

**Washington Metropolitan Area Transportation Authority
Board Action/Information Summary**

<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information	MEAD Number:	Resolution: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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PURPOSE

The purpose of the presentation is to provide the Board with recommendations and to request Board approval of procurement streamlining initiatives to improve business functions and implement best procurement business practices.

DESCRIPTION

Staff evaluated and analyzed policies and procedures that were amended as a result of Resolution #2006-44, for seeking Board of Directors approval of procurement actions. Staff is recommending further changes to rules and processes for improved business functions.

For Purchase Cards: Increase the single transaction threshold from \$2,500 to \$5,000, remove the restriction on the number of purchase cards, and authorize purchase card use for travel and by authorized procurement staff up to the simplified acquisition threshold.

For Approval Authority: Exempt the procurement of basic operational goods and services, including utilities, from Board approval. Grant management approval authority to exceed "Initiate and Award" amounts, individually and previously approved by the Board, up to 10% or \$500,000, whichever is less, provided sufficient budget authority exists. Allow a variance of 10% or \$100,000, whichever is lower, for award of individual procurement actions listed and approved by the Board each new fiscal year, and allow contract modifications up to \$1,000,000 or 10% of the original award amount, whichever is greater, and thereafter, authorize modifications up to \$200,000 for each occurrence.

Staff is seeking approval to align the Board adopted Procurement Policy with applicable Board approved policy changes, and to authorize the General Manager or his designee, to make clerical revisions to the Procurement Policy that reflect changes to the Authority organizational structure and operational procedures, as well as to remove redundant language from the document that is currently set

forth in the Authority Compact, Authority policies and procedures, and FTA Circulars and the Master Agreement.

FUNDING IMPACT

Implementation of the recommended best procurement business practices does not impact funding, but will improve Authority resource efficiency.

RECOMMENDATION

It is recommended that the Board (1) approve the attached resolution amending Chapter 1 of the Procurement Procedures Manual consistent with best procurement business practices and (2) increase the purchase card single transaction threshold from \$2,500 to \$5,000, remove the restriction on the number of purchase cards and authorize purchase card use for travel by authorized procurement staff up to the simplified acquisition threshold.

PRESENTED & ADOPTED

SUBJECT: PROCUREMENT STREAMLINING INITIATIVES

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

WHEREAS, On September 21, 2006, the Board of Directors adopted the action to streamline 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 Director approval of procurement actions and is recommending further changes to rules and processes for improved business functions; and

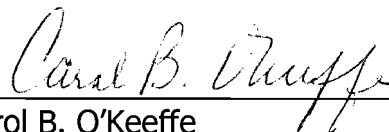
WHEREAS, The Procurement Policy adopted by the Board of Directors on September 24, 1992, and revised on July 24, 1997, has not been updated to align it with subsequent Board approved policy changes, and the current format of the document requires significant edits for clarity and to eliminate redundancy; now, therefore be it

RESOLVED, That the Board of Directors increases the purchase card single transaction threshold from \$2,500 to \$5,000, removes the restriction on the number of purchase cards, authorizes card use for travel, and authorizes card use by authorized procurement personnel up to the simplified acquisition threshold; and be it further

RESOLVED, That Chapter 1 of the Procurement Procedures Manual adopted by the Board of Directors on September 24, 1992, and amended July 24, 1997, is amended as shown on Attachments A and B hereto, to establish new Board approval thresholds for contracts and to remove language which duplicates provisions of the WMATA Compact, the WMATA procurement regulations, policies, and procedures, and in the Federal Transit Administration Circulars and Master Agreement; 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 4220.1E and 5010.1C, 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.	(a) Over \$1 million. (b) If less than \$1 million, but above the simplified acquisition threshold, and not on the list of procurement actions contained in the approved 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) Over \$1 million. (b) If less than \$1 million but above the simplified acquisition threshold, and not on the list of approved procurement actions contained in the approved budget. (c) The lesser of \$500,000 or 10% in excess of an "Initiate and Award" amount previously approved by the Board, 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.	(a) Individual modifications over \$1 million. (b) Modifications 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, unless previously approved by the Board. Thereafter, only 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.	Over the simplified acquisition threshold.

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, diesel fuel, software licenses, software maintenance and support, inventory parts, 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.E, as amended.

CHAPTER 1

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

SECTION 100 – GENERAL CHAPTER 1 – PROCUREMENT POLICY STATEMENT

101. Purpose. ~~I. Introduction~~ – The purpose of ~~this Procurement Policy Statement is to sets~~ forth the guidance and requirements ~~general procurement policy~~ that will govern the Washington Metropolitan Area Transit Authority (“Authority”) procurement activities, and conduct of Authority procurement activities and 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. II. Procurement Regulations Background. – The ~~Washington Metropolitan Area Transit Authority’s (the Authority) Procurement Policy Statement~~ establishes the broad framework for ~~its~~the Authority Procurement Regulations. The Regulations consist of the Procurement Policy Statement approved by the Authority Board of Directors (the “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. T-~~Accordingly, the Authority Procurement System is fully certified by the U.S. Department of Transportation (DOT), Federal Transit Administration (FTA), to carry out its the Authority’s procurement functions, in accordance with federal guidelines and Authority policy. However, certain functions which are identified in the current version of DOT/FTA Circulars 4220.4D-1E and 5010.4B-1C, as amended, may require approval or concurrence by the FTA Administrator, FTA.~~

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

~~Due to the recent changes in federal acquisition statutes and regulations, as well as changes in DOT/FTA implementing regulations, the Authority rewrote Section 73 of the Authority Compact. Subsequently, these Compact changes were approved by Maryland, Virginia, the District of Columbia and the 104th U.S. Congress and signed into law by the President on October 19, 1996.~~

~~Consequently, the procurement policy statement is being revised to reflect these recent changes in federal acquisition policy and the rewritten Compact.~~

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.

III. General Policy — Section 73 of the Authority Compact, as amended, sets forth general policy guidance and requirements affecting the conduct of Authority procurement. The revised Section 73 is incorporated in its entirety as follows:

~~Contracting and Purchasing~~

~~Section 73(a)(1). Except as provided in subsections (b), (c), and (f) of this section, and except in the case of procurement procedures otherwise expressly authorized by statute, the Authority in conducting a procurement of property, services, or construction shall:~~

~~(A) Obtain full and open competition through the use of competitive procedures in accordance with the requirements of this Section; and~~

~~(B) Use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.~~

~~Section 73(a)(2). In determining the competitive procedure appropriate under the circumstances, the Authority shall:~~

~~(A) Solicit sealed bids if:~~

~~(i) time permits the solicitation, submission, and evaluation of sealed bids;~~

~~(ii) the award will be made on the basis of price and other price-related factors;~~

~~(iii) it is not necessary to conduct discussions with the responding sources about their bids; and~~

~~(iv) there is a reasonable expectation of receiving more than one sealed bid; or~~

~~(B) Request competitive proposals if sealed bids are not appropriate under clause (A) of this paragraph.~~

~~Section 73(b). The Authority may provide for the procurement of property, services, or construction covered by this Section using competitive procedures but excluding a particular course in order to establish or maintain an alternative source or sources of supply for that property, service, or construction if the Authority determines that excluding the source would increase or maintain competition and would likely result in reduced overall costs for procurement of property, services or construction.~~

~~Section 73(c). The Authority may use procedures other than competitive procedures if:~~

~~(1) The property, services or construction needed by the Authority is available from only one responsible source and no other type of property, services, or construction will satisfy the needs of the Authority; or~~

~~(2) The Authority's need for the property, services, or construction is of such an unusual and compelling urgency that the Authority could be seriously injured unless the Authority limits the number of sources for which it solicits bids or proposals; or~~

~~(3) The Authority determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement; or~~

~~(4) The property or services can be obtained through federal or other governmental sources at reasonable prices.~~

~~Section 73(d). For the purpose of applying subsection (c)(1) of this section:~~

~~(1) In the case of a contract for property, services, or construction to be awarded on the basis of acceptance of an unsolicited proposal, the property, services or construction shall be deemed to be available from only one responsible source if the source has submitted an unsolicited proposal that demonstrates a concept:~~

~~(A) That is unique and innovative or, in the case of a service, for which the source demonstrates unique capability to provide the service; and~~

~~(B) The substance of which is not otherwise available to the Authority and does not resemble the substance of a pending competitive procurement.~~

~~(2) In the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment or the continued provision of highly specialized services, the property, services, construction may be deemed to be available from only the original source and may be procured through procedures other than competitive procedures if it is likely that award to a source other than the original source would result in:~~

~~(A) Substantial duplication of cost to the Authority that is not expected to be recovered through competition; or~~

~~(B) Unacceptable delays in fulfilling the Authority needs.~~

~~Section 73(e). If the Authority uses procedures other than competitive procedures to procure property, services or construction under subsection (c)(2) of this section, the Authority shall request offers from as many potential sources as is practicable under the circumstances.~~

~~Section 73(f).~~

~~(1) To promote efficiency and economy in contracting, the Authority may use simplified acquisition procedures for purchases of property, services and construction.~~

~~(2) For the purposes of this subsection, simplified acquisition procedures may be used for purchases for an amount that does not exceed the simplified acquisition threshold adopted by the Federal Government.~~

~~(3) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the procedures under paragraph (1) of this subsection.~~

~~(4) In using simplified acquisition procedures, the Authority shall promote competition to the maximum extent practicable.~~

~~Section 73(g). The Board shall adopt policies and procedures to implement this Section. The policies and procedures shall provide for publication of notice of procurements and other actions designed to secure competition where competitive procedures are used.~~

Section 73(h). The Authority in its discretion may reject any and all bids or proposals received in response to a solicitation.

SECTION 300 – COMPETITION REQUIREMENTS AND METHODS OF PROCUREMENT

301. Prohibition Against Restrictive Competition. IV. Procurement Standards—The Procurement policies and procedures of the Authority are designed to set forth the standards for processing all contracts. These standards are furnished to ensure that materials and services are obtained in a timely, efficient and economical fashion, adhering to principles of good administrative practices and sound business judgement. Accordingly, the following standards are applicable.

1. The Authority will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

2. Members of the Authority's Board of Directors will adhere to the standards of conduct adopted by the Board. Authority employees will adhere to the standards of conduct approved by the General Manager under a delegation of authority from the Board.

3. Authority procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

4. The Authority will provide procedures that encourage the use of value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

5. The Authority will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy as implemented by applicable laws and regulations, record of past performance, and financial and technical resources. It is the policy of the Authority to solicit offers, award contracts, and consent to subcontracts with responsible contractors only.

6. Records sufficient to document the significant history of a procurement will be maintained and retained in accordance with policies and procedures approved by the General Manager.

7. Authority Contracting Officers will be responsible in accordance with good administrative practice and sound business judgement for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims.

8. Competition—The following requirements for competition are applicable to Authority procurements.

(a) All procurement transactions will be conducted in a manner providing full and open competition consistent with the above stated 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:

- _____ (a1) _____ Placing unreasonable requirements on firms in order for them to qualify to do business;
- _____ (b2) _____ Non-competitive pricing practices between firms or between affiliated companies;
- _____ (c3) _____ Organizational conflicts of interest;
- _____ (d4) _____ Specifying only a "brand name" product instead of allowing "an equal" product to be offered while not providing salient characteristics of the product;
- _____ (e5) _____ Any arbitrary action in the procurement process;
- _____ (f6) _____ Development of specifications and evaluation criteria which unnecessarily favor a particular contractor.

302. Written Determinations. 6. — ~~In~~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"), 4. and 5.a.b.c., the Contracting Officer will prepare 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.

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~~(b) Procurement transactions will be conducted in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographic preferences in the evaluation of bids or proposals, except in those cases where Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. When using the qualifications-based method for contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.~~

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~~(c) The Authority will have written selection procedures for procurement transactions that ensure fair, unbiased evaluation of competing proposals by a technical evaluation panel, appointed by the Contracting Officer. These procedures will ensure that all solicitations:~~

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~~(1) Incorporate a clear and accurate description of the technical requirements for the property, construction or services to be procured. Such specifications or statement of work shall not in competitive procurements, contain requirements~~

~~that restrict competition. The specification may include a statement of the qualitative nature of the property, construction or services to be procured and shall set forth those minimum essential characteristics, standards and requirements to which it must conform if it is to satisfy its intended use.~~

~~(2) Clearly state the evaluation factors, including cost or price, cost or price-related factors and non-cost or non-price related technical and business management factors and any significant subfactors that will be considered in making the source selection.~~

~~9. Procedures for suspension and debarment of contractors are set forth in Chapter 14 of the PPM. Procedures for receiving and processing contractor protests concerning the award of contracts are set forth in Chapter 20 of the PPM. Procedures for processing claims and resolving disputes arising under awarded contracts are set forth in Chapter 21 of the PPM.~~

~~**V. Competition Requirements and Methods of Procurement -**~~

~~1. Authority Contracting Officers shall obtain full and open competition through the use of those competitive procurement procedures best suited for the particular procurement.~~

~~2. In determining the competitive procedure appropriate to the procurement, Contracting Officers shall solicit sealed bids if:~~

~~(a) Time permits the solicitation, submission and evaluation of sealed bids;~~

~~(b) The award will be made on the basis of price and price related factors;~~

~~(c) It will not be necessary to conduct discussions with the responding sources about their bids; and~~

~~(d) There is a reasonable expectation of receiving more than one sealed bid.~~

~~3. The Contracting Officer shall request competitive proposals if sealed bids are not appropriate under V2 above. If competitive proposals are used instead of sealed bidding, the Contracting Officer shall briefly explain in writing which of the conditions in V2 has not been met.~~

~~4. The Authority may providing for the procurement of property, services or construction using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property, services or construction if the Authority determines that excluding the source would increase or maintain competition and would likely result in reduced overall costs for procurement of the property, services or construction.~~

~~5. The Authority may providing for the procurement of property, services or construction using other than competitive procedures if:~~

~~(a) The property, services or construction are available from only one responsible source and no other type of property, services or construction will satisfy the needs of the Authority;~~

~~(b) The Authority's need for the property, services or construction is of such an unusual and compelling urgency that the Authority would be seriously injured unless the Authority limits the number of sources from which it solicits bids or proposals;~~

~~(c) The Authority determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement. Procurements utilizing federal funds may not utilize Compact Section 73(c)(3) as the basis for conducting a non-competitive procurement unless:~~

~~(1) FTA has specifically approved the non-competitive procurement; and~~

~~(2) A written Determination and Finding (D&F) to use this authority is prepared by the Contracting Officer, approved one level above the Contracting Officer and reviewed by the Office of the General Counsel. The D&F shall set forth sufficient facts, circumstances and reasoning to clearly and convincingly justify the determination made.~~

~~(d) The property or services can be obtained at reasonable prices through federal or other governmental sources;~~

~~(e) Sole source procurements for follow on contracts not utilizing federal funds described in Section 73(d)(2), provided one of the following conditions must be met prior to award:~~

~~(1) Substantial duplication of cost to the Authority that is not expected to be recovered through competition; or~~

~~(2) Unacceptable delays in fulfilling the Authority's needs.~~

~~However, whenever sole source procurements for follow on contracts or the acquisition of associated capital maintenance items are funded in whole or in part with federal funds, the Authority must certify in accordance with FTA C4220.1D that:~~

~~(1) Such manufacturer or supplier is the only source for such item; and~~

~~(2) The price for such items is not higher than the price paid for such item by like customers.~~

~~7. For procurements which do not exceed the federal simplified acquisition threshold, currently \$100,000, simplified acquisition procedures may be used. Where such procedures are used, the Authority will promote competition to the maximum extent practicable. The Authority will have procedures for using the simplified acquisition process.~~

~~8. The Authority may only use qualifications based competitive negotiation procedures for procurement of architectural and engineering services (A&E) and for A&E related services such as construction management, A&E feasibility studies, preliminary construction engineering, design, surveying, and mapping. The Authority will have written procedures for using this type of procurement. (See Chapter 8 PPM.)~~

~~9. The Authority shall provide for publication of notice of procurement and other actions designed to secure full and open competition where competitive procedures are used. In this regard, the Authority must comply with DOT/FTA 4220.1D (or the current version) regarding publicizing procurements, as well as developing procedures for complying with this paragraph.~~

SECTION 400 – CONTRACTING WITH DISADVANTAGE BUSINESS ENTERPRISES (DBE)

401. -

VI. ~~**Contracting with Disadvantaged Business Enterprise (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—used wherever possible. Affirmative steps shall include:

- ~~1. Placing qualified DBEs on solicitation lists;~~
- ~~2.(a) Ensuring that DBEs are solicited whenever they are potential sources;~~
- ~~3.(b) When economically feasible, dividing requirements into smaller tasks or quantities to permit maximum participation by DBEs;~~
- ~~4(c). Where the requirement permits, Establishing contract delivery schedules, where the requirement permits, that encourage participation by DBE;~~
- ~~5.(d) Using the services and assistance of the Small Business Administration and the Department of Commerce.~~
- ~~6.(e) Requiring the prime contractor to take the necessary steps to ensure the maximum opportunity for DBE subcontractors. In this regard, the Authority currently has a DBE subcontract participation goal of 21% on construction contracts over \$500,000, and a 36% subcontract goal on supply and services contracts over \$100,000, in accordance with the Authority's annual DBE goal established by the Board.~~

SECTION 501 – LIQUIDATED DAMAGES PROVISIONS

~~VII. **Cost and Price Analysis**—Cost or price analysis must be performed in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation but as a minimum the Authority will make independent estimates before receiving bids or proposals. Authority Contracting Officers will ensure strict compliance with the cost and price analysis procedures as set forth in Chapter 13 of the PPM.~~

- ~~1. Authority Contracting Officers shall request a pre-negotiation audit prior to the negotiation of any non-competed contract or modification resulting from proposals in excess of \$250,000. For non-competed contracts and modifications in excess of \$100,000, but not more than \$250,000. Contracting Officers may elect to proceed without audits after consultation with the Auditor General and receiving his expression of no objection. The contract file must be fully documented as to the rationale for actions taken.~~

~~VIII. **Bonding Requirements**—The Authority shall specify a bonding policy in compliance with FTA requirements for construction or facilities improvement contracts which adequately protects the interests of the FTA and the Authority. This bonding policy will be as set forth in Chapter 16 of the PPM.~~

~~IX. **Options**—An option means a unilateral right in a contract by which, for a specified time, the Authority may elect to purchase additional property, construction or services called for in~~

~~the contract or may elect to extend the term of the contract. The use of options shall be as outlined in DOT/FTA 4220.1D (or current version) and as set forth in Chapter 4 of the PPM.~~

~~X. **Advance Payments** – It is the express policy of the Authority not to make advance payments on any contract except for rent, tuition, insurance premiums, subscriptions to publications and extension or connection of public utilities for Authority property. For federally funded contracts, FTA does not allow and will not participate in funding payments made by a grantee to a Contractor prior to the incurrence of costs by the contractor unless prior written approval is obtained from FTA.~~

~~XI. **Progress Payments** – In appropriate circumstances, the Contracting Officer may include a clause in the contract providing for payments to the Contractor, prior to delivery or completion, that are determined on the basis of costs incurred by the Contractor and/or the percentage or stage of completion of the Contract. Progress payments, if used will be made in strict accordance with DOT/FTA 4220.1D (or current version) and the procedures as set forth in Chapter 19 of the PPM.~~

~~XII.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. The Contracting Officer shall determine whether or not use of liquidated damages provisions are appropriate for each specific procurement. Normally, liquidated damages provisions are used in construction and construction related programs and not in supply and services contracts. The amount of liquidated damages must be reasonable to compensate for possible damages and not be so large as to be construed as a penalty. If the Contracting Officer determines that a liquidated damages clause is necessary in a contract, it shall document the derivation of the rate of assessment and ensure it is reasonable, proper and not arbitrary. Procedures are outlined in DOT/FTA 4220.1D (or current version) and as set forth in Chapter 10 of the PPM.~~

~~XIII. **Statutory and Regulatory Requirements** – Related Federal requirements applicable to Authority federally funded procurements are contained in the FTA Master Agreement.~~

~~XIV. **Contracting Officer Authority** – Authority and responsibility to enter into contracts for the Authority is vested in the General Manager. The General Manager may delegate Contracting Officer authority to qualified employees of the Authority and may authorize the re-delegation of authority to other qualified employees of the Authority. The Director, Office of Procurement, shall establish a system for selecting, recommending and appointing contracting officers, and delegating appropriate contracting authority to them. 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.~~

SECTION 600 – CONTRACT APPROVAL REQUIREMENTS

~~601.XV. If the amount of a proposed contract is above the simplified acquisition threshold, **Contract Approval Requirements** – 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 certain activities identified below 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 is authorized to delegate the approval of procurement initiation and award activities, that the Board has delegated to the General Manager to subordinate officials of the Authority. The General Manager will establish procedures which will 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:

<u>ACTION DESCRIPTION</u>	<u>BOARD APPROVAL THRESHOLD REQUIRED</u>
A. Procurement Initiation	
1. All procurement actions, except as listed below and §603 of this Procurement Policy Section.	(a) Over \$1 million. (b) If less than \$1 million, but above the simplified acquisition threshold, and not on the list of procurement actions contained in the approved budget, Board approval is required.
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) Over \$1 million. (b) If less than \$1 million but above the simplified acquisition threshold, and not on the list of approved procurement actions contained in the approved budget, Board approval is required. (c) The lesser of \$500,000 or 10% in excess of an "Initiate and Award" amount, previously approved by the Board, 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	(a) Individual modifications over \$1 million.

<p><u>below in §7603 of this Procurement PolicySection.</u></p>	<p>(b) Modifications 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, unless previously approved by the Board. Thereafter, only modifications exceeding \$200,000 require Board approval.</p>
<p>2. Any modification exceeding the approved budget line item, including contingency, if any.</p>	<p>Any amount over the line item in the Operating Budget or in the approved Project budget for a capital expenditure.</p>
<p>D. Sole Source</p>	
<p>Any noncompetitive contract.</p>	<p>Over the simplified acquisition threshold.</p>

<p>ACTIVITY REQUIRING BOARD APPROVAL</p>		<p>DOLLAR THRESHOLD</p>
<p>A. Initiation of Procurement</p>		
<p>-</p>	<p>1. All procurement actions except as listed below.</p>	<p>Over \$100,000</p>
<p>-</p>	<p>2. Real Estate Acquisitions</p>	<p>Board Approval Not Required</p>
<p>-</p>	<p>3. Professional and Technical Services (P&T)</p>	<p>Over \$50,000 if Budgeted Over \$10,000 if Non-Budgeted</p>
<p>B. Contract Awards</p>		
<p>-</p>	<p>1. All awards, except as listed below.</p>	<p>Over \$100,000</p>
<p>-</p>	<p>2. Real Estate Acquisitions</p>	<p>Over \$250,000</p>
<p>-</p>	<p>3. Professional and Technical Services (P&T)</p>	<p>Over \$50,000 if Budgeted Over \$10,000 if Non-Budgeted</p>
<p>-</p>	<p>4. Any award which would represent a change to Board policy.</p>	<p>-</p>
<p>C. Modifications</p>		
<p>-</p>	<p>1. All Modifications for equipment</p>	<p>Over \$200,000</p>

	supplies, services, construction and real-estate including exercise of options, except as noted below.	
-	2. Any modification exceeding the authorized budget including contingency, if any.	Over Budget
-	3. Any budgeted modification to exercise a contract option when the option was not evaluated as part of the basis of award and Board approval was provided as part of the initial award.	Board Approval Not Required.
-	4. Professional and Technical Services (P&T)	Over \$10,000; Board approval required if modification is greater than \$10,000 more than funds previously approved. Staff Summary Sheet.

6703. 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 previously approved Basic Ordering Agreements or contracts previously approved by the Board.
- (d) Basic operational goods and services, including utilities (e.g., electricity, water, diesel fuel, software licenses, software maintenance and support, inventory parts, bus tires).

604. Restrictions. NOTE: Notwithstanding the above, the General Manager has the authority to incur obligations in emergency situations:

~~Procurement actions shall not be split to avoid thresholds approval, as specified above or to avoid any other Authority procurement policies and procedures authorized by this Statement 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.~~

~~1. The issuance of a Notice to Proceed for a Change Order which precedes final agreement on an equitable adjustment to contract terms and conditions requires Board approval at the threshold level indicated in Paragraph C above appropriate to the type of contract modification activity.~~

~~2. Under no circumstances will~~

SECTION 700 – POLICY DEVIATION

~~**XVI. Reports** – The General Manager shall periodically report to the Board new contracts awarded on a sole source or emergency basis pursuant to the provisions of the Compact and preapproved options that have been exercised over \$200,000.~~

~~**XVII. Special Agreements** – The General Manager shall submit policies and procedures for Board approval for the development of special agreements which include but are not limited to: utility contracts, marketing agreements, joint funding agreements, employee benefits contracts, contracts for the purchase, sale or lease of real property, and insurance contracts. In this regard, contracts required by the Authority use regulations shall conform to this paragraph and Chapter 15 of the PPM.~~

~~**XVIII. Implementation** – The policies herein set forth shall be implemented by the General Manager. Procedural guidance shall be provided under the Policy Instruction (PI) Manual system as approved by the General Manager. The majority of procedures will be published in a Procurement Procedures Manual (PPM) authorized under the PI system.~~

~~**XIX01. 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 Changes to FTA policies shall be in accordance with DOT/FTA Cir. 42201.E, as amended, require FTA approval.~~