**Washington Metropolitan Area Transit Authority**

# Board Action/Information Summary

| Action / Information | MEAD Number: | Resolution: |
|---|---|---|
| (•) Action ( ) Information | 101211 | (•) Yes ( ) No |

**TITLE:**

Approval of Procurement and Reprogramming Policy

**PURPOSE:**

The purpose of this action is to receive Board approval for policy changes to the Procurement Policy contained in Chapter 1 of the Procurement Procedures Manual (PPM) and to the Reprogramming Policy in order to streamline the approval authority process for contract actions and reprogramming actions.

**DESCRIPTION:**

With increased jurisdictional capital funding, the capital program has grown significantly. Metro is improving procedures, tools and reporting mechanisms to increase program activity/transparency for the capital program and activities funded through the Operating Budget.

Metro has identified areas to improve capital program efficiency:

- Reduce cycle time to approve contract and budget reprogramming actions

- Synchronize approval processes for operating and capital budgets and contract actions

The Board annually reviews and approves the Operating Budget and Multi-Year Capital program in accordance with the WMATA Compact and key agreements including the 2010 Capital Funding Agreement (CFA), which is the basis for procuring/funding capital contracts. The CFA requires the development of the six-year Capital Improvement Program and Annual Work Plan for jurisdictional review and annual Board approval. In addition, these documents serve as the basis for the TIP and STIP submissions which are reviewed and approved by the MWCOG as well as the FTA.

Given current/planned internal procurement controls, a policy revision to Chapter 1 of the PPM is requested to support a more efficient contracting process:

Under the new process, the Board will be responsible for approving the attached Chapter 1 of the PPM and annual approval of the Board`s overall Operating and multi-year Capital Budgets, which will authorize the General Manager and Chief Executive

Officer (GM/CEO) to initiate, award, and modify contracts consistent with the approved budgets.

These requested policy changes are in direct relation to Metro`s Goals:

- Deliver Quality Service through accelerating the ability to commence the procurement of operating and capital contracts in a more expedited manner, thereby starting the projects actual field work sooner for any operational and capital improvement project; and
- Use Every Resource Wisely by re-directing human capital resources from time spent on administrative routing requirements for approval authority requests to more project specific procurement requirements (i.e. statement of work development), the programs will be more streamlined in getting the contracts through the procurement system in a more efficient and timely manner.

The CFA established a funding and billing system that is expenditure-based and as a result, the capital program must remain flexible to changing conditions.

Given the need for greater flexibility and the establishment of internal reprogramming controls, the following Reprogramming Policy changes are requested:

The Board will be responsible for approving:

- Initiation of any new capital project not within the current approved budget
- Any budget adjustment which would cause the Authority to be required to issue and form of debt
- Any increase to the total annual approved budget

To further streamline the implementation of the Capital Program and activities funded in the Operating Budget, under the proposed policy the GM/CEO will be authorized to approve reprogramming actions 5 percent of the approved capital budget .

Any reprogramming actions over 5% of the approved total annual capital budget on an annual cumulative basis between existing projects will require Board approval to increase the GM/CEO authority in increments thereafter.  Board approval would be required to increase the total Operating Budget.

The jurisdictions will be notified prior to the capital reprogramming of amounts $1 million and over, per the CFA.

**FUNDING IMPACT:**

| | |
|---|---|
| Project Manager: | Carol Dillon Kissal |
| Project | |

| Department/Office: | DGMA/CFO |
|---|---|

**RECOMMENDATION:**

Approval of revised Chapter 1 of the Procurement Procedures Manual (PPM) and the Reprogramming Policy.

**PRESENTED AND ADOPTED: June 23, 2011**

SUBJECT: PROCUREMENT STREAMLINING INITIATIVES AND DELEGATIONS, REPROGRAMMING POLICY FOR OPERATING AND CAPITAL BUDGETS AND APPROVAL REQUIREMENTS FOR NON-PROCUREMENT ACTIVITIES

**2011-30**

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, On September 21, 2006, September 27, 2007, June 25, 2009 and July 16, 2009, the Board of Directors adopted streamlining policies and procedures for contract actions requiring Board of Directors' approval; and

WHEREAS, Staff has evaluated and analyzed the amended procurement policies and procedures for seeking the Board of Directors' approval of contract actions and is recommending further changes to rules and processes for improved business functions; and

WHEREAS, On June 24, 2010, the Board of Directors adopted Resolution #2010-32 approving the Capital Funding Agreement (CFA) and Local Capital Funding Agreement including expenditure-based budgeting for the WMATA Capital Improvement Program (CIP); and

WHEREAS, The Board of Directors annually approves the Operating and Capital Budgets; and

WHEREAS, On October 28, 2010, the Board of Directors approved Resolution #2010-59 revising the reprogramming policy for the capital budget previously approved by Resolution #2000-43 and on May 13, 1999, the Board of Directors approved Resolution #99-21 revising the reprogramming policy for the operating budget; and

WHEREAS, Expenditure-based budgeting requires timely and prudent cash management because scope, pricing, expenditure levels and the prioritization of some capital projects and operating budget needs may change during the term of the approved annual budget; and

WHEREAS, WMATA has in place internal controls to document, review and approve all budget reprogramming requests and is completing improvements to internal financial controls including commitment control to better manage and automate all project reprogramming activities; and

**Motioned by Mrs. Hynes, seconded by Mr. Downey**
**Ayes: 8 - Mrs. Hudgins, Mr. Downs, Mr. Downey, Mr. Nichols, Mrs. Hynes, Mr. Wells, Mr. Acosta and Mr. Barnes**

WHEREAS, The Board of Directors receives monthly financial reports which incorporate operating and capital budget performance and identify significant actions including reprogramming actions; and

WHEREAS, Staffing needs may change during the fiscal year in order to implement the projects and programs in the adopted budget; and

WHEREAS, WMATA prepares a quarterly capital program progress report for the preceding quarter for submittal to the Contributing Jurisdictions no later than 45 days following the close of the quarter as required in Section 4(b)(5) of the CFA; and

WHEREAS, WMATA provides the Contributing Jurisdictions with advance notice of any request to reprogram funds in an amount greater than $1,000,000 per project before the reprogramming request is acted upon by the General Manager or the Board of Directors as required in Section 5(g) of the CFA; and

WHEREAS, WMATA may receive insurance settlement funds during the fiscal year for incidents of property loss or damage; and

WHEREAS, The General Manager and Chief Executive Officer (hereinafter, GM/CEO) is authorized to approve Reimbursable Projects with participating jurisdictions and state governments under Resolution #99-63; and

WHEREAS, The Compact, previous resolutions and established business practices require certain non-procurement agreements to receive Board of Directors' approval; now, therefore be it

*RESOLVED,* That Chapter 1 of the Procurement Procedures Manual adopted by the Board of Directors on September 24, 1992, as amended, is hereby repealed and reenacted as shown in Attachment A and authorizes the GM/CEO to initiate, award and modify procurements consistent with the Authority's approved operating and multi-year capital budgets; and be it further

*RESOLVED,* That Staff will provide a monthly financial report and quarterly capital program progress report that will include a report on procurement awards, including activity of significant contracts (initiations, awards, or modifications) contained within the project of the CIP and the status of awarded vendors in the Disadvantaged Business Enterprise (DBE) and Small and Local Business Program (SLBP); and be it further

*RESOLVED,* That Staff shall obtain approval of the Board Finance and Administration Committee for Operating Budget actions that require an adjustment to the total Operating Budget before such adjustment is submitted to the Board of Directors; and be it further

*RESOLVED,* That changes within the total operating budget are delegated to the GM/CEO using the following criteria and will be reported to the Board of Directors in the monthly report:

- Requested change is consistent with the Mission Statement and Goals; and
- Requested change is a higher priority than other needs (safety, providing service at the KPI level); and
- Requested change will result in expenditures in the current fiscal year, consistent with the overall operating budget; and be it further

*RESOLVED,* That Staff shall obtain approval of the Board Finance and Administration Committee prior to submission to the Board of Directors, for the following actions affecting the CIP budget all as set forth in Attachment A:

- Initiation of any new capital project not within the current approved Capital Budget; or
- Any budget adjustment which would cause the Authority to be required to issue any form of debt; or
- Any increase to the total approved budget for the current or any future budget year; or
- Any reprogramming actions over 5% of the approved total annual capital budget on an annual cumulative basis between existing projects; thereafter, the GM/CEO will seek additional reprogramming authority to cover additional reprogramming amounts in increments which he shall recommend to the Board of Directors; and be it further

*RESOLVED,* The GM/CEO is authorized to approve reprogramming actions requiring approval of the Board of Directors on an emergency basis, as defined in Attachment A hereto, provided that the Board Finance and Administration Committee is immediately notified of such actions; and be it further

*RESOLVED,* That the GM/CEO may approve the addition of staff positions provided that the funding is available within the annual budget; and be it further

*RESOLVED,* That insurance payments related to property and operating losses may be applied to the Budget for projects created to repair or replace the asset and the total operating and capital budgets may be increased to reflect these funds without specific Board of Directors approval provided that the Board is notified; and be it further

*RESOLVED,* That the GM/CEO may approve Reimbursable Projects with participating jurisdictions and state governments and make the corresponding change to the total reimbursable program budget, provided that such project does not exceed $500,000 and all costs for any required additional staff positions are included in project funding; and be it further

*RESOLVED,* That the GM/CEO is authorized to approve all other reprogramming actions not requiring the approval of the Board of Directors; and be it further

*RESOLVED,* That this Resolution supersedes Resolution #2010-59 and Resolution #99-21; and be it further

*RESOLVED,* That Staff shall obtain approval of the Board Finance and Administration Committee prior to submission to the Board of Directors all Authority non-procurement activities required to be approved by the Board of Directors as shown in Attachment B and incorporated for convenience with Chapter One (Attachment A); and be it further

*RESOLVED,* That the Board of Directors hereby re-delegates the power to handle banking services to the GM/CEO consistent with the requirements of Compact § 69(a) in a manner that most efficiently services the needs of the Authority and the GM/CEO is also authorized to approve all other non-procurement activities including international travel provided the activity does not require Board of Directors' approval under the Compact; and be it finally

*RESOLVED,* That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

Carol B. O'Keeffe
General Counsel

# ATTACHMENT A

# WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

# PROCUREMENT POLICY

# ADOPTED BY THE AUTHORITY BOARD OF DIRECTORS

# JUNE 23, 2011

**ATTACHMENT A**

Washington Metropolitan Area Transit Authority
Board Approval, Delegation & Reprogramming Requirements
Adopted By the Authority Board of Directors
September 24, 1992
Revised: July 24, 1997, September 27, 2007, June 25, 2009, July 16, 2009, June 23, 2011

---

# PROCUREMENT PROCEDURES MANUAL

## CHAPTER 1 – BOARD APPROVAL, DELEGATION & REPROGRAMMING REQUIREMENTS

### SECTION 100 - GENERAL

**101. Purpose.** This Chapter 1 sets forth the guidance and requirements that will govern the Washington Metropolitan Area Transit Authority ("Authority") procurement activities, budget reprogramming activities, non-procurement activities, and conduct of personnel engaged in those activities. This chapter augments the Authority Compact, Section 73, as amended, which sets forth the general policy guidance and requirements that affect Authority procurements and approvals.

**102. Procurement Regulations Background.** The Authority's Procurement Policy, as defined in this Chapter 1, establishes the broad framework for its Procurement Regulations. The Regulations consist of the Procurement Policy approved by the Authority Board of Directors ("Board"), and procedures that are developed and issued by the Chief Procurement Officer and approved by the General Manager/Chief Executive Officer (CEO).

**103. Certification of Procurement System.** The Authority Procurement System is fully certified by the U.S. Department of Transportation (DOT), Federal Transit Administration (FTA), to carry out the Authority's procurement functions, in accordance with federal guidelines and Authority policy. However, certain functions identified in DOT/FTA Circulars 4220.1F and 5010.1D, as amended, may require approval or concurrence by the FTA Administrator.

**104. References to Statutes or Regulations.** Reference in the Authority's Procurement Policy to any federal, state, or local statute, regulation, or circular or other guidance, shall be deemed to include any revision, amendment, or replacement therein, effective after the date of the adoption of this Policy by the Board.

### SECTION 200 - RESPONSIBILITY AND AUTHORITY

**201. Responsibility.** With respect to this Policy, the following responsibilities apply:

(a) **Board of Directors.** The Board is responsible for approving procurement policies; approving deviations from procurement policy; authorizing the GM/CEO to initiate, award and modify procurements consistent with the approved Authority operating and multi-year capital budgets; delegating contracting officer

authority to the GM/CEO; authorizing the GM/CEO to delegate contracting officer authority and authority to approve procurement initiation and award activities to subordinate officials of the Authority.

(b) **General Manager/Chief Executive Officer.** The GM/CEO is delegated unlimited contracting authority. The GM/CEO is authorized to initiate, award and modify procurements consistent with the approved Authority operating and multi-year capital budgets and is responsible for delegating contracting officer authority to qualified employees of the Authority and authorizing the re-delegation of authority to other qualified employees of the Authority; approving employee standards of conduct; approving Authority procurement and related policies and procedures that augment Board procurement policy; approving, only as authorized by the Board or this Procurement Policy, the initiation of procurement actions and awarding contracts in emergency situations; and reporting sole source and emergency contracts to the Board. The GM/CEO is also responsible for establishing a system for the timely review and approval of procurement actions, establishing policies and procedures for special agreements, and implementing procurement policies and procedures.

(c) **Chief Procurement Officer.** The Chief Procurement Officer, with approval by the GM/CEO, is responsible for developing and issuing procurement procedures to implement Board procurement policies; establishing a system to select, recommend, appoint, and delegate Contracting Officer authority; preparing quarterly reports for presentation by the GM/CEO to the Board; acting in appointed capacity as Contracting Officer. The Chief Procurement Officer may appoint authorized representatives for the purpose of assisting the Contracting Officers in providing technical guidance to the Contractor or otherwise assisting in the administration of the contract. In limited circumstances, authority representatives may be delegated restricted contracting authority.

(d) **Subordinate Authority Officials.** Subordinate Authority Officials to the GM/CEO are responsible for carrying out procurement initiation, award approval, and contract administration functions in accordance with established Authority procurement and related policies and procedures, and with their specific delegations or written authorizations.

**202. Delegation of Authority.** On June 28, 1991, the GM/CEO delegated contracting officer authority to the Director, Office of Procurement (subsequently designated as Chief Procurement Officer), and thereby separated procurement from other functional responsibilities.

**203. General Manager/Chief Executive Officer Authority (Emergency Situations).** Notwithstanding the approval requirements in § 600 of this Procurement Policy, the GM/CEO has the authority to incur obligations in emergency situations, and will report back to the Board on all emergency procurements within 60 days of the action. "Emergency" is defined as a situation (such as a flood, epidemic, riot, equipment failure, or other reason declared by the GM/CEO) that creates an immediate threat to the public health, welfare, or safety. The existence of an emergency condition creates an

immediate need for supplies, services, or construction which cannot be met through normal procurement methods, and the lack of which would seriously threaten either the health or safety of any person, the preservation or protection of property, or the continuation of necessary Authority functions.

**204. General Manager/Chief Executive Officer Authority (Special Agreements).** The GM/CEO has the authority to develop policies and procedures for special agreements which include but are not limited to: utility contracts, marketing agreements, employee benefits contracts, contracts for the purchase, sale or lease of real property, and insurance contracts.

## SECTION 300 - COMPETITION REQUIREMENTS

**301. Prohibition Against Restrictive Competition.** All procurement transactions will be conducted in a manner providing full and open competition consistent with the procurement standards in Section 73 of the Authority Compact. Some of the situations considered to be restrictive of competition include, but are not limited to:

(a) Placing unreasonable requirements on firms in order for them to qualify to do business;

(b) Non-competitive pricing practices between firms or between affiliated companies;

(c) Organizational conflicts of interest;

(d) Specifying only a "brand name" product instead of allowing "an equal" product to be offered while not providing salient characteristics of the product;

(e) Any arbitrary action in the procurement process;

(f) Development of specifications and evaluation criteria which unnecessarily favor a particular contractor.

**302. Written Determinations.** When using the procedures authorized in the Authority Compact, Sec. 73(b) ("excluding a particular source"), Sec. 73(c)(1) ("only one responsible source"), Sec. 73(c)(2) ("unusual and compelling urgency"), and Sec. 73(c)(3) ("public interest"), a written determination and finding (D&F) shall be prepared by the Contracting Officer, approved one level above the Contracting Officer, and reviewed by the Office of General Counsel as to form and legal sufficiency. The Authority Procurement Regulations will establish other instances when a written D&F is required. D&Fs shall set forth sufficient facts, circumstances, and reasoning to clearly and convincingly justify the determination made.

## SECTION 400 – CONTRACTING WITH DISADVANTAGED BUSINESS ENTERPRISES ("DBE")

**401. Contracting with Disadvantaged Business Enterprises ("DBE").** The Authority will take all steps to ensure that minority owned firms and women-owned businesses are offered opportunities to compete for contracts as prime contractors or subcontractors wherever possible. Affirmative steps shall include:

(a) Ensuring DBEs are solicited whenever they are potential sources;

(b) When economically feasible, dividing requirements into smaller tasks or quantities to permit maximum participation by DBEs;

(c) Where the requirement permits, establishing contract delivery schedules that encourage participation by DBE;

(d) Using the services and assistance of the Small Business Administration and the Department of Commerce.

(e) Requiring the prime contractor to take the necessary steps to ensure the maximum opportunity for DBE subcontractors, in accordance with the Authority's annual DBE goal established by the Board.

## SECTION 500 - LIQUIDATED DAMAGES PROVISIONS

**501. Liquidated Damages Provisions.** Liquidated damages provisions shall be included in any Authority contract for supplies, services, and construction, where the Authority is likely to incur a direct or indirect economic loss if completion of the contract is delayed. Liquidated damages shall be established and assessed on a per day rate basis.

## SECTION 600 - BOARD APPROVAL, DELEGATION AND REPROGRAMMING REQUIREMENTS

**601. Board Approval, Delegation and Reprogramming Requirements.**

| ACTION DESCRIPTION | DELEGATED AUTHORITY |
|---|---|
| A. Procurement Initiation, Award & Modifications | The GM/CEO is authorized to initiate, award and modify procurements consistent with the approved Authority operating and multi-year capital budgets. |
| B. Operating Budget Adjustments | Board approval is required if Operating Budget actions require an adjustment to the total Operating Budget. |

| ACTION DESCRIPTION | DELEGATED AUTHORITY |
|---|---|
| C. Capital Budget Reprogramming | Board approval is required for:<br>• Initiation of any new capital project not within the current approved Capital Budget; or<br>• Any budget adjustment which would cause the Authority to be required to issue any form of debt; or<br>• Any increase to the total approved budget for the current or any future budget year; or<br>• Any reprogramming actions over 5% of the approved total annual capital budget on an annual cumulative basis between existing projects; thereafter, the GM/CEO will seek additional reprogramming authority to cover additional reprogramming amounts in increments which he shall determine to increase the total GM/CEO authority.<br><br>The GM/CEO is authorized to approve reprogramming actions requiring Board approval on an emergency basis provided that the Board Finance and Administration Committee is immediately notified of such actions. |
| D. Additional Staff Positions | The GM/CEO may approve the addition of staff positions provided that the funding is available within the annual budget. |
| E. Insurance Payments Related to Property and Operating Losses | Insurance payments related to property and operating losses may be applied to the Budget for projects created to repair or replace the asset and the total operating and capital budgets may be increased to reflect these funds without specific Board approval provided that the Board is notified. |
| F. Reimbursable Projects | The GM/CEO may approve Reimbursable Projects with participating jurisdictions and state governments and make the corresponding change to the total reimbursable program budget, provided such project does not exceed $500,000 and all costs for any required additional staff positions are included in project funding. |
| G. Other Reprogramming Actions | The GM/CEO is authorized to approve all other reprogramming actions not requiring approval of the Board. |
| H. Other Non-Procurement Activities | Board approval is required for the non-procurement activities shown in the table below. The GM/CEO is authorized to approve all other non-procurement activities including international travel provided the activity does not require Board approval under the Compact. |

## NON-PROCUREMENT ACTIVITIES REQUIRING BOARD APPROVAL

| Jurisdictional Operating/ Capital Agreements | Financial | Real Estate | Other |
|---|---|---|---|
| • Reimbursable Agreements over $500,000<br>• Fare Buydown Agreements*<br>• Capital Funding Agreements* | • Bonds/Letters of Credit/ Commercial Paper*<br>• Public-Private Financing*<br>• Tax Lease Closeouts*<br>• Banking Services**<br>• Finance Leases*<br>• Parking Surcharge Agreements* | • Joint Development Agreements<br>• Amendments to Joint Development Agreements having one of the following:<br>- *Value over $500,000*<br>- *Change in composition of developer or assignment*<br>- *Change in term*<br>- *Change in proposed elements*<br>• Connection Agreements that vary from adopted policy<br>• Sale/Acquisition of property valued over $1 million | • Agreements requiring the Authority to indemnify the counterparty<br>• Collective Bargaining Agreements<br>• Noncharter mass transit services requested by other entities<br>• Nonannual State or Federal Grants with match requirements |
| * Indicates Board of Directors approval required by the WMATA Compact.<br><br>** This was previously delegated to the GMGR in Board Resolution #93-17. The Board of Directors hereby re-delegates the power to the GM/CEO to handle banking services consistent with the requirements of Compact § 69(a) in a manner that most efficiently services the needs of the Authority. | | | |

**602. Restrictions.** Procurement actions shall not be split to avoid threshold approval, or to avoid any other Authority procurement policies and procedures authorized by this Procurement Policy. Further, no procurement action, except as expressly authorized by this Procurement Policy or Authority procurement policies and procedures, shall be executed prior to receiving funding and management approval, and when applicable, Board approval.

## SECTION 700 - POLICY DEVIATION

**701. Policy Deviation.** Deviation from the policies stated herein, except for the requirements of the Authority Compact, shall be approved by the Board unless the change is required by Federal law or regulation in which case the policies will be deemed changed. Deviation from Compact requirements is not authorized unless superseded by Federal law. Deviations from FTA policies shall be in accordance with DOT/FTA Cir. 4220.1F, as amended.

## SECTION 800 – REPORTS

**801. Reports.** The GM/CEO shall periodically report to the Board new contracts awarded on a sole source or emergency basis pursuant to the provisions of the Compact. Regular progress reports (submitted to the Contributing Jurisdictions/Board) will be enhanced to include significant contract activity (significant initiations, awards or modifications) and the status of awarded vendors in the Disadvantaged Business Enterprise ("DBE") and Small and Local Business ("SLBP") Programs.

ATTACHMENT B

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

NON-PROCUREMENT AGREEMENTS REQUIRING BOARD APPROVAL

ADOPTED BY THE AUTHORITY BOARD OF DIRECTORS

JUNE 23, 2011

| **Jurisdictional Operating/Capital Agreements** | **Financial** | **Real Estate** | **Other** |
|---|---|---|---|
| • Reimbursable Agreements over $500,000<br>• Fare Buydown Agreements*<br>• Capital Funding Agreements* | • Bonds/Letters of Credit/ Commercial Paper*<br>• Public-Private Financing*<br>• Tax Lease Closeouts*<br>• Banking Services**<br>• Finance Leases*<br>• Parking Surcharge Agreements* | • Joint Development Agreements<br>• Amendments to Joint Development Agreements having one of the following:<br>- *Value over $500,000*<br>- *Change in composition of developer or assignment*<br>- *Change in term*<br>- *Change in proposed elements*<br>• Connection Agreements that vary from adopted policy<br>• Sale/Acquisition of property valued over $1 million | • Agreements requiring the Authority to indemnify the counterparty<br>• Collective Bargaining Agreements<br>• Non-charter mass transit services requested by other entities<br>• Non-annual State or Federal Grants with match requirements |

* Indicates Board of Directors approval required by the WMATA Compact.

** This was previously delegated to the GMGR in Board Resolution #93-17. The Board of Directors hereby re-delegates the power to the GM/CEO to handle banking services consistent with the requirements of Compact § 69(a) in a manner that most efficiently services the needs of the Authority.