



Finance, Administration and Oversight Committee

**Action Item III-E
July 9, 2009**

Procurement Streamlining

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

<input checked="" type="radio"/> Action <input type="radio"/> Information	MEAD Number: 100407	Resolution: <input checked="" type="radio"/> Yes <input type="radio"/> No
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TITLE:

Procurement Streamlining Initiatives

PURPOSE:

To request Committee concurrence and Board approval to amend Chapter 1 of the Procurement Procedures Manual to implement procurement streamlining initiatives with respect to non-competitive procurement actions.

DESCRIPTION:

On June 25, 2009, the Board of Directors granted the General Manager authority to approve competitive contracts regardless of dollar amount if the contracts appear in the Plan of Contracts that will be approved annually with the budget. The requested changes involve authority to initiate and award procurements.

Staff is requesting that the General Manager be granted approval authority for non-competitive contracts in addition to competitive contracts. The Board requested further review prior to granting this authority. Accordingly, Staff spoke with the Jurisdictional Coordinating Committee members by conference call on June 18, 2009 and briefed the Committee again on June 25, 2009. Recommendations from both meetings have been addressed and incorporated where appropriate.

Staff, therefore, recommends that the General Manager be granted authority to approve the initiation and award of non-competitive contracts up to \$1 million, if the contract is listed in the Plan of Contracts submitted as part of the budget approval process. If the procurement action is not listed in the Plan of Contracts or exceeds the \$1 million threshold, then Board approval is required.

Implementation of this recommendation requires a change to the Board Procurement Policy as set forth in Chapter 1 of the Procurement Procedures Manual.

This change will grant the General Manager approval authority for non-competitive contracts up to \$1 million, if the contracts appear in the Plan of

Contracts that will be approved annually with the budget. The requested change involves authority to initiate and award procurements. Quarterly reporting will be provided to the Board regarding non-competitive contract awards.

The specific changes are detailed in Attachement A to the proposed Board Resolution.

FUNDING IMPACT:

No impact on funding

RECOMMENDATION:

Approval of revisions to Chapter 1 of the Procurement Procedures Manual to grant General Manager authority to initiate and award all non-competitive procurement actions up to \$1 million that are included in the annual Plan of Contracts and approved by the Board of Directors as part of the annual budget approval process.



Procurement Streamlining Initiatives

Presented to the Board of Directors:
**Finance, Administration and Oversight
Committee**
July 9, 2009





Purpose

To grant the General Manager authority to “Initiate and Award” non-competitive procurements up to \$1 million if included in the Plan of Contracts submitted with the annual budget.



Background

- On June 25, 2009, the Board approved the Fiscal Year 2010 Operating Plan of Contracts:
 - List of all contracts over \$100,000 anticipated for award during upcoming fiscal year.
 - Granted General Manager authority to approve competitive procurements, regardless of dollar value, included in the Plan of Contracts.
 - Did not grant authority to approve non-competitive procurements.
 - 2010 Operations Plan of Contracts
 - 141 entries (contracts)
 - 8 non-competitive (5.7%)

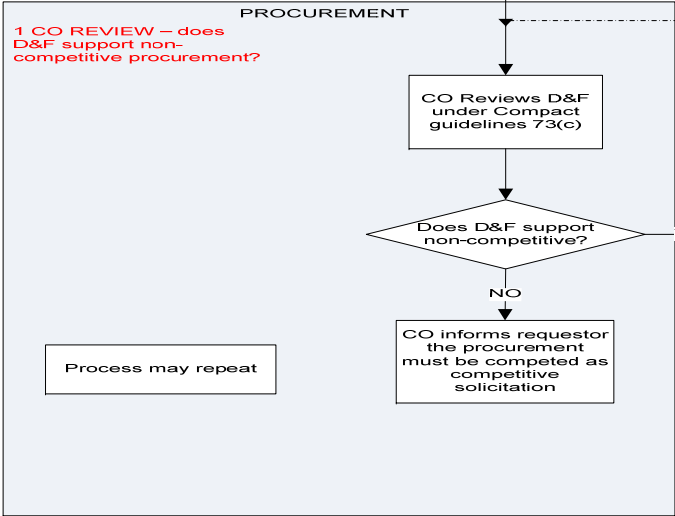


Recommended Initiative

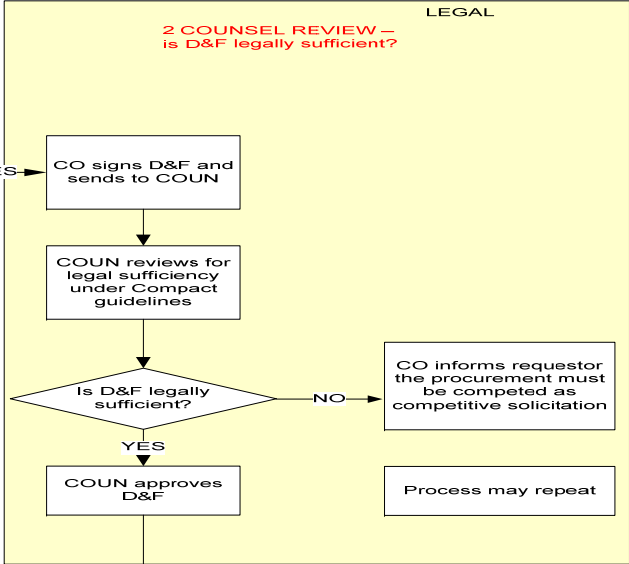
GM Approval	Current Level	Recommended Level
Non-Competitive	Up to simplified acquisition threshold (\$100,000)	All non-competitive contracts up to \$1 million if included in Plan of Contracts submitted with annual budget.

Non-Competitive Procurements over \$100,000

Requester prepares non-competitive Determination & Findings document

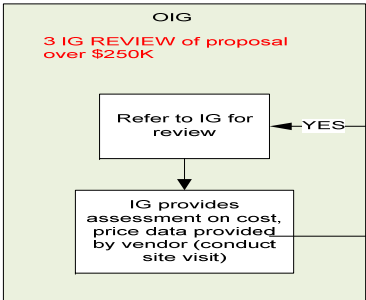
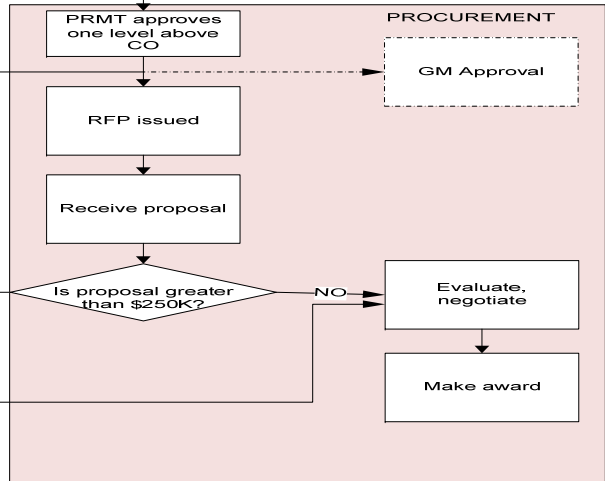


AGM Approval



Key:
 CO = Contracting Officer
 D&F = Determination & Findings (document justifying non-competitive)
 RFP = Request for Proposals
 Dotted lines = proposed

Board Approval





Checks and Balances

- Criteria for non-competitive procurements are set forth in the Compact.
- Sign off of statement of facts will be required at Assistant General Manager level.
- Reviewed in accordance with the Compact and approved or rejected by Contracting Officer.
- If approved by Contracting Officer, forwarded to General Counsel (COUN).
- If approved by COUN, back to Procurement for sign-off by a senior Contracting Officer.
- OIG analysis of costs if proposal exceeds \$250,000.
- FTA Triennial Procurement System Review.



Reporting to Board

- Proposed non-competitive contracts > \$100,000 will be identified in the Plan of Contracts.
- Includes both capital and operating contracts.
- Plan of Contracts will be available in sufficient time for thorough review by the Board.
- Quarterly report to the Board on non-competitive contract awards included in Plan of Contracts:
 - Contractor
 - Scope
 - Contract Amount
 - Term
 - Basis for non-competitive
- Procurement regulations will be updated to include requirement for reporting of non-competitive procurements.



Recommendation

- **Staff recommends that the Finance, Administration and Oversight Committee concur and forward to the Board, the Resolution granting the General Manager increased authority to approve the initiation and award of non-competitive contracts up to \$1 million if included in the Plan of Contracts submitted with the annual budget.**

SUBJECT: PROCUREMENT STREAMLINING INITIATIVES/AMENDING CHAPTER 1 OF THE PROCUREMENT POLICY AND PROCEDURES MANUAL AND BOARD RESOLUTION #99-63

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

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

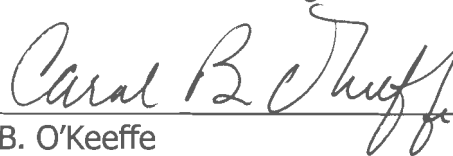
WHEREAS, Staff has evaluated and analyzed the amended policies and procedures for seeking Board of Directors' approval of contract actions and is recommending further changes to rules and processes for improved business functions; now, therefore be it

RESOLVED, That Chapter 1 of the Procurement Procedures Manual adopted by the Board of Directors on September 24, 1992, and amended July 24, 1997, September 21, 2006, September 27, 2007, and June 25, 2009, is further amended as shown on Attachment A, to authorize the General Manager to initiate and award non-competitive procurements that do not exceed one million dollars and are listed on the approved Plan of Contracts; and be it further

RESOLVED, That staff will provide a quarterly report to the Board of Directors of the contracts which have been awarded on non-competitive or sole source basis; 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

Washington Metropolitan Area Transit Authority
Procurement Policy
Adopted By the Authority Board of Directors
September 24, 1992
Revised: September 27, 2007, July 24, 1997

SECTION 100 – GENERAL

- 101. Purpose.** This Procurement Policy sets forth the guidance and requirements that will govern the Washington Metropolitan Area Transit Authority (“Authority”) procurement activities, and conduct of personnel engaged in those activities. The Procurement Policy augments the Authority Compact, Section 73, as amended, which sets forth the general policy guidance and requirements that affect Authority procurements.
- 102. Procurement Regulations Background.** The Authority’s Procurement Policy 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 Director, Office of Procurement, and approved by the General Manager.
- 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 Board 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 of Directors

SECTION 200 – RESPONSIBILITY AND AUTHORITY

- 201. Responsibility.** With respect to this Policy, the following responsibilities apply:
- (a) Board of Directors. The Board of Directors is responsible for approving procurement policies; approving deviations from procurement policy; approving individual procurement actions or programs with multiple procurement actions that meet the established Board threshold levels; delegating contracting officer authority to the General Manager; authorizing the General Manager to delegate contracting officer authority and authority to approve procurement initiation and award activities to subordinate officials of the Authority.
 - (b) General Manager. Authority to enter into contracts is vested with the General Manager, who 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 General Manager 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) **Managing Director, Procurement and Materials.** The Managing Director, Procurement and Materials, with approval by the General Manager, 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 General Manager to the Board; acting in appointed capacity as contracting officer.
- (e) **Subordinate Authority Officials.** Subordinate Authority Officials to the General Manager 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.
- (f) **Contracting Officers.** Contracting Officers 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.

202. Delegation of Authority. On June 28, 1991, the General Manager delegated contracting officer authority to the Director, Office of Procurement, and thereby separated procurement from other functional responsibilities.

203. General Manager Authority (Emergency Situations). Notwithstanding the approval requirements in § 600 of this Procurement Policy, the General Manager 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 General Manager) 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.

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 DISADVANTAGE BUSINESS ENTERPRISES (DBE)

401. 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 501 – LIQUIDATED DAMAGES PROVISIONS

501. 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 – CONTRACT APPROVAL REQUIREMENTS

601. If the amount of a proposed contract is above the simplified acquisition threshold, initiation of procurement actions and award of contracts must be approved by the Board, subject to the approval thresholds set forth in § 602 of this Section, either as a specific procurement action, as part of the annual budget approval, or as part of a program, which may include multiple procurement actions. The Board has delegated approval authority to the General Manager for emergency situations (see § 203 of this Procurement Policy), and may delegate to the General Manager, as part of a programmatic approval, the authority to initiate, award, and modify contracts, without further action by the Board. The Board further authorizes the General Manager to delegate the approval of procurement initiation and award activities to subordinate officials of the Authority. The General Manager will establish procedures to provide for timely review and processing of all procurement actions.

602. Actions Requiring Board Approval. Board approval is required for the following actions, unless listed as an exemption in § 603 of this Section:

ACTION DESCRIPTION	BOARD APPROVAL REQUIRED
A. Procurement Initiation	
1. All procurement actions, except as listed below and § 603 of this Section.	Any award above the simplified acquisition threshold that has not been included in the Plan of Contracts approved by the Board as part of the adoption of the annual budget.
2. Real Estate Acquisitions	Over \$100,000 if not in the approved Environmental Impact Study.
B. Contract Awards	
1. All awards, except as listed below.	(a) Any award above the simplified acquisition threshold that has not been included in the Plan of Contracts approved by the Board as part of the adoption of the annual budget. (b) Awards in excess of the lesser of \$500,000 or 10% over the amount previously approved by the Board, in the Plan of Contracts or otherwise, provided funds are available in the Operating Budget or in the approved Project budget for a capital expenditure.
2. Real Estate Acquisitions	Over \$250,000
3. Any award that represents a change to Board policy.	Any amount.
4. Any contract award exceeding the approved budget line item.	Any amount over the line item in the Operating Budget or in the approved Project budget for a capital expenditure.
C. Contract Modifications	
1. All contract modifications, except as listed below in § 603 of this Section.	Any modification that has not been included in the Plan of Contracts approved by the Board as part of the adoption of the annual budget where the cumulative amount for all prior modifications against the contract exceeds \$1 million or 10% of the original contract award amount, whichever is higher. Thereafter, modifications exceeding \$200,000 require Board approval.
2. Any modification exceeding the approved budget line item, including contingency, if any.	Any amount over the line item in the Operating Budget or in the approved Project budget for a capital expenditure.
D. Sole Source	
Any noncompetitive contract.	(a) Over \$1 million (b) If less than \$1 million, but above the simplified acquisition threshold, and not on the Plan of Contracts approved by the Board as part of the adoption of the annual budget.

603. Exemptions from Board Approval. Board approval is not required for the following actions:

- (a) All contracts and modifications procured under the Authority's simplified acquisition procedures.
- (b) Any budgeted modification to exercise a contract option, when the option was evaluated as part of the basis of award, and Board approval was provided as part of the award.
- (c) Delivery or task orders issued under Basic Ordering Agreements or contracts previously approved by the Board.
- (d) Basic operational goods and services, including utilities (e.g., electricity, water, and diesel fuel), software license, fees and software maintenance and support for existing software, rail and bus inventory parts, and bus tires.

604. 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. 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. 42201.F, as amended.