

RESOLUTION NO. 2019-42

**A RESOLUTION OF THE MASON TRANSIT AUTHORITY BOARD
ADOPTING A REVISED PROCUREMENT POLICY (POL-407) AND
SUPERSEDING AND REPLACING IN FULL ANY PREVIOUSLY ADOPTED
OR APPROVED PROCUREMENT POLICY, INCLUDING RESCINDING
RESOLUTION NO. 2018-24.**

WHEREAS, Mason Transit Authority has previously created and revised its Procurement Policy (POL-407) and the policy needs to be updated as its previously keeping with the \$3,000 micro-purchase threshold has proven to be more cumbersome when making needed purchases of \$3,000 to \$10,000; and

WHEREAS, by increasing the micro-purchase threshold from \$3,000 to \$10,000, MTA will continue to comply with federal stipulations for purchases when not required by the FTA but by our policy; and

WHEREAS, a revision has also been made to include an exception guided by the Davis-Bacon Act which requires certain clauses for construction projects above \$2,000;

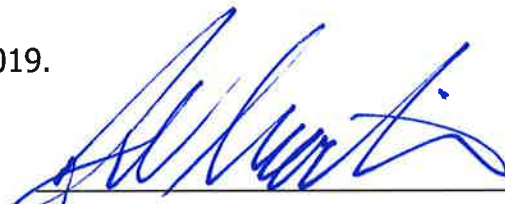
NOW THEREFORE, BE IT RESOLVED BY THE MASON TRANSIT AUTHORITY BOARD that the Procurement Policy (POL-407), which is attached hereto and incorporated herein, be established and adopted; and

BE IT FURTHER RESOLVED that this Procurement Policy (POL-407) shall supersede and replace in full any previously adopted or approved procurement policy, including rescinding Resolution No. 2018-24.

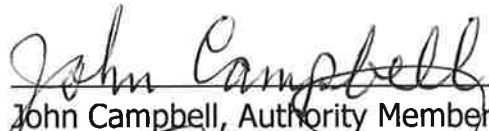
Adopted this 17th day of December, 2019.



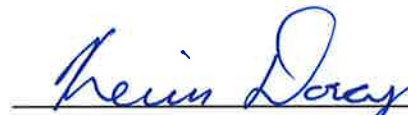
Randy Neatherlin, Chair



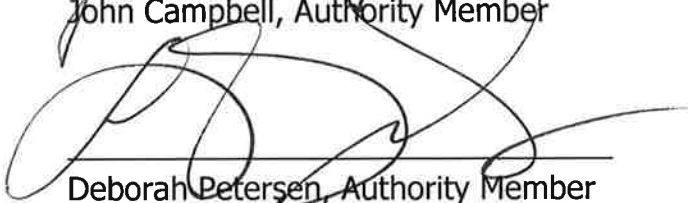
Wes Martin, Vice-Chair



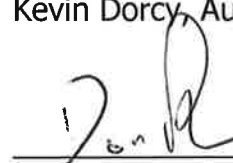
John Campbell, Authority Member



Kevin Dorcy, Authority Member



Deborah Petersen, Authority Member



Don Pogreba, Authority Member



Kevin Shutty, Authority Member




Sandy Tarzwell, Authority Member




Sharon Trask, Authority Member

APPROVED AS TO CONTENT: 

Danette Brannin, General Manager

APPROVED AS TO FORM: 

Robert W. Johnson, Legal Counsel

ATTEST: 

Tracy Becht, Clerk of the Board

DATE: December 17, 2019



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Number: 407
Effective: December 17, 2019
 Cancels: Resolution No. 2018-24
Prepared by: LeeAnn McNulty,
Administrative Services Manager
Approved by: Authority Board
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POL - 407

This policy applies to the MTA Authority Board, the General Manager, all Employees, and any contractor, consultant, or vendor bidding, proposing, or contracting with MTA.

1.0 PURPOSE, OBJECTIVES AND SCOPE

RCW 36.57.080 grants authority to Mason Transit Authority (MTA) to determine and prescribe requirements for purchases of goods and services.

This policy is consistent with federal and state requirements that will ensure that MTA receives the best goods and services at the most reasonable price practicable in an open, fair, and competitive manner.

The purpose of these MTA Procurement Policies is to establish a broad framework of policies and guidelines to ensure that MTA's purchasing and contracting functions promote administrative flexibility and efficiency, while also maintaining prudent internal controls and compliance with applicable statutes and regulations.

Specific objectives include, but are not limited to the following:

1. **Fairness and Objectivity**: Providing a fair, objective, and equitable selection and contracting environment for all individuals and firms seeking to do business or contracting with MTA.
2. **Ensuring Reasonable Costs**: Promoting competition and negotiating (where applicable) to ensure that MTA receives the most favorable prices and terms in its contracts.
3. **Efficiency**: Ensuring that supplies and services are obtained efficiently and effectively.
4. **Accountability**: Promoting accountability of contracting actions by MTA employees and encouraging employees to protect MTA's financial and other interests.
5. **Value-Added Procurement**: Facilitating a procurement process that provides service and value to MTA in obtaining goods and services.
6. **Ethical Standards**: Ensuring that MTA's procurement activities are implemented with the highest regard for integrity, avoidance of conflicts of interest, and consistent with applicable ethical standards.
7. **Legal Considerations**: Complying with all applicable federal, state, and local statutes and regulations.

MTA receives funds from federal and state funding sources. MTA shall develop purchasing procedures designed to ensure compliance with applicable laws and regulations without necessarily imposing a higher standard than is necessary to ensure compliance.

Where a requirement in these Policies is based only on federal requirements, MTA may, on a case-by-case basis for non-federally funded contracts, apply a less stringent standard than outlined in the federal requirements, provided it is otherwise consistent with applicable MTA Policies and that all State or other legal requirements are met.



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Nothing in these Procurement Policies will prevent MTA from complying with the terms and conditions of any grant, contract, gift, or bequest that is otherwise consistent with law.

Included in Scope: The following shall be governed by these Procurement Policies when procuring, purchasing, leasing or renting:

- Goods, supplies, equipment, materials
- Construction and maintenance
- Consultant services
- Architectural and engineering (a & e) consultant services
- Other services

Excluded from Scope: The following shall not be governed by these Purchasing Policies:

- Real Estate Purchase and Sale Transactions (Surveys, appraisals, environmental assessments, and financing analyses are considered Consultant services and governed by these Purchasing Policies)
- Business and other Insurance
- Banking services, Loan transactions, and related documents
- Sub-recipient or sub-grantee agreements and related change orders.
- Employment matters and employee benefit plans/programs.

2.0 POLICY ADMINISTRATION

The **Authority Board** is the governing body of MTA. This policy is adopted by the Board for the purposes of establishing the administrative authority of the General Manager (GM).

The **General Manager** is responsible for day-to-day operations of MTA involving personnel, finances, payments of invoices, facilities, real and personal property, and other assets. The GM shall retain professional staff that shall operate and manage according to directives and policy from the GM subject to review by the Board. The GM shall regularly inform and consult with the Chair of the Board, the Finance Committee, and the Board as a whole regarding significant information, business transactions and policies through methods mutually agreeable to the Board and the GM. The GM shall be responsible for the day-to-day direction and conduct of business transactions of MTA subject to the policies, limitations, and directives in this Policy.

3.0 DELEGATION OF AUTHORITY

The following MTA employees are authorized to purchase or issue purchase orders for supplies, materials, and services up to \$3,000:

- General Manager (GM)
- Administrative Services Manager
- Operations Manager/Supervisor



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- Vehicle/Maintenance Manager
- Mechanic
- Executive Assistant/Clerk of the Board
- Systems Administrator

The General Manager is delegated additional authority by the MTA Board to execute all procurement documents for goods and/or services and public works contracts up to \$25,000, except that the General Manager may award contracts for general operating supplies, such as diesel fuel, in the amounts exceeding \$25,000.

The Authority Board must approve all purchases over \$25,000 with the exception of general operating supplies.

Purchase documents not executed within the above-delegated authority may result in discipline up to termination or become the responsibility of the person originating the transaction.

4.0 CONTRACT AWARDS


Contract awards may be made only to “responsible” contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract (49 U.S.C. Section 5325). The prospective contractor must meet the following criteria as well as any additional criteria described in the solicitation document:

- a) Is not debarred or suspended from Federal programs per SAM.Gov (the Excluded Parties List System or equivalent).
- b) Is in compliance with applicable licensing, tax laws, and regulations,
- c) Has, or can obtain, sufficient resources to perform the contract,
- d) Is not or has not recently been seriously deficient in contract performance, unless it is determined that the circumstances were beyond the bidder or proposer’s control, or unless the bidder or proposer has taken appropriate corrective action.

Prior to the award of any public works contract, Finance shall ensure and document that the low bidder meets the mandatory bidder responsibility criteria included in [RCW 39.04.350](#). Additionally, MTA may develop supplemental bidder criteria as part of construction bidding documents, which include relevant, specific, and objective qualification requirements for the contractor or sub-contractors that may be used in evaluating whether a contractor is a responsible bidder capable of performing the proposed work.

5.0 FEDERAL CONTRACT PROVISIONS

Federally funded contracts shall contain, where applicable, contract language required by 2 CFR 200 and FTA Circular 4220.1.f Section IV, and any revisions thereof.

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6.0 CONTRACT DURATION

As a government agency and steward of the public’s money, MTA acknowledges the importance of competition to ensure it receives the best quality of goods and services at the most competitive prices. MTA also acknowledges the importance of providing public contracting opportunities to the larger business community.

MTA acknowledges that longer-term contracts are often beneficial to both the business community and MTA in that they reduce costs necessary to conduct frequent solicitation processes, enable the business community to gain proficiency and knowledge in meeting MTA’s needs, and afford economies of financial return for the business community.

In order to ensure fairness and meet the expectations of the business community, the length of any MTA contract shall be limited to the time specified in the advertised solicitation. MTA shall generally not extend a contract beyond the advertised period, except for good and sufficient reasons as approved by General Manager and/or Board.

Length of Contracts: The following shall govern the length of MTA contracts:

- Generally, a supply or service contract shall be established for one to three years, with options to extend the contract for up to a total of five years. The decision on the length of a contract shall be determined on a case-by-case basis, provided that the Administrative Services Manager approves the contract length.
- Solicitation documents and contracts shall include language about the anticipated length of a particular procurement.

Contract Extensions: Price Negotiations: Contracts shall generally include provisions outlining the process or formula to be followed in negotiating the price for an extension of a contract’s original term.

7.0 ENSURING REASONABLE COSTS

MTA staff shall exercise prudent, conservative and their best professional judgment to evaluate the reasonableness of a proposed expenditure. **An independent cost estimate** shall be made prior to solicitations, or prior to starting contract negotiations after making a selection based on a Request for Qualifications. The estimate will be used to evaluate reasonableness or unreasonableness of price and/or the estimated costs to perform the contract. The independent cost estimate will usually be prepared by MTA staff; however, an independent party may assist in evaluation of reasonableness of costs.

All Procurements over \$3,000 require either a Price Analysis or Cost Analysis:

- The purpose of cost or price analysis is to ensure that MTA pays a reasonable price.
- **Small Procurements between \$3,000 and \$7,500** will generally require a Price Analysis (catalog/internet prices or quotes; see 6.2). Occasionally a Cost Analysis will be required.



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- **Public Works** contracts and Change Orders must have a Price Analysis or Cost Analysis, per [RCW 39.04.020](#).
- All **federal grant** funded procurements must have a Price Analysis or Cost Analysis, per FTA Circular 4220.1.f VI.6, and any revisions thereof.

Extent of Analysis: The requirements for ensuring reasonable costs in contracting apply to most MTA procurement activities (goods, supplies, construction, consulting, services, and contract changes). The method and degree of analysis depends upon the facts of a particular procurement situation, including the size, nature, and complexity of the contract or change order. The estimate can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of such items as drawings, specifications, and prior data.

Price and Cost Analysis: An independent estimate of costs (Price Analysis or Cost Analysis) is required for procurements exceeding \$7,500 EXCEPT:

- Procurements made through **cooperative purchasing agreements** (e.g., WA State Department of Enterprise Services (DES) contracts) are exempt from this requirement.
- **Direct Payments** (Section 15) are exempt from this requirement.
- All procurements using federal funds **must have** a Price or Cost Analysis performed, even if purchases are made through cooperative agreements.

Price Analysis

The purpose of a Price Analysis is to ensure MTA pays a reasonable price, **based on market prices**. It is a written review and evaluation of competitive prices to determine whether the proposed price is reasonable when compared with prices provided by others in the market.

Accepted forms of Price Analysis techniques are:

- Comparison of catalog or market prices (internet search)
- Comparison to prior purchases
- Comparing vendor quotes
- Adequate price competition (at least 2 offerors respond satisfactorily to solicitation)
- Pricing set by law or regulation (ex: utilities)
- Comparing proposed prices with independently developed cost estimates.
- Value Analysis. This may include consideration of life cycle costs such as productivity gains, services/training provided, or efficiency gains.

Cost Analysis

The purpose of the Cost Analysis is to ensure that the proposed price is reasonable. It shall include an analysis of a proposal's separate cost elements and profit compared to what the cost of the contract should be, (assuming reasonable economy and efficiency). A written review and evaluation of the proposed cost elements (labor, materials, overhead) and profit of a contract, purchase order, or change order to ensure the price is reasonable. It is usually used for professional consulting and Architectural & Engineering services contracts. A Cost Analysis is necessary whenever a Price Analysis cannot be performed.

The following situations **require** a Cost Analysis:



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1. Price Analysis will not provide sufficient information to determine the reasonableness of the contract cost
2. Sole source, including emergency, selections (unless waived by the General Manager)
3. Single response to a solicitation
4. Contracts based on a Request for Qualifications (A&E)
5. Change orders or other modifications that change the contract amount.
6. Contracts based on Formal (ITB, RFP) or Informal Solicitations where price is one of the evaluation criteria.

Level of Specificity: MTA staff (or contractor/consultant) with the relevant experience and knowledge shall conduct the Cost Analysis. The analysis must have a level of specificity and independence appropriate to the contract or Change Order under review that describes what was analyzed. For any contract or Change Order subject to a Cost Analysis, MTA shall require that the Contractor/Consultant submit a cost breakdown of their price for use in evaluating reasonableness of price.

Negotiation of Profit: Profit shall be negotiated separately in all cases where there is no price competition, and in all acquisitions in which the recipient performs or acquires a cost analysis. 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.

Specific Situations:

1. **Time and Materials Contracts:** A Time and Materials contract may be used only after a determination that no other contract payment type is suitable. This is generally when the extent of work is unknown when the work is solicited.
2. **Prohibited Contracting Methods:** "The 'cost plus a percentage of cost' and 'percentage of construction cost' methods of contracting shall not be used" (CFR 48.1.C.102c).

8.0 GOODS, SUPPLIES, EQUIPMENT, AND MATERIALS

This Section deals primarily with the purchase of goods, supplies, equipment, materials, and ancillary services (ex: installation, maintenance packages, etc.), and is frequently referred to as "goods and supplies."

All Public Works projects are subject to Prevailing Wage on Public Works rules (RCW 39.12) as well as bidding and contract requirements and may only be purchased under this section if in compliance with Section 11.

Purchases Under \$10,000: Micro purchase procedures are for the purchases of goods and services under \$10,000, as defined by 41 USC 1902(a)(2), and any revisions thereof FTA Circular 4220.1F Section VI. Employees are expected to use their best professional judgment when making micro purchases and maximize MTA dollars for value. Although competition is not required, it is expected



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that the best possible price be obtained, and that no favoritism be shown in selecting suppliers. Micro-purchases:

- 1) Shall be distributed equitably among qualified suppliers, service providers, consultants, and contractors.
- 2) Shall not be divided or reduced merely to comply with the micro-purchase limit.
- 3) Are exempt from FTA's third party contract provisions, except Davis Bacon requirements which apply to construction contracts exceeding \$2,000.
- 4) Pricing shall be fair and reasonable.

Informal Solicitations: In accordance to the Exception issued by the Office of Management and Budget (OMB memo M-18-18) which specifies that procurements costing \$250,000 or less qualify as "small purchases" that are not subject to formal advertising as part of the selection process. MTA will maintain a range of \$10,000 to \$100,000 as a small purchase threshold. While these procurements may be conducted under less formal selection procedures, obtaining and comparing competitive prices from more than one vendor represents good public policy, and is required for the purchase of all goods, supplies, equipment, and materials costing \$3,000 or more.

Evaluation Criteria:

- a.) Generally, price shall be used as the primary evaluation criterion.
- b.) The geographic location of vendors submitting bids may not be used as an evaluation criterion.

Informal Solicitation Requirements:

- a.) Product descriptions shall not unduly restrict competition.
- b.) For purchases of \$3,000 or more, Department Managers shall have a Price Analysis performed, generally by comparing prices from vendors. If a Price Analysis cannot be performed, an Independent Cost Estimate must be developed for bids or quotations. Department Managers shall ensure that an adequate Price Analysis or Cost Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (Section 7). A copy of the completed Price Analysis or Cost Analysis will be placed in the procurement file.
- c.) To ensure adequate and sufficient competition in obtaining goods and supplies over \$3,000, at least three vendors must be solicited, or prices compared. Under special circumstances and for good and sufficient reasons, Administrative Services Manager may approve solicitation of just two vendors.
- d.) Price quotations may be received orally, by fax, e-mail, internet search, or other means. The decision about whether to request and receive price quotations orally or in writing shall be made by Administrative Services Manager based on the complexity of the solicitation. Simple solicitations may be handled orally or through an internet search, while more complex ones should be handled in writing. Solicitations and responses for goods which must be manufactured or assembled specifically for MTA, or for which installation is a component, should generally be in writing.
- e.) When soliciting goods valued at \$7,500 or more, Department Manager shall allow sufficient time for vendors to prepare and submit their prices.



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Informal Solicitation Threshold: An informal solicitation may be used for buying goods and supplies that will cost \$100,000 or less. A contract, single or multi-year, based on an informal solicitation shall not exceed \$100,000 (including change orders, transportation, and sales tax).

If goods and supplies in excess of \$100,000 are required under a contract based on an informal solicitation a competitive selection process should be initiated immediately for those goods and supplies. The General Manager may extend the existing contract if termination would adversely affect MTA business operations and the Board of Directors shall be notified of the extension.

Invitation to Bid: An Invitation to Bid (ITB) is a formally advertised and competitive selection process used for obtaining goods, supplies, equipment and materials that will cost more than \$100,000 (41 USC Section 403(11)), where award is made based on the lowest price submitted by a responsible bidder with a responsive bid.

When to Use ITBs: Generally, vendors providing goods, supplies, equipment, materials, and some services should be selected based on competitive bids. If the following criteria is met, an ITB should be utilized:

- a) The amount of the procurement, including any potential change orders, transportation, and sales tax will cost more than \$100,000.
- b) A complete, adequate, and realistic specification or purchase description is available.
- c) Two or more responsible bidders are willing and able to compete effectively for the work.
- d) ***The project lends itself to a firm fixed price contract, and the selection of the successful bidder can be made principally on the basis of price.***
- e) An ITB is NOT appropriate when the project does not lend itself to a firm-fixed price contract approach. An ITB would not be appropriate for fleet vehicles, projects where aesthetics are variable and important, and other projects with subjective criteria.

ITB Requirements:

- a.) ITBs will be publicly advertised in the *appropriate newspaper; Municipal Research and Service Center (MRSC) rosters; or other media as appropriate.*
- b.) ITBs should be advertised and available for review by vendors for a sufficient length of time to prepare and submit bids.
 - The length of time shall be determined based on a number of factors, including but not limited to, the estimated dollar value of the work to be performed or goods provided, and the complexity of the procurement.
 - Generally, it is expected that ITBs will be advertised and available for review by vendors for **21 calendar** days before bids are due. However, dependent upon the particular procurement, Administrative Services Manager may determine that adequate competition and preparation and submission of bids may be accomplished in a shorter period of time, and the 21-calendar day guideline may be adjusted appropriately.



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- Administrative Services Manager, in consultation with the applicable Department Manager, shall make the final decision on the length of time an ITB is advertised.
- c.) The ITB will not unduly restrict competition.
- d.) Department Managers shall ensure that an Independent Cost Estimate is developed for obtaining goods and supplies, provided however, that for standard, commercially available items, the purpose of an Independent Cost Estimate is fulfilled by obtaining and comparing prices from vendors (Price Analysis), and no separate Independent Cost Estimate shall be required.

Evaluation Criteria and Award:

- a) Price shall be the evaluation criterion used, provided the bid is submitted by a responsible bidder with a responsive bid
- b) The geographic location of vendors submitting prices may not be used as an evaluation criterion.
- c) Price shall be used as the evaluation criterion. This shall be identified in the ITB.
- d) Department Managers shall ensure that a Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (Section 7).

9.0 CONSULTANT, OTHER SERVICES & PROJECTS

Consultants provide advice, creative design, recommendations, reports, analyses, evaluations, audits, surveys or other products of cognitive processes or expert or professional services. *Consultants providing architectural, engineering, landscape architectural, or land surveying services are considered A & E Consultants, addressed in Section 10.*

Service Providers perform non-consultant work including ongoing management of programs and provision of services. Examples of Service Providers include but are not limited to: armored car service, messengers, services performing routine maintenance, etc. One distinguishing feature of Service Providers is that the work they perform is not normally subject to federal or state prevailing wage requirements.

Other Projects: Certain procurements are not appropriate for an ITB, as it is not reasonable to define or have knowledge of all possible specifications. Software, technology, or rolling stock are examples of procurements that are appropriately purchased through an RFP. Purchase criteria involves multiple factors with price as only one criterion.

Terminology: For ease of reading, this Section will refer to Consultants, Service Providers, and other project offerors as Consultants.

A Two Step Procurement procedure, described in Section 12, may be used for these procurements.



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Informal Solicitations (Under \$100,000)

41 USC Section 403(11) specifies that procurements costing \$100,000 or less qualify as “small purchases,” and are not subject to formal advertising as part of the selection process.

Informal Solicitation Threshold: An informal solicitation may be used only for those Consultant services that will cost \$100,000 or less over the life of the contract (including change orders and taxes). Based on selection through an informal solicitation process, no contract may be awarded where the contract amount and/or payments during the life of the contract exceeds \$100,000. A contract based on an informal solicitation shall not exceed \$100,000.

When to Use Informal Solicitation Process: While procurements of \$100,000 or less may be conducted under less formal selection procedures, competition, including the use of price as one of the evaluation criteria, represents good public policy, and is required for all Consultant services costing \$25,000 or more. For small contracts under \$25,000, obtaining a price from only one Consultant is acceptable if the price received is considered reasonable. Additionally, and where possible, solicitation opportunities for small contracts under \$25,000 shall be equitably distributed among the consultants on MTA’s Consultant Roster Program. (MTA participates in the MRSC Consultant Roster.)

Informal Solicitation Requirements:

- a.) In order to ensure adequate and sufficient competition in obtaining consultant services, at least three consultants should be solicited. Under special circumstances and for good and sufficient reasons, the Administrative Services Manager may approve solicitation of just two consultants.
- b.) The requirements and responses relating to most informal solicitations shall be in writing between MTA and the consultants.
- c.) Informal solicitations should be available for review by consultants for a sufficient length of time to provide consultants with adequate time to prepare and submit proposals.
- d.) Procurement Procedures shall outline requirements for receipt of proposals, including, but not limited to, proposal submission, the means of solicitation and proposal submission (electronic or hard copy), and deadlines for submission.
- e.) Department Managers shall ensure that an Independent Cost Estimate (Section 6) is developed prior to receipt of any proposals.
- f.) Contracts based on an informal solicitation shall normally be based on either a fixed-price, cost-reimbursement, or unit price model.

Evaluation Criteria and Award:

- a.) Offers not meeting minimum qualifications will not be considered.
- b.) Price shall be used as an evaluation criterion.
- c.) Experience of the consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors may also be used as evaluation criteria.
- d.) The geographic location of consultants submitting proposals may not be used as an evaluation criterion.
- e.) Evaluation criteria shall be included in the informal solicitation.



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- f.) The evaluation panel appointed by the Department Manager shall evaluate proposals received based only on the established criteria. Evaluation panel should consist of at least three qualified members (including a chair) to review and rate proposals received. It is recommended that MTA staff be in the majority on panels that include non-MTA members.
- g.) The Department Manager and General Manager will jointly develop a written negotiation position. MTA shall enter into negotiations with the highest ranked consultant in an effort to execute a Contract. If negotiations are unsuccessful, MTA may proceed to negotiate with the next highest ranked Consultant.
- h.) Department Managers shall ensure that an adequate and sufficient Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (see Section 7 of these Policies for further information). The Price Analysis or Cost Analysis must be in writing for all contracts of \$25,000 or more.

***Requests for Proposals
(Over \$100,000)***

A Request for Proposals (RFP) is a formally advertised and competitive selection process used to obtain consultant services more than \$100,000, and where the evaluation and selection of a Consultant cannot be based on price alone but is based on established criteria that include price and other factors.

Solicitation Requirements:

- a.) RFPs will be publicly advertised in the appropriate newspaper, MRSC Consultant Roster, or other media, as appropriate.
- b.) RFPs should be advertised and available for review by consultants for a sufficient length of time to provide consultants with adequate time to prepare and submit proposals.
 - RFPs will usually be advertised and available for review by consultants for 21 calendar days before proposals are due. For a particular procurement, Department Manager may determine that adequate competition and preparation and submission of proposals may be accomplished in a shorter period of time, and the 21-calendar day guideline adjusted appropriately. The length of time can be based on factors, including but not limited to, the estimated dollar value, the complexity of the work, and the extent of developing a proposal or project approach versus merely providing information about qualifications, experience, and availability.
 - The Administrative Services Manager, consulting with the applicable Department Manager, shall make the final decision on how long an RFP is advertised.
- c.) Procurement Procedures shall outline requirements for receipt of proposals, including, but not limited to, proposal addressee, means of solicitation and proposal submission, and deadlines for submission.
- d.) Department Managers shall ensure that an Independent Cost Estimate is developed for the work.

Evaluation Criteria and Award:

- a.) Price shall be used as an evaluation criterion.
- b.) Experience of the consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors may also be used as evaluation criteria.



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- c.) The geographic location of Consultants submitting proposals may not be used as an evaluation criterion.
- d.) Evaluation criteria and the relative weight of each criterion shall be included in the RFP.
- e.) Proposers not meeting minimum qualifications will not be considered.
- f.) The evaluation panel appointed by the Department Manager shall evaluate proposals received based only on the established criteria and upon the proposal submitted.
- g.) MTA shall enter into negotiations with the highest ranked consultant in an effort to execute a Contract. If negotiations are unsuccessful, MTA may proceed to negotiate with the next highest ranked Consultant.
- h.) Department Managers shall ensure that an adequate and sufficient Cost Analysis or Price Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (Section 7).
- i.) MTA may reject any or all proposals.

10.0 ARCHITECTURAL & ENGINEERING (A & E) CONSULTANT SERVICES

Architectural & Engineering (A & E) Consultant Services are a subset of Consultant Services. The primary distinction between the two is that MTA **may not use cost as an evaluation criterion when selecting a firm for performing A & E work**. Instead, consistent with the requirements of RCW 39.80 and the Brooks Act (40 USC. Sections 1101-1104), the evaluation criteria must be limited to factors that relate to a Consultant's qualifications and competence to perform the desired work. MTA must select the most highly qualified A & E Consultant to provide the services.

Disciplines: The following are included in A & E Consultant Services:

1. Professional Services: Program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services ([CFR 49 Sec 5325\(b\)](#)). Landscape architectural services ([RCW 39.80.020](#)).
2. Related to Real Property: Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used. ([40 U.S.C. 1102](#)).
3. Typically Performed By: Other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professionals (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual design, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operation and maintenance manuals, and other related services ([40 U.S.C. 1102](#)).



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Distinguishing Between A & E Work and Non-A & E Work:

Because price may not be used as a criterion for selection of A & E consultants, but price must be used as a one criterion for selecting other consultants, it is important to distinguish what is A & E work and what is non-A & E work. It is to MTA's advantage to use price as one criterion for selection of consultants when permitted, to ensure that MTA obtains the most value for its money.

Making a Determination: Generally, A & E work and non-A & E work is based on the following:

- If State law requires that the work in question be performed by someone licensed or registered in one of the professions cited above, then the work should be considered as A & E work and price may not be used as an evaluation criterion.
- As defined in RCW 39.80.020: "Architectural and engineering services" or "professional services" means professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in chapters [18.08](#), [18.43](#), or [18.96](#) RCW."
- The mere fact that the scope of services for a particular contract is likely to be performed by, or may be performed by, someone who is licensed or registered in one of the professions cited above does not mean that the work is A & E work. To be considered A & E work, the type of service must be as defined in RCW 39.80.020.

MTA may not use qualifications-based procurement procedures that are not included in the A & E categories noted above.

***Informal Solicitations
(Under \$100,000)***

Cost Thresholds: The Federal simplified acquisition threshold (41 USC 403(11)) specifies that procurements costing \$100,000 or less qualify as "small purchases" that are not subject to formal advertising as part of the selection process. However, Section 39.80 RCW requires **that A & E Consultant services be advertised**, either specifically or generally, regardless of the dollar amount. MTA will use a Roster when appropriate to solicit Request for Qualifications.

Roster: MTA may establish through a Request for Qualifications process a Roster of qualified A & E Consultants who may be selected for specific scopes of work under an expedited proposal submittal process (informal solicitation). In establishing such a Roster, MTA shall ensure that the Roster is maintained with current information and that there are a sufficient number of qualified A & E Consultants on the Roster to "ensure maximum open and free competition." MTA may also utilize other government rosters, such as MRSC. Projects that are estimated to cost more than \$100,000.00 over the life of the contract, including any potential change orders, must be formally advertised (Section 10).

Informal Solicitation Requirements:

- a.) To ensure adequate and sufficient competition in obtaining A & E consultant services, at least 3 A & E Consultants on the appropriate Roster category must be solicited. The Department



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Manager and Administrative Services Manager shall determine whether a Request for Proposal should be used in lieu of the roster, dependent on the requirements of the work.

- b.) Informal solicitations should be available for review by A & E Consultants for a sufficient length of time to provide them adequate time to prepare and submit qualifications.
- c.) Informal solicitations and responses should be in writing.
- d.) Procurement Procedures shall outline requirements for receipt of submittals, including, but not limited to, proposal addressee, the means of solicitation and submission, and submission deadlines.
- e.) Department Managers shall ensure that an Independent Cost Estimate is developed for procurements greater than \$25,000.

Evaluation Criteria and Award:

- a.) Price may not be used as an evaluation criterion.
- b.) Experience of the A & E Consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors may also be used as evaluation criteria.
- c.) The geographic location of A & E Consultants submitting qualifications may be used as an evaluation criterion provided that its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- d.) Evaluation criteria and their weight shall be included in the informal solicitation.
- e.) The evaluation panel appointed by the Department Manager shall evaluate submittals only on established criteria.
- f.) MTA shall negotiate a contract with the most qualified firm for A&E services at a price that MTA determines is fair and reasonable. In making its determination, MTA shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature of the project ([RCW 39.80.050 \(1\)](#)). If those negotiations are unsuccessful, MTA may negotiate with the next highest ranked firm.
- g.) Department Managers shall ensure that an adequate and sufficient Price Analysis or Cost Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (Section 7). The Analysis must be in writing for all contracts of \$25,000 or more.
- h.) Contracts based on an informal solicitation shall normally be either based on a fixed-price or a cost-reimbursement model.

***Request for Qualifications/Request for Proposals
(Over \$100,000)***

A Request for Qualifications (RFQ) or Request for Proposals is a formally advertised and competitive selection process used for obtaining consultant services that will cost more than \$100,000, and where the evaluation and selection of an A & E Consultant is based on the consultants' qualifications, and where price is not used as an evaluation criterion. Part of evaluating an A & E Consultant's qualifications may include an evaluation of their proposed approach for performing the work.

Solicitation Requirements:



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- a.) RFQs/RFPs should be advertised and available for review by A & E Consultants for a sufficient length of time to provide A & E Consultants with adequate time to prepare and submit qualifications.
- The length of time shall be determined based on a number of factors, including but not limited to, the estimated dollar value of the work to be performed, the complexity of the work, the degree to which MTA is requesting consultants to develop a proposal or project approach versus merely providing information about qualifications, experience, and availability.
 - Generally, it is expected that RFQs/RFPs will be advertised and available for review for 21 calendar days before submittals are due. However, dependent upon the particular procurement, Administrative Services Manager may determine that adequate competition and preparation and submission of qualifications may be accomplished in a shorter period of time, and the 21-calendar day guideline may be adjusted appropriately.
 - Administrative Services Manager, in consultation with the General Manager, shall make the final decision on the length of time an RFQ is advertised.
- b.) Department Managers shall ensure that an Independent Cost Estimate is developed for the work.
- c.) Procurement Procedures shall outline requirements for receipt of submittals, including, but not limited to, addressing to whom responses should be submitted, the means of solicitation and submission of responses (electronic or hard copy), and deadlines for submission.
- d.) MTA may establish through a Request for Qualifications process a Roster of qualified A & E Consultants who may be selected for specific scopes of work under an expedited proposal submittal process. In establishing such a Roster, MTA shall ensure that the Roster is maintained with current information and that there are a sufficient number of qualified A & E Consultants on the Roster to ensure maximum open and free competition.

Evaluation Criteria and Award:

- a) **Price may not be used** as an evaluation criterion.
- b) Experience of the A & E Consultant, expertise and qualifications of staff to be used, along with availability to perform the services and other factors such as understanding of the work to be performed may also be used as evaluation criteria.
- c) The geographic location of A & E Consultants submitting qualifications may be used as an evaluation criterion provided there are an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- d) Evaluation criteria shall be included in the RFQ, along with the weighting to be assigned to each criterion.
- e) The evaluation panel appointed by the Department Manager shall evaluate submittals received based only on the established criteria
- f) The Department Manager and Administrative Services Manager shall develop a written negotiation position. MTA shall negotiate a contract with the most qualified firm for A&E services at a price that MTA determines is fair and reasonable. In making its determination, MTA shall take into account the estimated value of the services to be rendered as well as the



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scope, complexity, and professional nature of the project ([RCW 39.80.050 \(1\)](#)). If those negotiations are unsuccessful, MTA may negotiate with the next highest ranked firm.

- g) Department Managers shall ensure that an adequate and sufficient Price Analysis or Cost Analysis is conducted that demonstrates the reasonableness of the proposed contract amount (Section 7).
- h) Contracts based on an RFQ/RFPs shall normally be either based on a fixed-price or a cost-reimbursement model.

11.0 CONSTRUCTION AND MAINTENANCE

Bids versus Proposals

Generally, contractors for construction and maintenance projects should be selected based on competitive bids (evaluated solely upon price) instead of proposals (evaluated on price and other factors). Competitive bidding should be utilized if the following criteria are met:

- 1) A complete, adequate, and realistic specification is available.
- 2) Two or more responsible bidders are willing and able to compete effectively for the work.
- 3) The project lends itself to a firm fixed-price contract, and the selection of the successful bidder can be made principally based on price.

Selection Methodologies

- 1. **Design-Bid-Build** - The design-bid-build procurement method requires separate contracts for design services and for construction. If MTA elects this method, relevant provisions of [RCW 39.04](#) will be used to establish the minimum procedures.
 - a) **Design Services.** Qualifications-based procurement procedures must be used for design services in compliance with [FTA Circular 4220.1.f](#), Section 11 and any revisions thereof; of these Procurement Policies, and applicable Federal, State and local law and regulations.
 - b) **Construction.** Public Works construction in Washington State does not allow competitive negotiations. This work must be solicited and awarded using an Invitation to Bid.
- 2. **Design-build** ([49 U.S.C. Section 5325\(d\)\(1\)](#)) procedures may be used when MTA contracts for design and construction simultaneously with a contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction. [RCW 39.10](#) generally restricts the use of design-build procedures to **public works projects of over \$10 million** and the agency must be approved by the WA Project Review Committee to use Design-Build. The various contract activities shall be classified as design OR construction and the estimated total value of each will be calculated. The procurement method is based on the phase of the project with the greatest cost:
 - a) When **construction costs are estimated to be more than A&E costs**, best value or low bid procurement methods shall be used. Since the A&E services are less than half of the total contract amount, qualifications-based procurement procedures may **not** be used for the design-build contract **unless** the FTA determines otherwise in writing or if required by State



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law. However, a qualifications-based method may be used to determine prospective contractors capable of performing the project and thus qualified to submit detailed technical and price proposals in step two of the design build procurement process (as described in Section 12 of this Procurement Policy).

- b) When **A&E services are estimated to be more than construction costs**, qualifications-based procurement procedures based on the Brooks Act, and described in Section 10 shall be used.
3. **Value Engineering:** Value Engineering, the systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lowest cost, is one of the tasks that the Contractor may be asked to perform on a Contract.
4. **General Contract/Construction Manager (GCCM):** Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may utilize the general contractor/construction manager procedure for public works projects where at least one of the following is met:
- a) Implementation of the project involves complex scheduling, phasing, or coordination;
 - b) The project involves construction at an occupied facility which must continue to operate during construction;
 - c) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project;
 - d) The project encompasses a complex or technical work environment;
 - e) The project requires specialized work on a building that has historic significance; or
 - f) The project is, and the public body elects to procure the project as, a heavy civil construction project. However, no provision of this chapter pertaining to a heavy civil construction project applies unless the public body expressly elects to procure the project as a heavy civil construction project.

Small Works Roster (Informal Solicitation)

MTA's Small Works Roster was established under the authority of RCW 39.04.155. MTA participates in the MRSC Small Works Roster. The Roster permits MTA to select a contractor for certain construction projects without otherwise publicly advertising the work, but by following the process outlined in State law for soliciting bids from contractors on the Roster.

Annual Advertisement: MRSC annually publishes an advertisement identifying MTA as a participating Agency (Consistent with of State law requirements), inviting contractors to apply for the Roster. Contractors may apply to the MRSC Roster anytime during the year.

Construction projects less than \$100,000 may use the informal selection procedures of the Small Works Roster to select a contractor (no advertising required). The federal "simplified acquisition threshold" is currently set at \$100,000 (41 USC 403(11)). For non-federally funded projects estimated



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to cost less than \$35,000, bids may be solicited from at least three contractors from the Small Works Roster using the limited public works process.

Specifications and Contracts:

- a.) **Bid Guarantee:** Specifications shall indicate whether bidders must submit a bid guarantee of 5% with their bid. Projects of \$35,000 or less, the General Manager may waive the bid guarantee requirement and omit in bidding documents.
- b.) **Contract Bond:** Specifications shall require the successful contractor submit a Payment and Performance Bond (Contract Bond) or a separate Payment Bond and a separate Performance Bond for 100% of the awarded contract amount. The General Manager may waive this requirement, for a project estimated to cost less than \$35,000, in accordance with RCW 39.04.155, provided that the selection is made from the Small Works Roster using the Limited Public Works Process in RCW 39.04.155 section 3.
- c.) **Retainage:** MTA shall withhold retainage of 5% of each payment to the contractor (RCW 60.28). The General Manager may waive the requirement to withhold retainage for a project estimated to cost less than \$35,000 (RCW 39.04.155) provided that the selection is made from the Small Works Roster using the Limited Public Works Process prescribed in RCW 39.04.155 section 3. As an alternative to withholding retainage, State law permits the contractor to submit a bond in lieu of retainage.
- d.) **Prevailing Wage:** RCW 39.12: Specifications shall require the payment of applicable prevailing wages. Contracts shall identify the wage schedule applicable to the project by including a copy of the wages or by reference. When the applicable schedule is referenced, the contract shall include instructions for accessing the wage schedule.
- e.) **Federal Contract Provisions:** Federally funded contracts shall contain, where applicable, contract language required by 2 CRF 200 as described below in Section 11.

Solicitation Requirements: Unless Administrative Services Manager approves of an alternate solicitation method, the Small Works Roster shall be used for obtaining bids for all informal solicitations.

- a.) Bids will be solicited consistent with the procedures in State law regarding the Small Works Roster, and with the requirements of 41 USC 403(11) for “small purchases,” which requires that “price or rate quotations...be obtained from an adequate number of qualified sources”.
- b.) Informal Solicitations should be available for review by contractors for a sufficient length of time to provide contractors with adequate time to prepare and submit their bids.
 - The length of time shall be determined based on a number of factors, including but not limited to, the estimated dollar value of the work to be performed, the complexity of the work, and current general market conditions.
 - Generally, an informal solicitation will be available for review by contractors for a minimum of 5 calendar days before bids are due.
 - Administrative Services Manager, in consultation with the applicable Department Manager, shall make the final decision on the length of time an Informal Solicitation is under review by contractors.
- c.) Notice for a pre-bid conference shall be stated in the solicitation.
- d.) All bids received by the required deadline will be evaluated.



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- e.) Procurement Procedures shall outline requirements for receipt of bids, including, but not limited to, addressing where bids should be submitted, and deadlines for submission.
- f.) Department Managers shall ensure that an Independent Cost Estimate is developed for the services sought prior to receipt of any bids.

Evaluation and Award:

- a.) Administrative Services Manager shall evaluate whether the bids submitted are responsive to the specifications.
- b.) The Department Manager and Administrative Services Manager shall evaluate whether the bidder submitting the lowest responsive bid is a responsible bidder. Responsibility analysis includes, but is not limited to, verifying contractor compliance with the mandatory bidder responsibility requirements of RCW 39.04.350 as well as issues related to the capability of the bidder to successfully complete the work (based on any supplemental bidder responsibility criteria that may have been established for the project).
- c.) If a contract is to be awarded, it shall be awarded only to a responsible bidder submitting the lowest responsive bid.
- d.) The geographic location of contractors **may not** be used as an evaluation factor.
- e.) MTA shall reserve the right to reject any or all bids if there is a sound documented reason.
- f.) Contracts shall be for a firm fixed-price based on either a lump sum amount or the summation of unit prices. On a unit price contract, MTA shall pay the contractor only for actual quantities installed, and so the awarded contract amount may vary from the actual amount paid to the contractor.

Formal Solicitation – Invitation to Bid (ITB)

An Invitation to Bid (ITB) method is a formally advertised competitive selection process used for obtaining construction and maintenance services that will cost more than \$100,000.

Specifications and Contracts:

- a) Each bidder must provide a **bid guarantee** equivalent to five (5%) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying the bid as assurance that the bidder will honor their bid upon acceptance.
- b) Specifications shall require the successful contractor to submit a Payment and Performance Bond (**Contract Bond**) or a separate Payment Bond and a separate Performance Bond for 100% of the awarded contract amount.
- c) **Prevailing Wages:** Specifications shall require the payment of applicable prevailing wages. Contracts shall include a copy of or reference to wage rates.

Solicitation Requirements:

- a.) ITBs will be publicly advertised in the *appropriate newspaper* and other media, as appropriate.
- b.) ITBs should be advertised and available for review by contractors for enough time to prepare and submit bids or proposals.



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- c.) The length of time shall be determined by various factors, including but not limited to, the estimated dollar value of the work, the complexity of the work, and general market conditions.
- d.) While ITBs will usually be advertised and available for review by contractors for 21 calendar days before bids are due, Administrative Services Manager may determine that adequate competition, preparation, and submission of bids may be completed in less time, and the 21-day guideline may be adjusted accordingly. Administrative Services Manager, in consultation with the Department Manager, shall determine how long a solicitation opportunity is advertised.
- e.) Notice for a pre-bid conference shall be stated in the ITB.
- f.) All ITB bids received by the required deadline will be publicly opened at the time and place prescribed in the invitation for bids.
- g.) Procurement Procedures shall outline requirements for receipt of bids or proposals, including, but not limited to, addressing where bids or proposals should be submitted, and deadlines for submission.

Evaluation and Award:

- a.) MTA shall evaluate whether the bids submitted are responsive to the specifications.
- b.) MTA shall evaluate whether the bidder submitting the lowest responsive bid is a responsible bidder. Responsibility analysis includes, but is not limited to, verifying contractor compliance with the bidder responsibility requirements of RCW 39.04.350, as well as issues related to the capability of the bidder to successfully complete the work, based on supplemental bidder responsibility criteria that may have been established for the project.
- c.) If a contract is to be awarded, it shall be awarded only to a responsible bidder submitting the lowest responsive bid.
- d.) Geographic location of contractors **cannot** be used as evaluation criteria.
- e.) No changes in price or other provisions of bids after opening shall be permitted unless an error is obvious. An obvious error can be clearly determined from math extensions or calculations shown in documents submitted with the bid. An error in a math extension, reported by a bidder but not shown in the bid documents, does not constitute an obvious error. Bidders are presumed to submit correct calculations and specifications.
- f.) Immaterial irregularities in a bid may be waived by MTA as an informality.
- g.) MTA shall reserve the right to reject any or all bids if there is a sound documented reason.
- h.) Contracts shall be for a firm fixed-price based on either a lump sum amount or the summation of unit prices. On a unit-price contract, MTA shall only pay the contractor for actual quantities installed, so the awarded contract amount may vary from the actual amount paid to the contractor.

Prevailing Wages

The **hourly wages** to be paid to laborers, workers, or mechanics, on all construction projects, shall not be less than the local **prevailing wage** (RCW Ch. 39.12). Maintenance, when performed by contract, is also subject to prevailing wage requirements. When federal funds are used, a project is subject to both state prevailing wages and federal prevailing wages, and the contractor must pay the higher of the two wages for a given classification.



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Applicability of **Federal** Prevailing Wage Requirements: Prevailing wage requirements shall apply only to construction projects of more than \$2,000 that contain federal funds (40 USC 276a to 276a-7).

Records Disclosure of Contractor Payroll Reports: Payroll reports received by MTA from contractors and subcontractors on construction projects, for the purpose of monitoring prevailing wage requirements, shall not be released to outside parties *unless* the employees' personal identifiers (e.g., name, address, social security number) are first deleted.

12.0 TWO STEP PROCUREMENT PROCEDURES

Two-Step Procurement Procedures (41 U.S.C. Section 253.m) may be used in **competitively negotiated procurements**, such as rolling stock or technology, provided the opportunity for full and open competition is retained, consistent with RCW and FTA requirements. It may also be used for Construction and Maintenance projects.


Step 1: Review of Technical Qualifications and Approach. The first step is a review of the prospective offerors' technical approach to MTA's request and technical qualifications to carry out that approach. The competitive range may be narrowed to prospective offerors that demonstrate a technically satisfactory approach and have satisfactory qualifications.

Step 2: Review of Bids and Proposals Submitted by Qualified Prospective Contractors. The second step consists of soliciting and reviewing complete proposals, including price, submitted by each prospective offeror determined to be qualified. Proposals should be solicited from at least three qualified prospective offerors, absent exceptional circumstances. Unlike qualifications-based procurement procedures required for A&E services (Section 10.1), and other contracts covered by CFR 49 Section 5325(b) discussed in Section 8 (ITBs), proposal prices of all proposers in the competitive range are to be considered along with evaluation factors relating to qualifications and technical factors.

In the interests of efficiency, MTA may elect to obtain submittals of both steps with a single solicitation.

13.0 INTERGOVERNMENTAL AGREEMENTS

To promote efficiency and competition in the procurement of goods and services, the General Manager is authorized to enter into agreements with other governmental agencies and intergovernmental purchasing networks or associations. **The purpose of a cooperative intergovernmental agreement is to take advantage of a competitive selection process already conducted by another agency and save MTA the time and expense of conducting its own selection process.** In evaluating the use of a cooperative intergovernmental agreement, Administrative Services Manager shall review the other agency's standards in the competitive selection process for reasonableness. To facilitate cooperative purchasing, MTA may include the consolidated requirements of other public entities in its procurement actions.

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MTA may utilize “existing contract” rights, which are the post award use of contract rights that allows someone who was not contemplated in the original contract to purchase the same supplies and/or equipment through that contract (i.e., “piggybacking”). These purchases shall meet the requirements of FTA Circular 4220.1.f V.7 and any revisions thereof.

Utilizing Intergovernmental Agreements does not eliminate the requirement for a Price Analysis or Cost Analysis.

MTA may purchase government excess and surplus property in lieu of purchasing new equipment and property, if project costs are significantly reduced and use is practicable and feasible.

Government Competition with Private Sector

MTA may enter into an intergovernmental agreement with other government agencies to procure goods and services when these are not available from the private sector. If the private sector also offers such goods or services, the General Manager or designee shall evaluate on a case-by-case basis what would be in the best interests of MTA, and whether to contract directly with the agency or to conduct a competitive selection process.

14.0 NON-COMPETITIVE PROCUREMENTS:

Prohibited Practices

Procurement practices that restrict competition are prohibited (49 USC Section 5325(h)). Examples of such practices include the following:

1. Unreasonable Requirements. Placing unreasonable requirements on firms in order for them to qualify to do business.
2. Improper Prequalification. Using prequalification procedures that conflict with prequalification standards described in the FTA Circular 4220.1.f VI-1c, and any revisions thereof.
3. Retainer Contracts. A noncompetitive award to any person or firm on a retainer contract if that award is not for the property or services specified for delivery under the retainer contract.
4. Excessive Bonding. Experience and Bonding: Requiring unnecessary experience and excessive bonding.
5. Brand Name Specificity: Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement.
6. Conflict of Interest: An organizational conflict of interest occurs when any of the following circumstances arise:
 - a.) Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
 - b.) Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.



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- c.) Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- d.) Restraint of Trade. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or proposers.
- e.) Arbitrary Action. Any arbitrary action in the procurement process.

Permissible Non-Competitive Procurements

In certain instances and situations, the procurement of goods and services without adequate competition is permissible:

1. **Sole Source:** The service or item is available only from a single source, based on a documented good faith review of available sources.
2. **Emergency:** An emergency exists that seriously threatens the public health, welfare, or safety concerns, endangers property, or would otherwise cause serious injury to MTA. This may occur through flood, earthquake, epidemic, fire, riot, equipment failure, or other event. Needs arising from this event will not permit a delay resulting from competitive solicitation.
3. **Inadequate Competition:** After solicitation from a number of sources, only a single response is received, or competition is determined to be inadequate.

Justifications:

1. **Selection:** Department Managers shall submit in writing to Administrative Services Manager a recommendation justifying the reasons why competitive selection requirements should be waived.
2. **Price Reasonableness:** Consistent with the requirements of Section 6, Department Managers are responsible for ensuring that a Price or Cost Analysis is prepared for all non-competitive procurements to ensure that the proposed price is reasonable.

15.0 COMPETITIVE EXCEPTIONS (DIRECT PAYMENTS)

Competitive Exceptions, or Direct Payments, are **transactions that, by their nature, are impractical or impossible to competitively bid because of market or other conditions** and are thus exempt from competitive bidding requirements. These transactions do not have to be justified as a Non-Competitive Procurement (Section 15) but may be obtained directly by an employee with adequate Approval Authority (per Section 4). Depending on the item, there may or may not be a contract or Purchase Order outlining the terms and conditions.

Modifications to Direct Payments List

The General Manager may approve modifications to the Competitive Exceptions list without seeking approval of the Board of Directors, provided that the changes are consistent with applicable statutory and regulatory requirements and that the current list is made readily available to MTA employees.




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Interpretation of Direct Payments List

In the event of ambiguity or uncertainty as to whether an item is or is not subject to competition and whether it should be included on the Direct Payments List, the Administrative Services Manager shall review the matter and make the final decision.

The following do not require competitive processes: (Direct Payment List) includes the following:

1. Utility bills (Water, Sewer, Electricity, Gas, other regulated utilities)
2. Postage and other purchases from the U.S. Postal Service
3. Licenses, permits, and fees from governmental or regulatory entities
4. Purchases from other governmental entities for goods or services not available from the private sector.
5. Fees paid to governmental cooperative purchasing organizations.
6. Charges for official MTA business on personal credit card while on MTA travel status.
7. Legal services such as arbitration fees, litigation fees, witness fees, court costs, and related expenses (but not the cost of outside counsel, investigations, or related matters), when endorsed by General Counsel.
8. Legal settlements of disputed matters, and judgment claims against MTA (for use only with endorsement by General Counsel).
9. Payments for existing annual maintenance, service, or support agreements for computer, telecommunication-related services, and existing software license agreements.
10. Travel expenses for MTA employees, program participants, volunteers, or the Board of Directors necessary to conduct MTA business.
11. Training registration fees and tuition for pre-established, non-MTA specific, off-site classes, seminars, workshops, etc. for MTA employees, program participants, volunteers, and the Authority Board.
12. Testing and travel expenses of employment applicants (including moving expenses for eligible personnel). This includes travel expenses of certain out-of-state job applicants. The General Manager must approve travel expenses of job applicants.
13. Conference and convention expenses and fees for MTA employees, program participants, volunteers, or members of the Authority Board conducting MTA business.
14. Advertisements for employment opportunities, purchasing and contracting solicitations, sale of surplus items, public announcements and outreach, etc. (all media). This exception does not include printing, design, or graphics services.
15. Freight bills, express shipping, common carriers, and delivery services.
16. Honoraria and stipends.
17. Insurance deductible and/or retained losses
18. Taxi, public transportation, and toll fares, mileage and incidental parking expenses for employees on agency business.
19. Publications, books, and subscriptions.
20. Mailing lists.
21. Professional association dues, fees, licenses, and certifications.
22. Petty cash purchases and reimbursements less than \$200.

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23. Transactions not subject to these Purchasing Policies as noted in Section 2: Scope.

16.0 DISADVANTAGED BUSINESS ENTERPRISE

MTA invites and encourages small and disadvantaged business enterprises (DBE) to participate in the procurement process for all purchases as detailed in MTA’s Disadvantaged Business Enterprise Policy/Program. All employees, responsible for making purchases, must make good faith efforts to seek DBE vendors and document those efforts.

For more information, consult MTA’s DBE policy.

17.0 CONTRACT ADMINISTRATION AND RECORDKEEPING

The MTA shall maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of contracts or purchase orders and applicable Federal, State and local requirements. All contracts shall include provisions adequate to form a sound and complete agreement.

All records shall be retained in accordance with the Record Retention Policy.

18.0 PUBLIC RECORDS


All procurement information generated and acquired through any of the procurement processes shall be open to public inspection following the Intent to Award a contract through the MTA Public Records Officer, in accordance with RCW 42.56. Each proposal shall be open to public inspection. MTA shall not be responsible for the protection of information marked “proprietary” submitted by proposers.

19.0 PROTESTS, APPEALS AND DISPUTES

Filing a Protest: An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services or construction by MTA. A protest must be submitted in writing to MTA Administrative Services Manager, and include the following information:

- a) Name, address, email address, and telephone number of the protester;
- b) Signature of the protester or their representative;
- c) Identification of the solicitation;
- d) Detailed statement of the legal and factual grounds of the protest;
- e) Copies of all relevant documents; and
- f) The form of relief requested.

Issues and facts not stated in the Notice of Protest will not be considered.

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All communications with involved parties shall be in writing and open for public inspection.

Public Works Projects:

Within two business days of the bid opening on a public works project that is the subject of competitive bids, MTA will provide, if requested by a bidder, copies of the bids MTA received for the project. MTA will then allow at least two full business days after providing bidders with copies of all bids before executing a contract for the project. Intermediate Saturdays, Sundays, and legal holidays are not counted.

When MTA receives a written protest from a bidder for a public works project that is the subject of competitive bids, MTA will not execute a contract for the project with anyone other than the protesting bidder without first providing at least two full business days' written notice of MTA's intent to execute a contract for the project; provided that the protesting bidder submits notice in writing of its protest no later than:

(a) Two full business days following bid opening, if no bidder requested copies of the bids received for the project under subsection (1) of this section; or

(b) Two full business days following when MTA provides copies of the bids to those bidders requesting bids under this section. Intermediate Saturdays, Sundays, and legal holidays are not counted.

Time for Filing a Protest: A protest based on alleged improprieties or ambiguities in a **solicitation** must be filed at least 7 days before the due date of the bid or proposal. A protest based upon alleged improprieties in an **award** of a contract or a **proposed award** of a contract must be filed within 2 days after notification to an unsuccessful proposer or bidder that they were not selected and before a contract is entered.

Notice of Protest: Administrative Services Manager shall immediately give notice of a protest to the contractor if a contract has been awarded. If no award has been made, notice will be provided to all interested parties.

Stay of Award: If a protest is filed, the award may be made unless the Administrative Services Manager determines in writing that a

- a) Reasonable probability exists that the protest will be sustained; or
- b) Stay of the award is not contrary to the best interests of MTA.

Review of Protests

- a) **Review:** The Administrative Services Manager shall review and investigate properly filed protests and issue a written decision to the protestor.



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- b) **Appeal:** A Protestor may appeal the Administrative Services Manager's formal decision to MTA's General Manager. The written appeal must be received by MTA within two business days after receipt of the written decision by the Protestor, or the appeal will not be considered. Properly filed appeals of the decisions of the Administrative Services Manager shall be reviewed and investigated by the General Manager who shall issue MTA's final decision no later than 21 days after receipt.

FTA Funded Projects: In general, FTA will not substitute its judgment for that of MTA unless the matter is primarily a Federal concern. Protests of solicitations, intent to award, or contracts funded with any FTA grants will be managed in accordance with FTA Circular 4220.1.f VII guidelines, and any revisions thereof

Federal Assistance in Contract Disputes: If MTA intends to request FTA permission to use Federal assistance to support payments to a third party contractor to settle a dispute, or intends to request increased Federal assistance for that purpose, MTA must comply with the requirements pertaining to notification of FTA, documentation, audit, and other requirements set forth in FTA Circular 4220.1 VII (e), and any revisions thereof.

20.0 ETHICS

The following rules apply to members of the MTA Authority Board (Board Member), Employees, both represented and non-represented, agents and the Immediate Family of Authority and Employees.

Immediate family means a spouse or domestic partner, child, child of a spouse or domestic partner, sibling, sibling of a domestic partner, brother-in-law, sister-in-law, part, parent of a spouse or domestic partner of an Employee or Board Member; a person for whom the Board Member or Employee is a legal guardian; or a person claimed as a dependent on the Board Member's or Employee's most recently filed federal income tax return.

1. **MTA Board Members, Employees and agents may not use their position for personal gain.** This includes seeking or agreeing to outside contracts through the influence of a MTA position, accepting compensation from someone other than MTA for performing duties of the Board Member's or Employee's position, taking action that affects a matter in which a Board Member, Employee, agent or Immediate Family member has a personal or financial interest, or using MTA time or property for personal or financial interests.
2. **MTA Board Members, Employees, agents and their Immediate Family members may not accept improper gifts.** This includes gifts, entertainment, travel, favors, etc. of any dollar value if a reasonable person might think it was intended to influence an individual in the performance of the duties of their job, or if there might be a perception that the gift might influence a Board Member or Employee in the performance of the duties of their job.
3. **Board Members, agents and Employees may not improperly use or disclose information.** This includes information that could result in a benefit to a Board Member, Employee, or Immediate Family unless the information is also available to the public. It also includes



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confidential information of any kind, unless disclosure is authorized by appropriate personnel or required to be disclosed by law or regulation.

4. **No** Board Member, Employee, agent or Immediate Family member may have a **personal or financial interest in any MTA contract** in which that Board Member or Employee plays or may play a role in the award or administration of the contract.
5. A Board Member, Employee or agent **may not advise or assist** someone for compensation on any matter pending before MTA.
6. **An Employee may not have outside employment if it is incompatible with performing MTA duties.** All outside employment or changes in outside employment must be reported to Human Resources and Administrative Services Manager.
7. **Employees may not publicly endorse** a product or service without written approval by the General Manager while representing MTA or if the endorsement would be considered a conflict of interest.
8. Employees **violating** this Ethics Section may be subject to disciplinary action, up to and including termination. Board Members violating this Ethics Section will be subject to Board action to the extent permitted by State or local law or regulations.

21.0 FTA SELF-CERTIFICATION OF PROCUREMENT SYSTEM

The Administrative Services Manager is authorized to file a self-certification with the FTA Regional Office that MTA's procurement system and procedures comply with the federal requirements and standards set forth in FTA Circular 4220.1.f, and any revisions thereof. Self-certification limits mandatory FTA review of the procurements listed in Section III of FTA Circular 4220, and any revisions thereof. The Administrative Services Manager shall self-certify MTA's procurement system in the FTA Annual Certification/ Assurance Process or as otherwise required by FTA.

22.0 WAIVER, REPEAL & EFFECTIVE DATE

The Authority Board may waive these requirements by motion or resolution except when prohibited by federal or state law or regulation.

All former Purchasing policies and procedures are repealed upon adoption of this document. These Rules and Policies are effective when adopted by the MTA Authority Board.

23.0 APPLICABLE LAWS, REGULATIONS, REFERENCES

Applicable Laws and Regulations:

1. 2 CRF 200 – US Dept. of Transportation, Procurement
2. FTA Circular C 4220.1 (current version)
3. FTA Best Practices Procurement Manual
4. RCW 36.57A.080 Grants Authority to Procure
5. RCW 39 Public Contracts and Indebtedness
6. RCW 42.56 Public Disclosure



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7. RCW 60.28 RCW Liens for Labor, Materials, Taxes on Public Works
8. WAC 296-127 Prevailing Wages
9. MTA Resolution 2009-04 - Identification & Disposal of Surplus Property
10. Other laws and regulations as appropriate

Procurement procedures and contract language adopted by the General Manager or designee must also comply with all applicable laws and regulations. MTA recognizes FTA Handbooks and Guidelines as non-regulatory, non-binding advice, except to the extent that Handbooks or Guidelines articulate statutory or regulatory requirements.

Conflicts between Policies and Other Laws or Regulations: In the event of a conflict between these Purchasing Policies and any applicable law or regulation, the law or regulation will prevail.

Changes in Laws and Regulations: In the event an applicable law or regulation is modified or eliminated, or a new law or regulation is adopted, the revised law or regulation shall, to the extent inconsistent with these Purchasing Policies, automatically supersede these Purchasing Policies, and Administrative Services Manager shall make appropriate modifications to the Policies.

