subcontractors – required for all construction contracts – PCC 4107.			
DEOD Final memo indicates Bidder is responsive to DBE Goal if applicable			
DBE/SBE Goal Affidavit			
Bidder Completely Filled Out & Signed the Following Certifications:			
Cert. Federal Lobbying (\$100,000 and over)			
Cert. Prospective Contr. Suspension and Debarment Cert (\$25,000 and greater)			
Cert. Lower Tier Suspension and Debarment Cert (\$25,000 and greater)			
Buy America Cert. – Steel or Manufactured Products			
Buy America Cert. – Rolling Stock			
Build America – Buy America – Construction Materials – 2 CFR 184			
Conflict of Interest Certificate			
Bid Bond Received (10% of Total Value) – if Construction			
Verification of Bid bond for adequacy			
Evidence of Proper License & verification of license			

* any certifications with exceptions noted by Bidder must be reviewed by Executive Director and/or Legal prior to completing responsiveness review

RESPONSIBILITY REVIEW	Y	N	Ref
1) Debarment and Suspension – Firm is not on Debarred/Excluded Parties List (Check Sam.gov and attach screenprint) - Should be verified right before award			
2) Affirmative Action and DBE/SBE – Firm is in compliance with Common Grant Rules and DBE/SBE requirements if there is a DBE/SBE goal			
3) Public Policy – Firm is in compliance with public policy of the Federal Government (general & debarment cert, pass pre-qual, etc.)			
4) Administrative and technical Capacity – necessary organization, experience, accounting & operational controls or ability to obtain them			
5) Licensing and Taxes – Compliance with applicable license, regulations & tax laws			
6) Adequate Financial Resources			
7) Production Capability – Necessary production, construction and tech. Equip. & facilities or ability to obtain them (pre-award site visit)			
8) Timeliness – Bidder able to comply with delivery schedule and/or performance requirements			
9) Satisfactory Current and Past Performance Review Completed, no current default terminations			
10) Adequate Safety Record			
11) Adequate Quality Assurance Plan			

Completed by: _____ Title: _____ Date: _____

Appendix A.2 Contract Closeout Checklist

FOR ALL CONTRACTS OVER \$100,000

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. (As appropriate, this form may be used for contacts of a lesser amount.)

Work Item	Status	Date
1. Resolution of all contract changes		
2. Perform Post-Delivery Buy America audit and execute required Post Delivery Certificates (See Note)		
3. Determination of any liquidated damages If LDs are assessed, these are to be deducted from the final invoice. See Note for how LDs are handled for Rolling Stock.		
4. Review of insurance claims. Determination if funds need to be withheld from final payment to cover unsettled claims against contractor/supplier		
5. Verify settlement and prompt payment of all sub-contracts by prime contractor/supplier		
5. Performance of required inspections/tests/etc. (Place results in the file.)		
6. Contractor Performance Report		
7. All submittals/deliverables/services completed: <ul style="list-style-type: none"> ▪ Reports ▪ Test results and acceptance documentation ▪ Final payroll records/wage rate certifications ▪ Warranties/Guarantees ▪ “As-Built” drawings, blueprints ▪ Manuals and publications 		
8. Final Invoice <ul style="list-style-type: none"> ▪ Consent of surety to release final payment ▪ Retention should be listed separately 		

Work Item	Status	Date
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		

NOTE – Post-Delivery Buy America Audits – This audit should be done as soon as the first production vehicle is started on the production line. 49 CFR 663.31 requires the audit be completed prior to title being transferred to the MTA. By that point, all parts have been ordered/received and the manufacturer should have all required invoices. The person or firm performing the audit cannot sign the certificates – this can only be done by the Agency’s representative.

NOTE – For Liquidated Damages on Rolling Stock – If the buses that are on order will be delivered late, Liquidated Damages may be imposed as long as this requirement was contained in the contract. The LDs should be assessed for each separate vehicle and the resulting amount should be deducted from the invoice for that specific vehicle.

Appendix A.3 FTA Clause Matrix – February 2024

APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)
Includes provisions from 2 CFR 200, Master Agreement 30 (FY23) and Circular 4220.1F

PROVISION	TYPE OF PROCUREMENT				
	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Termination	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Civil Rights (Title VI, ADA, EEO except Special DOL EEO clause for construction projects)	All	All	All>\$10,000	All	All
Special DOL EEO clause for construction projects				>\$10,000	
Veteran's Employment Preference				All	
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Prompt Payment to Subcontractors (if not part of DBE clause)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$150,000 49 USC 5323(j)(13)	>\$150,000 49 USC 5323(j)(13)	>\$150,000 49 USC 5323(j)(13)

TYPE OF PROCUREMENT

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Resolution of Disputes, Breaches, or Other Litigation – Notification of Contractor and/or Subcontractor to Agency and Agency notification to FTA	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Cargo Preference			Transport by ocean vessel	Transport by ocean vessel	Transport by ocean vessel
Fly America	Foreign air transp./travel	Foreign air transp./travel	Foreign air transp./travel	Foreign air transp./travel	Foreign air transp./travel
Davis-Bacon Act				>\$2,000 (also ferries)	
Contract Work Hours and Safety Standards Act		>\$100,000 (transportation services excepted)	>\$100,000	>\$100,000 (also ferries)	
Copeland Anti-Kickback Act Section 1 Section 2				All >\$2,000 (also ferries)	
Bonding				>\$250,000	
Seismic Safety	A&E for new buildings & additions			New buildings & additions	
Transit Employee Protective Arrangements		Transit operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit operations			
Alcohol Misuse and Testing		Transit operations			
Patent Rights	R & D				
Rights in Data and Copyrights	R & D				
Rights to Inventions Made Under a Contract or Agreement	R & D with Small Business or Non-Profit				

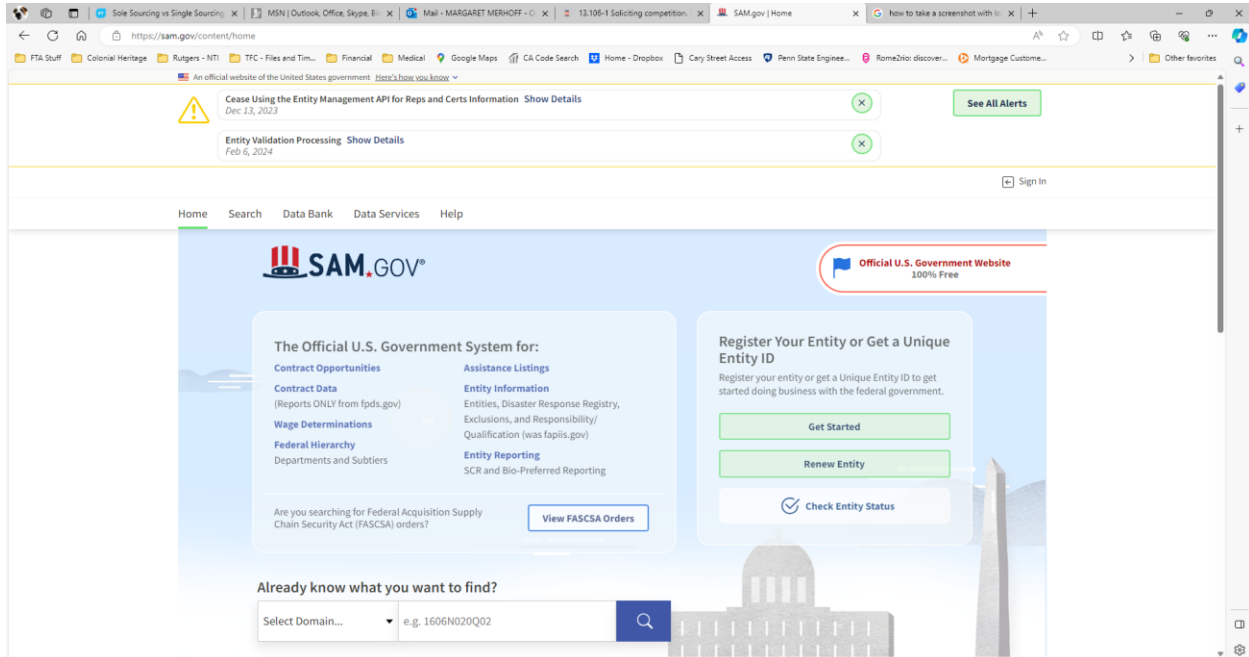
TYPE OF PROCUREMENT

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually		EPA-selected items \$10,000 or more annually	EPA-selected items \$10,000 or more annually
Conformance with ITS National Architecture	ITS projects	ITS projects	ITS projects	ITS projects	ITS projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States
Safe Operation of Motor Vehicles Seat Belt Use Distracted Driving	All	All	All	All	All
Prohibition on certain telecommunications and video surveillance services or equipment	All	All	All	All	All

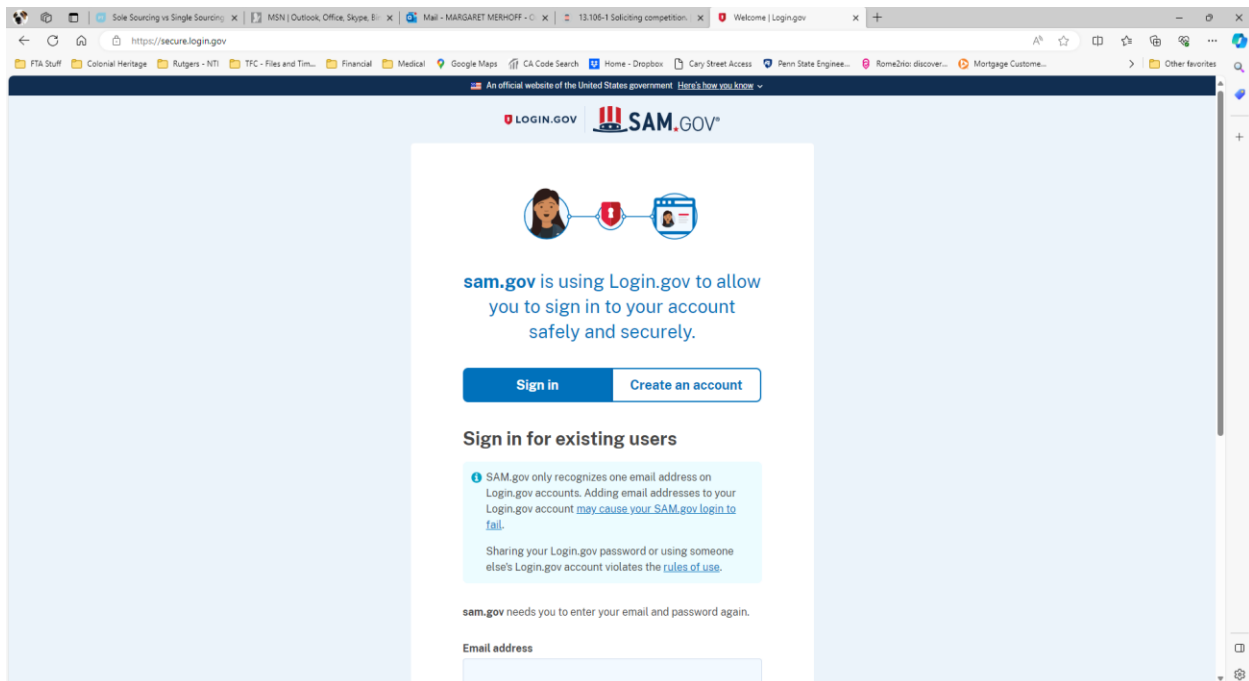
Appendix A.4 GSA Standard Form 330

Appendix A.5 How to Check Suspension and Debarment on SAM.gov

1. Navigate to www.sam.gov.

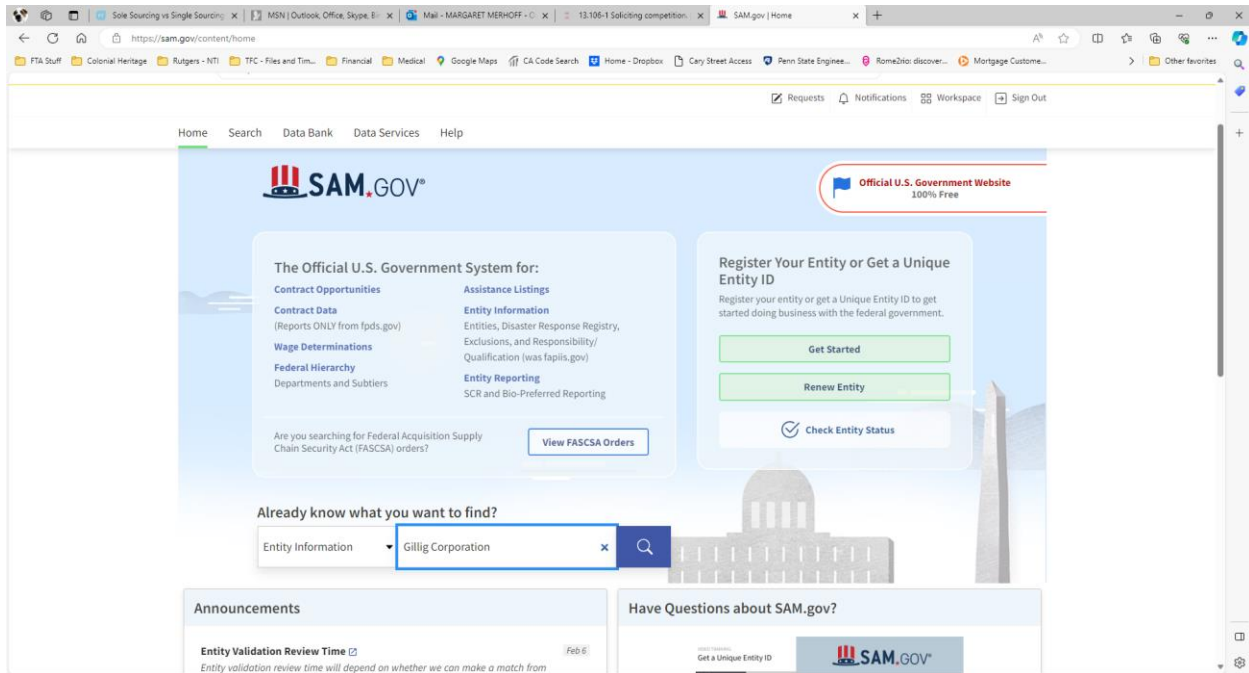


2. If you have not previously registered on sam.gov, you must first create an account. There is **NO COST!**

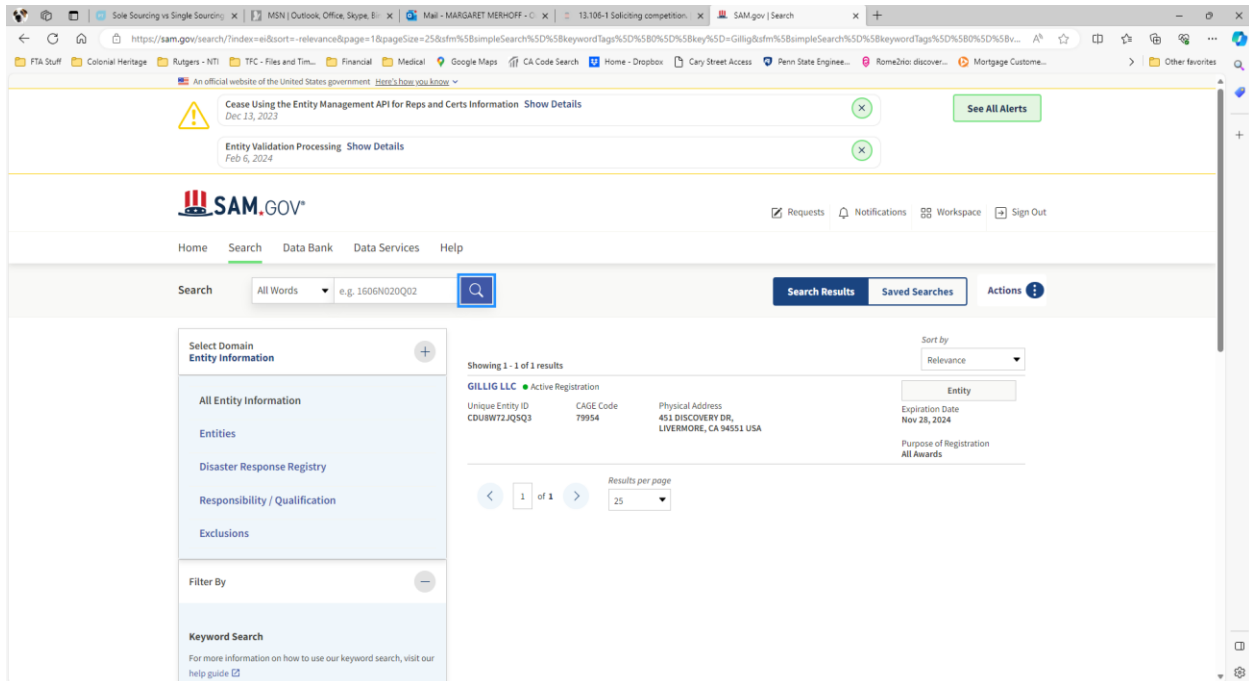


3. When you sign-in, the sam.gov system will likely send you a one-time code. Enter it in the space provided. From the Home page look at "Already know what you want to find?"

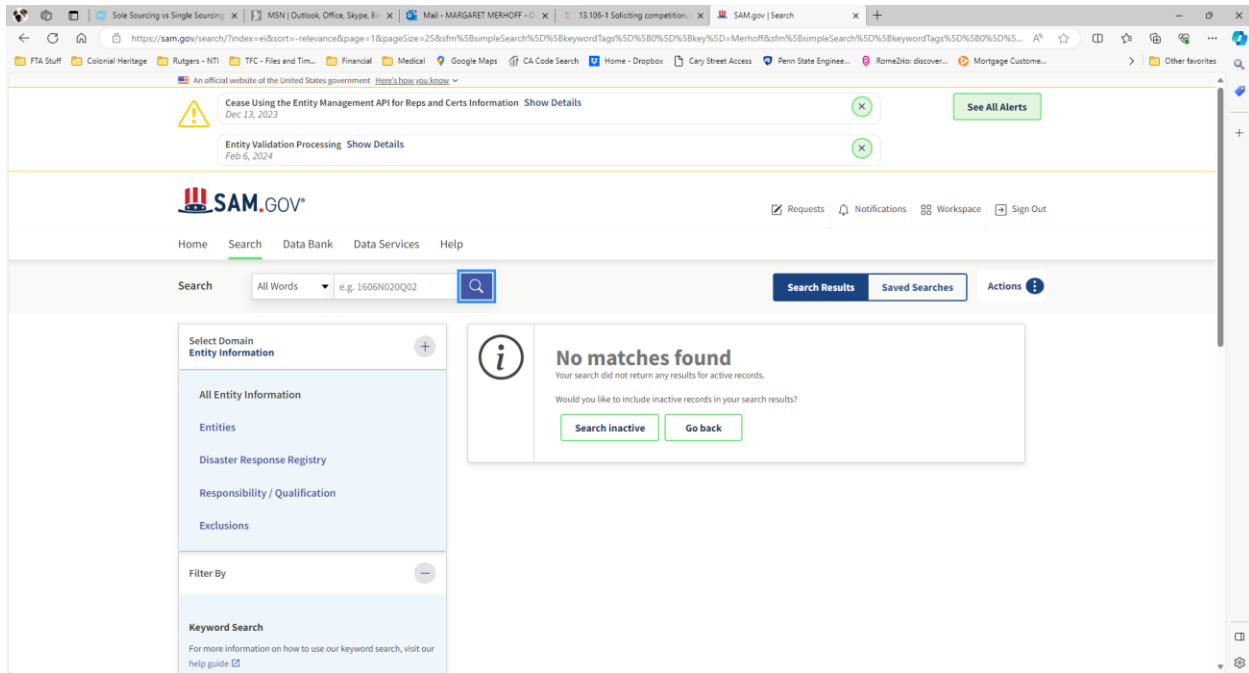
4. Select "Entity Information" and enter the name of the firm that you are checking.



5. Press enter.

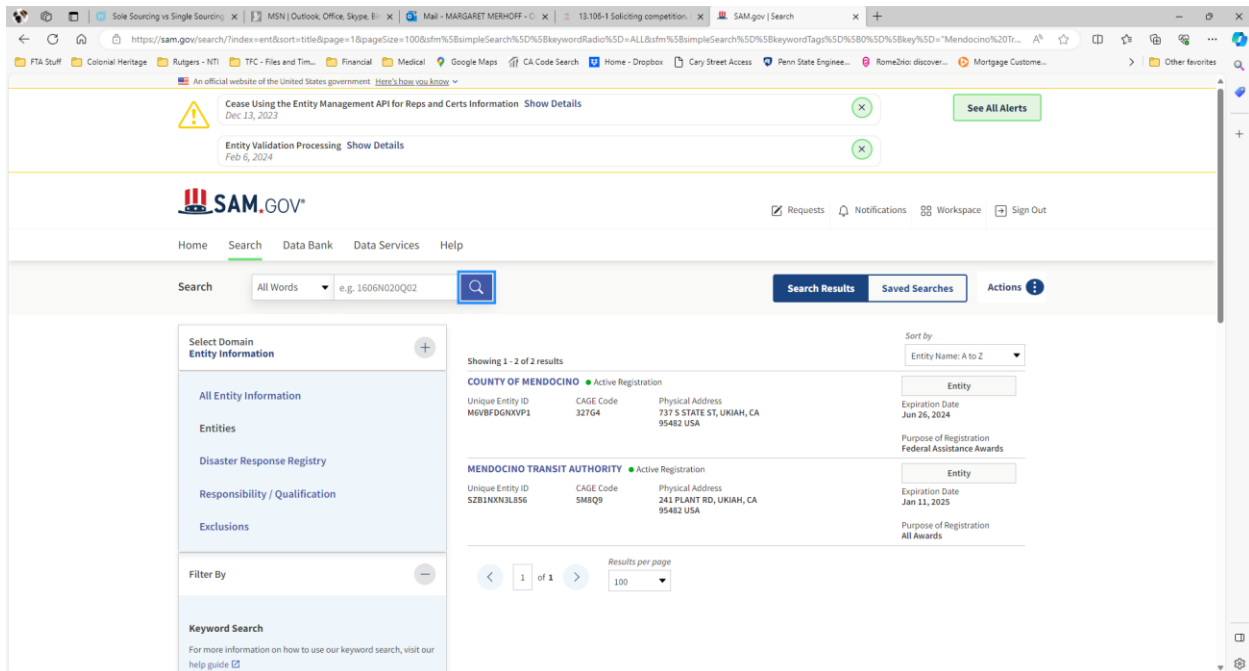


6. Most likely you will see something like the following:



7. Screenprint this page and put it in your file. On the page, note the name of the firm that you searched.

NOTE – USE A PARTIAL NAME OF THE BUSINESS AS YOU DON'T KNOW HOW THEY MAY HAVE REGISTERED IN SAM.GOV.



YOU SIMPLY DO NOT WANT TO FIND THAT THE FIRM IS DEBARRED OR SUSPENDED! If that happens, call Caltrans or the FTA. Do not proceed!

Appendix A.6 Informal Quote Form

For informal quotes \$3,000–\$100,000, complete this form which also provides the Written Record of Procurement History. Attach a copy of all quotes or responses received. File with the copy of the Purchase Order.

Date:			
Procurement Number:			
Project Title:			
Funding Source:			
Date of Receipt of Offer:			
Estimated Cost:			
Suspension and Debarment (required for Federal funds over \$25,000 - check SAM.gov – attach screenprint)			
Procurement Description (What is the purchase? Why is it needed? What is it for? Quantity?)			
Procurement Method:		Small Purchase/ Quotes	
Contract Type:	Firm Fixed Price	Firm Fixed Unit Price	Lump Sum
	Time and Material	If T&M, Not to Exceed Amount	
Rationale for the Method of Procurement:			
Reason for the Selection of the Contract Type: (for T&M – why is this the ONLY type of contract that is acceptable?)			
Offeror's Name:			
Offeror's Address:			
Offeror's Proposed Price:			
Name of Reason for Selecting the Proposed Contractor:			
Cost or Price Analysis – Justification for the Proposed Contract Price: - low quote, etc.			

Based on the attached competitive quotes obtained and the above information, the undersigned finds that the price offered is fair and reasonable.

Name of Staff Person

Signature: _____ Date: _____

Executive Director Approval – if necessary

Signature: _____ Date: _____

Appendix A.7 Micro-Purchase Fair and Reasonable Price Determination

For every Micro-Purchase, complete and attach a copy of this form to the Purchase Order.

I hereby determine the price for _____ (insert identification of item being purchased) to be fair and reasonable based on at least one of the following:

- Found reasonable on recent purchase
- Obtained from current price list
- Obtained from current catalog
- Commercial market sales price from internet search
- Other _____

Signed _____ Date _____

Appendix A.8 Notice of Intent to Award

(Date)

Contact Person

Company Name

Address

City, State Zip

Dear ()::

Subject: Notice of Intent to Award for (IFB/RFP No. __) for (Name of Project)

The MTA staff has evaluated the (bids/proposals) submitted in response to the subject (IFB/RFP). The staff recommends contract award to (insert name of firm). This recommendation is not final until approved by the MTA's (Executive Director or Board of Directors).

IF AWARD MUST BE APPROVED BY THE BOARD OF DIRECTORS – INCLUDE THE FOLLOWING INFORMATION

This recommendation for award will be presented to the MTA's Board at its meeting on (date). The meeting will be held at the _____ (location).

If there are other questions regarding the recommendation, please contact the undersigned at (213) ____-____.

Sincerely,

(Name)

(Project Manager)

cc: (Executive Director)

Appendix A.9 RFP – Responsiveness/Responsibility Checklist

Use the following checklist to check responsiveness and responsibility for each proposer for every formal procurement. Use one form per firm. List any additional certificates in the space provided. Use additional pages if necessary.

RESPONSIVENESS	Y	N	NA
Proposal Letter Signed by Duly Authorized Official & Notarized if required.			
Addenda ___ thru ___ acknowledged			
All Forms Completed (reference Proposal Document Requirements)			
List of Proposed Subcontractors			
DEOD Final memo indicates Proposer is responsive to DBE Goal if applicable			
DBE/SBE Goal Affidavit			
Bidder Completely Filled Out & Signed the Following Certifications:			
Cert. Federal Lobbying (\$100,000 and over)			
Cert. Prospective Contr. Suspension and Debarment Cert (\$25,000 and greater) – sam.gov			
Cert. Lower Tier Suspension and Debarment Cert (\$25,000 and greater) – sam.gov			
Buy America Cert. – Rolling Stock			
Conflict of Interest Certificate			

* any certifications with exceptions noted by Proposer must be reviewed by Executive Director and/or Legal prior to completing responsiveness review

RESPONSIBILITY REVIEW	Y	N	Ref
1) Debarment and Suspension – Firm is not on Debarred/Excluded Parties List (Check Sam.gov and attach screenprint) - Should be verified right before award.			
2) Affirmative Action and DBE/SBE – Firm is in compliance with Common Grant Rules and DBE/SBE requirements if there is a DBE/SBE goal			
3) Public Policy – Firm is in compliance with public policy of the Federal Government (general & debarment cert, pass pre-qual, etc.)			
4) Administrative and technical Capacity – necessary organization, experience, accounting & operational controls or ability to obtain them			
5) Licensing and Taxes – Compliance with applicable license, regulations & tax laws			
6) Adequate Financial Resources			
7) Production Capability – Necessary production, construction and tech. Equip. & facilities or ability to obtain them (pre-award site visit)			
8) Timeliness – Bidder able to comply with delivery schedule and/or performance requirements			
9) Satisfactory Current and Past Performance Review Completed, no current default terminations			

Completed by: _____ Title: _____ Date: _____

Appendix A.10 Sample Evaluation Form – RFP – QBS

SAMPLE TECHNICAL EVALUATION FORM

NOTE – To use this form, identify the evaluation criteria based on the scope of work and assign weights to each area. Use one copy for each evaluation. For Qualification Based Selections, delete the reference to Price as it cannot be an evaluation criterion.

Use one form to compile the rating for each proposer. Rate the proposer from 1 - 10 on each criterion as the proposer and the proposal relate to the work.

NOTE: There should be an attached narrative section to support the evaluator’s scoring for each proposal.

Criteria	Weight	X	Rating	= Score
1. Qualifications of Proposed Firm				
2. Qualifications of Proposed Staff				
3. Methodology / Work Plan				
4. Past Performance				
5. Price – IF APPROPRIATE				

TOTAL

I have rated the above Proposer's ability to provide the services according to the listed criteria and weights and calculated an overall score of which is consistent with the rating scale.

Evaluator Name: _____

Signature and Date: _____

SAMPLE TECHNICAL EVALUATION FORM SCORING DETERMINATION GUIDELINES

The following quality point rating shall be used in the ranking of proposals unless indicated otherwise on evaluation sheets. Scores should be indicated on the Evaluation Work Forms included herein.

Points	Rating	Basis of Rating
10	Excellent	Contractor's proposal indicates excellent conformance with stated requirements in terms of competence, analytical work, and efficient use of resources. It also shows excellent use of those attributes within proposed team structure.
8-9	Good	Contractor's proposal indicates good conformance with stated requirements in terms of competence, analytical work, and efficient use of resources. It also shows good use of those attributes within proposed team structure.
6-7	Average	Contractor's proposal indicates average conformance with stated requirements in terms of competence, analytical work, and efficient use of resources. It also shows average use of those attributes within proposed team structure.
4-5	Below Average	Contractor's proposal indicates below average conformance with stated requirements in terms of competence, analytical work, and efficient use of resources. It also shows below average use of those attributes within proposed team structure.
2-3	Poor	Contractor's proposal indicates poor conformance with stated requirements in terms of competence, analytical work, and efficient use of resources. It also shows poor use of those attributes within proposed team structure.
0-1	Very Poor	Proposal failed to accomplish a minimum level of acceptance.

SAMPLE TECHNICAL EVALUATION FORM NARRATIVE SECTION

The narrative section should provide comments that support why a specific score was assigned. It should also indicate any issues/problems that must be resolved prior to potentially recommending a contract award to a specific firm.

1. Qualifications of Proposed Firm

2. Qualifications of Proposed Staff

3. Methodology / Work Plan

4. Past Performance

5. Price Proposal

Appendix A.11 Sole Source Justification Form

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (Above the Micro Purchase Threshold \$3,000)

Under certain limited circumstances, the law permits exceptions to competitive bidding requirements. Use the following template, describe the situation that requires other than full and open competition. Fill in the yellow highlight areas and “remove” the highlight.

-
1. **This document is a justification for other than full and open competition prepared by the (name of requestor)** and concurred with by _____, Executive Director.
 2. **The nature and/or description of the action being approved:** This justification provides the rationale for contracting by other than full and open competition for the acquisition of (describe procurement).
 3. **Description of the supplies or services required, include an estimated value:**
 4. **Statutory authority permitting other than full and open competition:**
For purchase of all supplies, equipment, and materials, and the construction of all facilities and works, use one of the following (check the appropriate citation):
 - Board Vote.** The MTA Board of Directors, by majority vote, may dispense with bidding and other procedures required by the Purchasing Policy in any individual instance upon a finding that it would be impractical, useless, or uneconomical in such instance to follow these procedures, and that the public interest would be promoted by dispensing with these procedures.
 - Emergencies.** In case of any great public calamity, such as extraordinary fire, flood, storm, epidemic, or other disaster, **the Executive Director** may authorize the immediate expenditure of money to safeguard life, health, property, or public welfare. In cases where the total cost exceeds \$100,000 the expenditure is to be presented to the **Board of Directors** at its next Board meeting for ratification of the expenditure.
 - Immediate Remedial Measures.** Upon determining that immediate remedial measures are needed to avert or alleviate damage to property or to repair or restore damaged or destroyed MTA property, **the ED may authorize** the expenditure of money for the direct purchase of goods and services.
 - Sole Source of Supply.** There is only a single source of supply and patent or data rights restrictions preclude competition.
 - Sole Source Item.** There is only a single item that meets the requirements and no acceptable “equal.” (In this case, the PM is documenting that only there are no “equals” to the required item but that there are multiple sources that can supply the item.

- Purchase made from or contract made with the State government.** An order placed under a State Supply Schedule contract does not require a justification – non-federally funded items.

For purchase of services, use one of the following (check the appropriate):

- The service is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- FTA authorizes noncompetitive negotiations;
- After solicitation of a number of sources, competition is determined inadequate; or
- Public Interest. When MTA determines that full and open competition in connection with a particular acquisition is not in the public interest.

5. Description of the efforts made to ensure that offers were/are solicited from as many potential sources as practicable:

6. Other facts supporting the use of other than full and open competition: (Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.)

7. Sources, if any, that expressed an interest in providing the needed goods or services: (If any source(s) other than the proposed source expressed such interest, set forth the reasons why it or they were found not capable of satisfying the Agency’s requirement.)

Determination & Finding:

Requisition Approving Official: I certify that the supporting data presented in this justification are accurate and complete and that I have no financial interest in this procurement.

(Typed Name) (Typed Title)

(Date)

Contracting Officer: I hereby find that the justification above supports an exception to the requirements for competitive procurement and determine that a contract may be awarded on the basis cited above provided that all other provisions of MBTA Purchasing Policy are complied with and the price is determined to be fair and reasonable.

(Typed Name), Executive Director

(Date)

Appendix B References

These policies and procedures reflect guidance contained in:

1. 2 Code of Federal Regulations (CFR) Part 200
2. 49 CFR Part 20, 26, 661, 663, 665, and 5325
3. 2 CFR Part 184
4. FTA Circular 4220.1F, Third Party Contracting Requirements
5. Federal Acquisition Regulation (FAR)
6. State of California Law
7. California Public Contracts Code
8. Policies and Rules established by the County of Mendocino where appropriate, and by the MTA Board of Directors