

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
202241

Resolution:
☒ Yes ☐ No

TITLE:

Restructuring WMATA PRMT PPM & Revisions to Ch 1

PRESENTATION SUMMARY:

Staff is seeking approval to restructure and revise WMATA's Procurement Procedures Manual (PPM).

PURPOSE:

This action seeks the Board of Directors' approval to amend Chapter 1 of the PPM to streamline certain policies and procedures and to improve the efficiency and effectiveness of the procurement process.

DESCRIPTION:

Approval from the Board of Directors is required to update Chapter 1 of the PPM.

Key Highlights:

After analyzing and evaluating WMATA's PPM, staff recommends separating Chapter 1 from the remainder of the PPM and renaming Chapter 1 "Procurement Guiding Principles". The balance of the PPM will be renamed the Procurement Best Practices Manual (BPM).

Background and History:

Chapter 1 of the current WMATA PPM has been amended via board resolution nine previous times in efforts to strengthen the procurement process.

Discussion:

Following are recommended amendments, along with a red lined version, that will further improve efficiencies in the business process:

Chapter 1 of the Procurement Procedures Manual shall be renamed "Procurement Guiding Principles" and shall be separated from the remainder of the Procurement Procedures Manual;

Section 301 of the renamed Procurement Guiding Principles, Commitment to

Full and Open Competition, is amended to permit reasonable discretion in applying laws and regulations that may be applicable to federally funded procurements but not non-federally funded procurements, and vice versa;

Section 306, Procurements by the Office of General Counsel, is amended to grant the General Counsel the authority to determine, in his/her reasonable discretion, the appropriate level of legal review throughout the procurement process;

Section 308, Required Use of Procurement Audit Standards, is amended to include modern audit standards, such as those contained in the FTA Guidance for Procurement System Reviews;

Section 500, Performance Measures is amended to permit a range of remedies for non-performance or poor performance including liquidated damages (Section 501), forfeitures and monetary damages (new Section 502), and incentives (new Section 503);

Section 602, Restrictions is renamed "Funding Restrictions" and is amended to apply to non-procurement actions, and new Section 603, Exemption is added to permit commercially reasonable practices in procurement actions, to include insurance, liability, and indemnification provisions;

Section 700, Policy Deviation is amended to require Board approval for any substantial deviations from the policies set forth in the Procurement Policy Manual;

Section 900, Parts Bridging Program is rescinded, and replaced with new Section 900, Commercial Items, to implement the Board's prior authorization in Resolution 2020-27 to establish procedures for the direct purchase of commercial off-the-shelf (COTS) products in an amount not to exceed fifty thousand dollars per purchase order.

FUNDING IMPACT:

| | |
|--|------|
| None. Policy changes have no fund impact | |
| Project Manager: | None |
| Project Department/Office: | None |

TIMELINE:

| | |
|-------------------------|---|
| Previous Actions | September 24, 1992 – Procurement Policy Statement #92-53 |
| | July 24, 1997-Revised Procurement Policy Statement #97-31 |

| | |
|---|--|
| | <p>September 27, 2007 – Procurement Streamlining Initiatives #2007-38</p> <p>June 25, 2009 – Procurement Streamlining Initiatives/Amending Chapter 1 of the Procurement Policy and Procedures Manual and Board Resolution #99-63</p> <p>July 16, 2009 – Procurement Streamlining Initiatives/Amending Chapter 1 of the Procurement Policy and Procedures Manual and Board Resolution #99-63</p> <p>June 23, 2011 – Procurement Streamlining Initiatives and Delegations, Reprogramming Policy for Operating and Capital Budgets and Approval Requirements for Non-Procurement Activities #2011-30</p> <p>April 7, 2014 – Approval of Revised Metro Procurement Policy #2014-19</p> <p>November 19, 2015 – Establish a Parts Bridging Program to Restore Spare Parts Availability, Develop Competition Among Vendors, And Achieve Eligibility for Federal Reimbursement #2015-59</p> <p>July 23, 2020 – Approval of Revisions to the Procurement Procedures Manual #2020-27</p> |
| Anticipated actions after presentation | <ul style="list-style-type: none"> • Create the proposed Procurement Guiding Principles • Develop the Procurement Best Practices Manual |

RECOMMENDATION:

Recommendation:

Approve the proposed amendment to Chapter 1 of the PPM, separation of Chapter 1 from the remainder of the PPM, and renaming of Chapter 1 as "Procurement Guiding Principles."

SUBJECT: AMENDMENT TO PROCUREMENT PROCEDURES MANUAL

2021-07

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

WHEREAS, Pursuant to § 73 of the WMATA Compact, the Board of Directors previously established Chapter 1 (Board Approval, Delegation & Reprogramming Requirements) of the Procurement Procedures Manual (PPM) that requires Board approval for any substantive changes thereto; and

WHEREAS, The Board wishes to amend Chapter 1 of the PPM to streamline certain policies and procedures and to improve the efficiency and effectiveness of the procurement process; and

WHEREAS, For clarity of implementation, staff recommends separating Chapter 1 from the remainder of the PPM and renaming Chapter 1 "Procurement Guiding Principles"; and

WHEREAS, On July 23, 2020, the Board authorized the Chief Procurement Officer to establish procedures for the direct purchase of commercial off-the-shelf (COTS) products in an amount not to exceed \$50,000 per purchase order (Resolution 2020-27);

NOW, THEREFORE, be it

RESOLVED, That the Board of Directors adopts the amendments to Chapter 1 of the Procurement Procedures Manual as set forth in Attachment A; and be it further

RESOLVED, That Chapter 1 of the Procurement Procedures Manual shall be renamed "Procurement Guiding Principles" and shall be separated from the remainder of the Procurement Procedures Manual; and be it further

RESOLVED, That Section 301 of the renamed Procurement Guiding Principles, Commitment to Full and Open Competition, is amended to permit reasonable discretion in applying laws and regulations that may be applicable to federally funded procurements but not to non-federally funded procurements, and vice versa; and be it further

RESOLVED, That Section 306 of the renamed Procurement Guiding Principles, Review of Procurements by the Office of General Counsel, is amended to grant the General Counsel

Motioned by Mr. Smedberg, seconded by Ms. Gidigbi-Jenkins

Ayes: 7- Mr. Smedberg, Ms. Gidigbi-Jenkins, Mr. Goldman, Mr. McMillin, Mr. Letourneau, Mr. Bulger and Mr. Rouse

the authority to determine, in his/her reasonable discretion, the appropriate scope of legal review throughout the procurement process; and be it further

RESOLVED, That Section 308 of the renamed Procurement Guiding Principles, Required Use of Procurement Audit Standards, is amended to include modern audit standards, such as those contained in the FTA Guidance for Procurement System Reviews; and be it further

RESOLVED, That Section 500 of the renamed Procurement Guiding Principles, Performance Measures, is amended to permit a range of remedies for non-performance or poor performance including liquidated damages (Section 501), forfeitures and monetary damages (new Section 502), and incentives (new Section 503); be it further

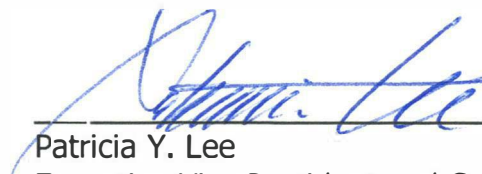
RESOLVED, That Section 602 of the renamed Procurement Guiding Principles, Restrictions, is renamed "Funding Restrictions" and is amended to apply to non-procurement actions, and new Section 603 Exemption is added to permit commercially reasonable practices in procurement actions, including insurance, liability, and indemnification provisions; and be it further

RESOLVED, That Section 700 of the renamed Procurement Guiding Principles, Policy Deviation, is amended to require Board of Directors approval for any substantial deviations from the policies set forth in the Procurement Guiding Principles; and be it further

RESOLVED, That Section 900 of the renamed Procurement Guiding Principles, Parts Bridging Program is rescinded, and replaced with new Section 900, Commercial Items, to implement the Board of Directors' prior authorization in Resolution 2020-27 to establish procedures for the direct purchase of commercial off-the-shelf products in an amount not to exceed \$50,000 per purchase order; and be it finally

RESOLVED, That this Resolution shall be effective 30 days after adoption in accordance with § 8(b) of the WMATA Compact.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
Executive Vice President and General Counsel

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,
April 7, 2014, November 19, 2015

PROCUREMENT GUIDING PRINCIPLES

SECTION 100 – GENERAL

101. **Purpose.** These Guiding Principles set forth the Procurement Policy 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. These Guiding Principles augment 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 herein, 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 (CPRO) and approved by the General Manager/Chief Executive Officer (GM/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. **Reference 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 (CPRO) shall be a full participatory member of the Executive Leadership Team. The CPRO, 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) **General Counsel.** The General Counsel shall have responsibility for: providing legal counsel regarding procurement matters within WMATA, including to the Chief Procurement Officer, contracting officers and others, involved in the procurement process; assigning a cognizant attorney in the Office of General Counsel (COUN) for each WMATA procurement; reviewing and approving procurement policies and procedures within WMATA, and ensuring they are consistent with all applicable laws and regulations and effectively fulfill the needs and purposes of WMATA; and ensuring appropriate legal review at all appropriate steps of a procurement. The General Counsel may delegate within COUN any or all of the foregoing authorities and responsibilities. At least one attorney within the Office of the General Counsel shall have experience in procurement of information technology products and services.
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 reasons 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. **Commitment to Full and Open Competition.** WMATA shall conduct procurements using full and open competition. WMATA shall take into account and give effect to competition requirements that are contained in any statute, regulation or guidance that applies to grant funds used in the procurement.

302. **Restrictions on Procurements Not Using Full and Open Competition or Excluding Sources.** Under certain circumstances, it may be appropriate to conduct a procurement using: (a) full and open competition after exclusion of sources; or (b) other than full and open competition. Procurements not using full and open competition will be reported to the Board on a quarterly basis. Such approaches may be used only after written approval of both the General Counsel and the Chief Procurement Officer of an appropriate Determination and Findings (“D&F”) – who shall approve such approaches only upon a determination that the procurement cannot reasonably be accomplished using full and open competition without exclusion of sources. WMATA procurement personnel and counsel shall comply strictly with WMATA restrictions and, to the extent applicable, federal restrictions on procurements conducted not using full and open competition or excluding sources.

303. **Prohibition Against Organizational Conflicts of Interest.** WMATA shall analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award. In any instance in which WMATA first becomes aware of an organizational conflict of interest after contract award, it shall conduct a review to determine whether the organizational conflict of interest was reasonably foreseeable and should have been identified by the contractor prior to award. In an instance where WMATA first becomes aware of an organizational conflict of interest after award, the Chief Procurement Officer may in his/her discretion terminate the contract or if reasonable possible, take appropriate steps to avoid, neutralize or mitigate such organizational conflict of interest.

- (a) Definition. An “organizational conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to WMATA, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. An organizational conflict of interest occurs when any of the following circumstances arise:

- i. Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances. Such an OCI would occur, for example, if the service the contractor is to perform under a contract with WMATA might involve that contractor in evaluating its own performance or the performance of an affiliate under another WMATA contract.

- ii. Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract. Such an OCI would occur, for example, if the contractor's service under a prior contract gave it access to non-public, proprietary information of a company competing with it for a subsequent contract. It merits note that relevant case law makes clear that no unfair competitive advantage is created by an offeror's prior performance of particular requirement. WMATA is under no obligation to equalize other offerors with an incumbent by providing information in the hands of the incumbent due to prior performance of the requirement.
- iii. Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents. To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bid and/or requests for proposals shall be excluded from competing for such procurements.
- (b) Identifying and Addressing Organizational Conflicts of Interest. The contracting officer and cognizant COUN attorney shall analyze every planned procurement to determine whether there is an opportunity for any actual or apparent conflict of interest. A clause requiring offerors to identify any potential or actual organizational conflict of interest shall be included in all solicitations, absent a written determination by the contracting officer and the cognizant COUN attorney that there is no opportunity for an actual or apparent conflict of interest and such a clause is not necessary for the procurement. In any instance where a potential or actual organizational conflict of interest is identified, the procurement shall be reviewed by the Chief Procurement Officer and the General Counsel. The Chief Procurement Officer shall be responsible for ensuring that such organizational conflict of interest is appropriately avoided, neutralized or mitigated. The Chief Procurement Officer shall not act to address an organizational conflict of interest without written concurrence from the General Counsel.

304. Prohibition Against Personal Conflicts of Interest. No employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm considered or selected for award. This provision is applicable to individuals serving on a Technical Evaluation Team.

305. Prohibition on Provisions within Solicitation That Unduly Restrict Competition. WMATA shall not include in a solicitation any feature that unduly restricts competition. Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

- (a) Excessive Qualifications. Imposing unreasonable business requirements for bidders or offerors;
- (b) Unnecessary Experience. Imposing unnecessary experience requirements for bidders and offerors.

- (c) Improper Prequalification. Using prequalification procedures that conflict with the prequalification standards described in the WMATA Compact, the WMATA Procurement Policy, or the FTA Circular 4220.1F.
- (d) Retainer Contracts. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.
- (e) Excessive Bonding. Requiring a bonding that far exceeds the requirements described in state or local law or those described in FTA Circular 4220.1F.
- (f) Brand Name Only. Specifying only a “brand name” product without allowing offers of “an equal” product, or allowing “an equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable.
- (g) In-State or Local Geographic Restrictions. Specifying In-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographic preferences, even if those preferences are imposed by state or local laws or regulation except as permitted by FTA Circular 4220.1F.
- (h) Restraint of Trade. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.
- (i) Arbitrary Action. Taking any arbitrary action in the procurement process.
- (j) Excessively Specific Qualifications. Development of specification and evaluation criteria which unnecessarily favor a particular contractor.
- (k) Arbitrary Contract Splitting. Splitting larger procurements into multiple smaller procurements to evade competition requirements at certain ordering thresholds.

306. Review of Procurements by the Office of General Counsel. The General Counsel shall be responsible for ensuring appropriate legal review at all appropriate steps of a procurement. The Chief Procurement Officer also shall have responsibility for ensuring that procurement personnel seek the involvement of counsel at appropriate junctures. The General Counsel and the Chief Procurement Officer shall develop and implement written procedures to give effect to the foregoing.


307. Independent Cost Estimate Required. WMATA shall perform a cost or price analysis in connection with every procurement action including contract modifications before receiving bids or proposals. The cost estimate shall be included with the procurement record submitted to the cognizant COUN attorney for review.

- (a) Equipment and Supplies. Contracting officers shall ensure preparation and documentation of equipment estimates using appropriate sources – such as published price lists; prices from past competitive procurements updated with inflation factors; and pricing data from other agencies that obtained competitive bids for the same equipment or supplies. In the case of specialized equipment, care must be taken that the source of the estimates is not disproportionately obtained from one supplier.



- (b) Professional Services. Contracting officers shall ensure preparation and documentation of estimates for professional services using appropriate sources, such as past competitive procurements updated with inflation factors, published price lists such as Federal Supply Schedules, and pricing data from other agencies that obtained competitive bids for the same professional services. The Authority may also consider obtaining a professional cost estimate by a firm not interested in the final procurement if cost and price estimates are not reasonably available from other sources.
 - (c) Construction. In some cases, cost estimates may be difficult to obtain or may lie outside the competence of Authority personnel. Contracting officers shall ensure preparation and documentation of cost estimates using appropriate sources, such as prior WMATA construction projects awarded competitively; and pricing data from other agencies that obtained competitive bids for similar construction work. A design firm may already be under contract, or may be engaged, to perform this service. In some cases, the Authority's in-house personnel who have participated in design or past construction efforts may be the most professional and reliable cost estimators.
- 308. Required Use of Procurement Audit Standards.** The Chief Procurement Officer, with the concurrence of the General Counsel, shall create and maintain processes consistent with the procurement audit standards (e.g. checklists) contained in the FTA Guide for Procurement System Reviews (including any amendments)
- 309. Procurement Training.** Under the direction and control of the GM/CEO, the Chief Procurement Officer and the General Counsel shall prepare and implement an annual training plan for ensuring that procurement personnel and attorneys in the Office of General Counsel understand and adhere to applicable procurement policies and procedures, and are fully trained to perform their duties with regard to Authority procurements.

SECTION 400e- 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 DBE's 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 requirements 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; and
 - (e) Requiring the prime contractor to take the necessary steps to ensure the maximum opportunity for DBE subcontractors, in accordance with the Authority's triennial DBE goal.

SECTION 500 – PERFORMANCE MEASURES

- 501. Liquidated Damages Provisions.** Liquidated damages provisions may 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.
- 502. Forfeiture and Monetary Damages Provisions.** Authority contracts may include clauses that provide for negative consequences, to include pecuniary losses, when the conditions for which are clearly stated. Appropriate examples could include delays, late deliveries, non-conforming goods, performance failures of all types, statutory recoveries and unallowable costs.
- 503. Incentive Provisions.** Authority contracts may include specific rewards, such as monetary incentives, for accelerated or superior performance, where the benefit to the Authority is direct and measurable or otherwise appropriate in the judgment of the Contracting Officer.

SECTION 600e- 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. |
| C. Capital Budget Reprogramming | <p>Board Approval is required for:</p> <ul style="list-style-type: none"> • 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 an 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 amounts in increments which he/she shall determine to increase the total GM/CEO authority. <p>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.</p> |
| 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 |
|--|--|---|---|
| <ul style="list-style-type: none"> Reimbursable Agreements over \$500,000 Fare Buy down Agreements* Capital Funding Agreements* | <ul style="list-style-type: none"> Bonds/Letters of Credit/Commercial Paper* Public-Private Financing* Tax Lease Closeouts* Banking Services** Finance Leases* Parking Surcharge Agreements* | <ul style="list-style-type: none"> Joint Development Agreements Amendments to Joint Development Agreements having one of the following: <ul style="list-style-type: none"> Value over \$500,000 Change in composition of developer or assignment Change in term Change in proposed elements Connection Agreements that vary from adopted policy Sale/Acquisition of property valued over \$1 million | <ul style="list-style-type: none"> Agreements requiring the Authority to indemnify the counterparty Collective Bargaining Agreements Noncharter mass transit services requested by other entities Nonannual State or Federal Grants with match requirements |
| <p>* Indicates Board of Directors approval required by the WMATA Compact.</p> <p>** 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.</p> | | | |

602. Funding Restrictions. Procurement and Non-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 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.

603. Exemption. Procurement actions, as delegated elsewhere in this policy and when undertaken by a Contracting Officer, may include commercially reasonable practices for insurance, liability and indemnification, as appropriate.

SECTION 700 – POLICY DEVIATION

701. Policy Deviation. Any substantial deviation from the policies stated herein shall require approval by the Board, unless the change is required by Federal law or regulation in which case the policies will be deemed superseded. 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.

SECTION 900 – COMMERCIAL ITEMS

- 901. General Purpose.** To facilitate the purchase of any item, other than real property, in an amount not to exceed fifty thousand dollars (\$50,000) per purchase order that is of a type customarily used, available, or offered for sale, lease or license to the general public.
- 902. Support Services.** Installation, maintenance, repair, training or other services if procured in support of a commercial item, regardless of whether these services are provided by the same source or at the same time as the commercial item.
- 903. Waiver of Competition Requirements.** Where an item or service is of a type offered and sold competitively in substantial quantities in the commercial marketplace as evidenced by published catalog or established market prices without modification and in the same form as sold in the commercial marketplace.
- 904. Combinations and Modifications.** Combinations of items (e.g. “kits”) and minor modifications of items may be made to meet Authority requirements, provided they do not significantly alter the function or essential physical characteristics.
- 905. Method of Acquisition.** The Chief Procurement Officer (CPRO) may determine the most efficient and expeditious methods for purchase, order and delivery of commercial items.

SECTION 900 – PARTS BRIDGING PROGRAM

- 901. General Purpose.** ~~The Parts Bridging Program sets forth temporary measures, effective through December 31, 2017, necessary to correct deficiencies arising from existing conditions that cannot be adequately addressed through normal procurement methods.~~
- 902. Responsibility.** ~~The Chief Procurement Officer (CPRO) shall determine, on an exception basis, those spare parts that will be included within the Program and the duration of non-federal contract that will be required within the Program such that any part purchased under this Program will have a defined end date for return to normal procurement methods may resume.~~
- 
- 903. Waiver of Procurement Requirements.** ~~Where the CPRO has approved a determination and findings for enrollment of a part and a vendor(s) in this Program, and OMBS has identified non-federal funds sufficient to finance the proposed contract term, all procedural requirements established in this procurement policy shall be inapplicable to the initial purchase of that part from the approved vendor. In no case may an initial purchase exceed a two-year term. In no case may a part be enrolled in this Program more than one time.~~
- 904. Enrollment of Parts.** ~~The CPRO may enroll a part and associated vendor(s) in the Program for any of the following justifications:~~

- (a) ~~**Safety Critical.** The Deputy General Manager, Operations (DGMO) has determined the part is critical to maintaining the safety of the passenger system and identified a single vendor or limited vendor(s) as an approved source for the part.~~
- (b) ~~**Proprietary.** DGMO has determined that only the original equipment manufacturer (OEM) part meets the essential criteria necessary to maintain overall system integrity.~~
- (c) ~~**Qualified.** DGMO has determined that this part meets the essential criteria in terms of form, fit or function necessary to maintain overall system integrity.~~
- (d) ~~**Warranty.** Program office has determined only one source will maintain continuation of warranty coverage necessary for this part (or component of which the part is a sub-component or replacement part).~~
- (e) ~~**Interoperability.** Program office has determined that WMATA has overlapping requirements that are dependent upon continued use and availability of this part from one vendor to the exclusion of other parts and vendors.~~
- (f) ~~**Combination.** Program office has determined that this source provides enhanced value to WMATA through a synergy of convenience and efficiency that offers overall best value when this part is acquired as a group or set included with other parts (e.g. overhaul "kits").~~

~~**905. Competition.** The goal of the Program is to purchase needed parts without regard to procurement policies, it being the Board's determination that this program is intended to address an unusual and compelling urgency to restock parts; however, where appropriate (i.e. more than one approved source/vendor) limited competition shall be employed to purchase the part.~~

~~**906. Procedures.** When any part, component, or sub-component is determined and found to be eligible for enrollment into the Program based upon any of the determination and findings (D&F) conditions of paragraph 904 above Procurement and Program shall take action to:~~

- (a) ~~**Restock.** Immediately enter into a contract with approved vendors to restore parts availability of this item above minimum stock requirements, including reorder quantities as necessary, for a period not to exceed two years.~~
- (b) ~~**Resource.** Utilizing strategic sourcing methods, the requirement will be advertised for fair and open competition for a multiple award indefinite delivery indefinite quantity (IDIQ) contract eligible for federal grant reimbursement.~~
- (c) ~~**Resolve.** Offeror/part combinations will be conditionally entered upon a Qualified Parts List (QPL) subject to verification by third-party labs, demonstrated success with other transit properties, or WMATA-approved testing and certification procedures, as determined appropriate by DGMO.~~

~~**907. Policy Deviations.**~~

- (a) ~~It is the objective of this Program that within two years of enrollment in the Program, any specific part, component or sub-component will emerge on WMATA's QPL as either eligible for Federal reimbursement or documentation will be available to request a waiver from the Federal Transit Administration (FTA) of those federal requirements which prevent entering into a compliant contract eligible for reimbursement.~~

~~(b) — Any policy or procedure deviations must therefore be in accordance with FTA enabling legislation, 49 U.S.C. § 5325(a) requiring FTA grant recipients to conduct all procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition (including Buy America compliance); FTA Master Agreement Requirements; FTA Circulars 4220.1F and 5010.1; and the OMB “Super Circular” 2 C.F.R. 200.~~

908. Reports. ~~The CPRO shall report to the Board of Directors, in accordance with other quarterly reporting metrics, the number of parts line items enrolled in the program, which of the six (904 a through f) justifications were sought, and the progress toward completion and final resolution under 906 above.~~