

# PROCUREMENT PROCEDURES

September 2010

## INTRODUCTION

The Metropolitan Council periodically passes through Federal Transit Administration (FTA) funds to replacement service providers established pursuant to Minnesota Statutes, section 473.388, commonly referred to as “Suburban Transit Providers.” When FTA funds are passed through to a Suburban Transit Provider, the Suburban Transit Provider as the subgrantee is primarily responsible for meeting all applicable federal requirements associated with the receipt of federal funds including, without limitation, all federal procurement requirements. These responsibilities apply to all FTA-funded purchases including, without limitation, the procurement of rolling stock, architectural and engineering services, professional/technical services, construction services, and goods. FTA’s contracting guidance is found in FTA Circular 4220.1F.

While the Suburban Transit Providers have the primary responsibility for meeting the described federal requirements, the Metropolitan Council as the initial recipient of the grant funds also has a continuing responsibility to monitor subgrantee compliance with applicable FTA requirements. The Council already has procedures in place for the monitoring of subrecipient compliance with FTA requirements. These procedures also apply to Suburban Transit Providers and are set out in this document.

It is important to note that despite the Council’s monitoring activities under these procedures, the Suburban Transit Provider as a subgrantee of federal funds continues to have the primary responsibility for meeting all applicable federal requirements for procurement. As such, the Council strongly urges each Suburban Transit Provider to include relevant staff in development of procurement documents including, in particular, legal staff that represent the Suburban Transit Provider itself.

## APPLICATION OF PROCEDURES

Suburban Transit Providers will follow the Council’s Project Procurement procedures below when issuing procurements involving FTA funds.

There are other types of procurements where the full Project Procurement procedures would not apply. These are procurements (listed below) where Suburban Transit Providers do not solicit offers but which may be compliant with funding requirements. In these procurements, Suburban Transit Providers will forward the Subrecipient Contract Initiation Memo to the Project Manager and will discuss proper procedures with the Project Manager.

### Piggybacking

“Piggybacking” is an assignment to existing contract rights to purchase supplies, equipment or services. Suburban Transit Providers must be able to determine that the contract to be piggybacked meets funding requirements. Particular attention must be given to the specific issues identified in the FTA Piggybacking Worksheet. A

piggybacking assignment can be led by a Suburban Transit Provider, by the Council, or jointly.

### Intergovernmental Procurement Agreements

Suburban Transit Providers can utilize available state and local intergovernmental agreements for procurement of goods and services if all state requirements, required clauses, and certifications are met.

### Joint Procurement

Several agencies may consolidate their requirements into one procurement. Suburban Transit Providers can participate in joint procurements if all federal requirements, required clauses, laws and certifications are followed and are included in the resulting joint solicitation and contract documents.

### Sole Source

When the goods or services are available from only one source, documentation of the sole source purchase must include the justification and the authorization to award the sole source contract. A cost analysis must be performed to determine if the price is fair and reasonable.

## **MAXIMUM TIMELINES**

The maximum timelines for Council turnaround in reviewing procurement documents are listed below. The maximum times apply only to Council staff reviews and do not apply to actions needed by others such as FTA.

### Pre-Solicitation

Review Subrecipient Contract Initiation Memo (SCIM), Independent Cost Estimate (ICE) and draft solicitation document including specifications and sample contract within ten (10) business days.

### Pre-Contract Execution

Complete DBE compliance checks within ten (10) business days as a general rule. Certain projects may require additional time in order to complete the DBE checks due to a large number of proposers and/or the potential for reconsideration hearings.

### Contract Administration

Review proposed contract changes within ten (10) business days.

Note that other procurement activities can proceed during these reviews, so that the overall procurement time is not necessarily increased by the number of business days stated above. The above times exclude non-Council actions by FTA, TAB or MnDOT and other parties which may have other timeline requirements.

## **MONITORING PROCEDURES**

### Project Authorization

- The Council sends subrecipient the notification letter with application and monitoring requirements attached.
  - A-133 form, Certifications and Assurances, environmental documentation, and other application materials are retained in the Council's project file.
  - Once all application materials are received, Council's Grants Manager submits application to FTA.
- Federal notice of award received; Council's Grants Manager issues Notice of Grant Award to the Council's Project Manager.
- Council and subrecipient execute an interagency grant agreement to implement the project.

### Project Procurement

- Procurements by subrecipients of \$50,000 or more require review and approval by Council's Purchasing and Office of Diversity and Equal Opportunity (ODEO) prior to issuance for review of compliance with FTA requirements.
  - Subrecipient submits a Subrecipient Contract Initiation Memo (SCIM) and an Independent Cost Estimate (ICE) to the Council Project Manager, who forwards them to Council's Grants, Purchasing, and Office of Diversity and Equal Opportunity (ODEO) for review and approval.
  - Subrecipient submits a draft solicitation document to the Council Project Manager, who forwards to Council's Purchasing and ODEO for review and approval.
  - Solicitation is issued by subrecipient.
  - Subrecipient submits all proposals or bids received to the Council Project Manager who forwards them to ODEO for the DBE compliance check.
  - Copies of executed contracts are sent to the Council Project Manager who forwards a copy to Council Purchasing.
  - All contract amendments (financial and non-financial) require prior review and approval by Council Project Manager who will forward to Council Purchasing, and ODEO as appropriate.

### Post-Procurement

- Subrecipient submits four copies of each invoice packet to Council Project Manager, who forwards copies to Council's Grants, ODEO, and Finance for review and approval.
- All subrecipient procurements are subject to Council audit and review to check for compliance with FTA requirements.

- Council Project Manager has primary responsibility for monitoring subrecipient compliance (Compliance Checklist for Mandatory FTA Procurement Standards attached)
- Council's Program Evaluation and Audits will conduct periodic random audit and review of subrecipient procurements

In addition, the Council has minimum requirements for warranty, indemnification, insurance, liability and bonding that must be included in contracts for Council-owned assets.

The Council will offer periodic training sessions for Suburban Transit Providers on FTA requirements, as well as assistance on an as-needed basis.

The cost of Council personnel time and materials may, at the Council's discretion, be deducted from the amount of the grant award or funding awarded to the subrecipient.

The following compliance checklist is provided for the convenience of subgrantees and contains only an outline of federal procurement requirements. The compliance checklist does not purport to contain all federal requirements to which a subgrantee may be subject as a subrecipient of federal grant funds. The subgrantee remains responsible for conforming its procurement processes to all applicable federal requirements for federal funds passed through from the Council, notwithstanding the Council's review above and the following compliance checklist.

## Compliance Checklist

### Mandatory FTA Procurement Standards

#### FTA Circular 4220.1F

| No. | Element  |
|-----|--|
| 1)  | Written Standards of Conduct                             |
| 2)  | Contract Administration System                           |
| 3)  | Written Protest Procedures                               |
| 4)  | Prequalification System                                  |
| 5)  | System for Ensuring Most Efficient and Economic Purchase |
| 6)  | Procurement Policies and Procedures                      |
| 7)  | Independent Cost Estimate                                |
| 8)  | A&E Geographic Preference                                |
| 9)  | Unreasonable Qualification Requirements                  |
| 10) | Unnecessary Experience and Excessive Bonding             |
| 11) | Organizational Conflict of Interest                      |
| 12) | Arbitrary Action   |
| 13) | Brand Name Restrictions                                  |
| 14) | Geographic Preferences                                   |
| 15) | Contract Period of Performance Limitation                |
| 16) | Written Procurement Selection Procedures                 |
| 17) | Solicitation Prequalification Criteria                   |
| 18) | Award to Responsible Contractors                         |
| 19) | Sound and Complete Agreement                             |
| 20) | No Splitting [Micro-purchase]                            |
| 21) | Fair and Reasonable Price Determination [Micro-purchase] |
| 22) | Micro-Purchase Davis Bacon                               |
| 23) | Price Quotations [Small Purchase]                        |
| 24) | Clear, Accurate, and Complete Specification              |
| 25) | Adequate Competition - Two or More Competitors           |
| 26) | Firm Fixed Price [Sealed Bid]                            |
| 27) | Selection on Price [Sealed Bid]                          |
| 28) | Discussions Unnecessary [Sealed Bid]                     |
| 29) | Advertised/Publicized                                    |
| 30) | Adequate Solicitation                                    |
| 31) | Sufficient Bid Time [Sealed Bid]                         |
| 32) | Bid Opening [Sealed Bid]                                 |
| 33) | Responsiveness [Sealed Bid]                              |

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| 34) | Lowest Price [Sealed Bid]                          |
| 35) | Rejecting Bids [Sealed Bid]                        |
| 36) | Evaluation [RFP]                                   |
| 37) | Price and Other Factors [RFP]                      |
| 38) | Sole Source if Other Award is Infeasible           |
| 39) | Cost Analysis Required [Sole Source]               |
| 40) | Evaluation of Options                              |
| 41) | Cost or Price Analysis                             |
| 42) | Written Record of Procurement History              |
| 43) | Exercise of Options                                |
| 44) | Out of Scope Changes                               |
| 45) | Advance Payments                                   |
| 46) | Progress Payments                                  |
| 47) | Time and Materials Contracts                       |
| 48) | Cost Plus Percentage of Cost                       |
| 49) | Liquidated Damages Provisions                      |
| 50) | Qualifications Exclude Price [A&E]                 |
| 51) | Serial Price Negotiations [A&E]                    |
| 52) | Bid Security [Construction over \$100,000]         |
| 53) | Performance Security [Construction over \$100,000] |
| 54) | Payment Security [Construction over \$100,000]     |