

FINAL REPORT
OF THE
PROCUREMENT SYSTEM REVIEW
OF
METROPOLITAN COUNCIL
ST. PAUL, MINNEAPOLIS



JANUARY 2018

**Conducted by a Procurement
Management Review Team from
Milligan & Company, LLC
Philadelphia, PA**

EXECUTIVE SUMMARY

Milligan & Company, LLC (MILLIGAN), under contract to the Federal Transit Administration (FTA), performed a Procurement System Review of the Metropolitan Council (Met Council).

The Metropolitan Council is a metropolitan planning organization and regional governmental agency that serves the Twin Cities metropolitan area. The metropolitan area consists of seven counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

This Procurement System Review (PSR), conducted from September 18 – 22, 2017, was performed in accordance with FTA procedures, and included a procurement assessment phase and a contract review phase. During the assessment phase, a review was conducted of the organizational structure, staffing, and management direction that define the Met Council procurement system environment.

The contract review phase included interviews with key management and staff personnel and a review of contract files and supporting documents. The Milligan team reviewed FTA-funded capital expenditures.

This report contains several findings aimed at assisting Met Council in conducting their procurements in compliance with Federal requirements. Of the 60 elements designated for review, Met Council was found not deficient in 43 elements and 4 elements were not applicable. Deficiencies were found in the remaining 13 elements. Based on the responses provided by Met Council, three of these deficiencies are now closed and one deficiency was added for Element 14, Geographic Preference.

These deficiencies are summarized in the table below and addressed in the body of this report.

No.	Deficient Elements
7)	Independent Cost Estimate
12)	Arbitrary Action
13)	Brand Name Restrictions
14)	Geographic Preference
19)	Sound and Complete Agreement
21)	Fair and Reasonable Price Determination
38)	Sole Source if Other Award is Infeasible [Sole Source]
39)	Cost Analysis Required [Sole Source]
41)	Cost or Price Analysis
45)	Advance Payments
46)	Progress Payments
56)	Clauses
60)	Post-Delivery Review - Bus

Appendix B:

Report Summary Table

No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action Plan and Schedule
1)	Written Standards of Conduct	(FTA C 4220.1F CH III, 1.)	1	0	0	1	
2)	Contract Administration System	(FTA C 4220.1F CH. III, 3)	1	0	0	1	
3)	Written Protest Procedures	(FTA C 4220.1F CH VII, 1.)	1	0	0	1	
4)	Prequalification System	(FTA C 4220.1F CH. VI, 1.c.)	1	0	0	1	
5)	System for Ensuring Most Efficient and Economic Purchase	(FTA C 4220.1F CH IV,1.b)	1	0	0	1	
6)	Procurement Policies and Procedures	(FTAC 4220.1F CH III, 3.a.)	1	0	0	1	
7)	Independent Cost Estimate	(FTA C 4220.1F CH. VI, 6.)	24	3	8	35	By November 20, 2017, submit to the FTA Region V Office a corrective action plan and schedule for developing independent cost estimate procedures to ensure that they are completed before the date of the receipt of proposals or bids and retained in the procurement files. Closed based on the responses to the draft report.
8)	A&E Geographic Preference	(FTA C 4220.1F CH. VI, 2.(g)(1))	4	0	31	35	
9)	Unreasonable Qualification Requirements	(FTA C 4220.1F CH. VI, 2.a.(4)(a))	21	0	14	35	
10)	Unnecessary Experience and Excessive Bonding	(FTA C 4220.1F CH. VI, 2.a.(4)(e))	19	0	16	35	
11)	Organizational Conflict of Interest	(FTA C 4220.1F CH. VI, 2.a.(4)(h))	7	0	28	35	

No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action Plan and Schedule
12)	Arbitrary Action	(FTA C 4220.1F CH. VI, 2.a.(4)(j))	26	1	8	35	<p>By November 20, 2017, submit a corrective action plan and schedule to the FTA Region V Office that includes developing clear guidelines for when to classify a bid or proposal as non-responsive and a requirement to include a written rationale for awarding a contract to other than the lowest bidder.</p> <p>Provide additional information by February 3, 2018</p> <p>Corrective Action Plan: Starting immediately if the low bidder is found not responsive or not responsible a memo will be added to the file.</p> <p>Completed.</p> <p>Person Responsible: Micky Gutzmann, Procurement Director</p>
13)	Brand Name Restrictions	(FTA C 4220.1F CH. VI, 2.a.(4)(f))	14	1	20	35	<p>By November 20, 2017, submit a corrective action plan and schedule. The corrective action plan should state how Met Council will ensure that brand name restrictions are not placed in procurement specifications or scopes of work that limit full and open competition.</p> <p>Closed based on the responses to the draft report.</p>

14)	Geographic Preferences	(FTA C 4220.1F CH. VI, 2.a.(4)(g))	26	1	8	35	<p>Submit to the FTA Region V Office a corrective action plan and schedule. The corrective action plan should state how Met Council will ensure intergovernmental agreements utilized do not contain any geographic preferences.</p> <p>Provide additional information by February 3, 2018.</p> <p>Correction Plan: Because this is a new finding and was added after the initial review, the Council is unsure as to what this is referring to. The Council believes it is because the reviewers saw a State required form entitled: Minnesota Resident Vendor Form in the full Cooperative Procurement Venture contract for rolling stock that indicates that the vendor CAN DO business in the State of MN; <u>not</u> that they will have any preference nor was there any local preference on this solicitation. Hogle Bus is located in MN, and has two locations; however, they are a distributor of busses that are manufactured outside of the State of MN.</p> <p>The State of MN collaborates with the Council when they run solicitations for the bus CPV. The State runs these with no geographical preference, and the FTA has not cited the State of MN for utilizing geographic preference on a CPV. Hogle Bus is a distributor and there are no manufacturers of “cut away” busses in the State of MN</p> <p>Person Responsible: Micky Gutzmann, Procurement Director</p>
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No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action Plan and Schedule
15)	Contract Period of Performance Limitation	(FTA C 4220.1F CH. IV, 2.e(10))	27	0	8	35	
16)	Written Procurement Selection Procedures	(FTA C 4220.1F CH. III,3.d.(1)(c))	13	0	22	35	
17)	Solicitation Prequalification Criteria	(FTA C 4220.1F CH. VI, 1.c.)	0	0	35	35	
18)	Award to Responsible Contractors	(FTA C 4220.1F CH. VI, 8.b.)	19	0	16	35	
19)	Sound and Complete Agreement	(FTA C4220.1F CH. III, 3.b)	14	5	16	35	By November 20, 2017, submit to the FTA Region V Office a corrective action plan and schedule. The corrective action plan should include procedures to ensure the inclusion of breach, dispute resolution, and termination provisions into applicable contracts. Closed based on the responses to the draft report.
20)	No Splitting [Micro-purchase]	(FTA C4220.1F CH. VI, 3.a. (2)b)	8	0	27	35	

No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action Plan and Schedule
21)	Fair and Reasonable Price Determination [Micro-purchase]	(FTA C4220.1F CH. VI, 3.a.)	7	1	27	35	<p>By November 20, 2017, submit to the FTA Region V Office a corrective action plan and schedule. The corrective action plan should ensure that a fair and reasonable price determination is conducted for all micro-purchases made with FTA funds.</p> <p>Provide additional information by February 3, 2018.</p> <p>Corrective Action: The Council has an automated system for a purchasing agent to state that a micro-purchase is fair and reasonable, and it is checked for each purchase order. To print this and resave it would be redundant. A link to the federal and local terms and conditions will be added to the Council's website with information on where to access them on the purchase order.</p> <p>Completed by June 1, 2018</p> <p>Person Responsible: Micky Gutzmann, Procurement Director</p>
22)	Micro-purchase Davis-Bacon	(FTA C 4220.1F CH. IV,2.h(5))	0	0	35	35	
23)	Price Quotations [Small Purchase]	(FTA C 4220.1F CH. VI, 3.b)	8	0	27	35	
24)	Clear, Accurate, and Complete specification	(FTA C 4220.1F CH. III, 3.a.(1)(a))	27	0	8	35	
25)	Adequate Competition – Two or More Competitors	(FTA C 4220.1F CH. VI, 3.c.(2)(b))	13	0	22	35	
26)	Firm Fixed Price [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c)	7	0	28	35	

No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action Plan and Schedule
27)	Selection on Price [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c)	7	0	28	35	
28)	Discussions Unnecessary [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c(1)(e))	7	0	28	35	
29)	Advertised / Publicized	(FTA C 4220.1F CH. VI, 3.c.(2)(a))	13	0	22	35	
30)	Adequate Solicitation	(FTA C 4220.1F CH. VI, 3.d.(2)(c))	13	0	22	35	
31)	Sufficient Bid time [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c.(2))	7	0	28	35	
32)	Bid Opening [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c(2)(e))	7	0	28	35	
33)	Responsiveness [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c(2)(f))	7	0	28	35	
34)	Lowest Price [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c(2)(f))	5	0	30	35	
35)	Rejecting Bids [Sealed Bid]	(FTA C 4220.1F CH. VI, 3.c(2)(g))	4	0	31	35	
36)	Evaluation [RFP]	(FTA C 4220.1F CH. VI, 3.d(2)(b))	6	0	29	35	
37)	Price and Other Factors [RFP]	(FTA C 4220.1F CH. VI, 3.d.(2)(e))	6	0	29	35	

No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action Plan and Schedule
38)	Sole Source if Other Award is Infeasible	(FTA C 4220.1F CH. VI, 3.i(1)(a))	7	2	26	35	<p>By November 20, 2017, submit to the FTA Region V Office a corrective action plan and schedule. The corrective action plan should contain provisions for ensuring an approved sole source justification is contained in a sole source procurement file.</p> <p>Provide additional information by February 3, 2018</p> <p>Corrective Action Plan: The sole source form will be changed to include a check off as to which criterion fits the sole source justification and more information will be required.</p> <p>Complete by June 1, 2018.</p> <p>Person Responsible: Micky Gutzmann, Procurement Director</p>

No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action Plan and Schedule
39)	Cost Analysis Required [Sole Source]	(FTA C 4220.1F CH. VI, 3.i.(3)(c))	5	1	29	35	<p>By November 20, 2017, submit to the FTA Region V Office a corrective action plan and schedule for conducting and documenting cost analyses for sole source procurements and change orders. Met Council needs to develop a process to ensure a cost analysis that the price is fair and reasonable with supporting documentation is retained in the file.</p> <p>Provide additional information by February 3, 2018.</p> <p>Corrective Action Plan The Council will review all work instructions for the divisions to ensure that the corrective language and process is in place.</p> <p>Complete by June 1, 2018</p> <p>Person Responsible: Micky Gutzmann, Procurement Director</p>
40)	Evaluation of Options	(FTA C 4220.1F CH. VI, 7.b)	9	0	26	35	

No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action Plan and Schedule
41)	Cost or Price Analysis	(FTA C 4220.1F CH. VI, 6)	17	4	14	35	<p>By November 20, 2017, submit to the FTA Region V Office a corrective action plan and schedule. The corrective action plan should establish a process that will ensure a cost or price analysis is conducted and includes documentation to fully support the conclusion.</p> <p>Provide additional information by February 3, 2018</p> <p>Corrective Action Plan: The Procurement Department has developed educational documents to hand out to project managers which illustrate what is required in a Price or Cost Analysis and what is needed to be done to have an inclusive process to determine fair and reasonable. (see attached) – Procurements cannot proceed without this documentation – and Procurement Staff will require any back-up documentation and will question if not adequate. (attachment Element 41) [Milligan stated that they did not receive this in the first submittal.].</p>
42)	Written Record of Procurement History	(FTA C 4220.1F CH. III, 3.d(1))	27	0	8	35	
43)	Exercise of Options	(FTA C 4220.1F CH. V, 7.a(1))	1	0	34	35	
44)	Out of Scope Changes	(FTA C 4220.1F CH. V, 7.b(1))	4	0	31	35	

No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action Plan and Schedule
45)	Advance Payments	(FTA C 4220.1F CH. IV, 2.b(5)(b))	18	1	16	35	<p>By November 20, 2017, submit to the FTA Region V Office a corrective action plan and schedule. The corrective action plan should specify internal procedures that will ensure FTA funds are not used to finance advance payments to third party contractors.</p> <p>Provide additional information by February 3, 2018</p> <p>Corrective Action Plan: The following language will be added to Council contracts: The Contractor must certify that funds have been expended in an amount equal to the milestone percentage, or the progress payment amount, which may be less than or equal to the invoiced amount. The Council will not pay an invoice that does not contain substantiating backup documentation of expenditures by the Contractor, nor will it make payment in advance of services rendered.</p> <p>Complete by June 1, 2018</p> <p>Person Responsible: Micky Gutzmann, Procurement Director</p>

No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action Plan and Schedule
46)	Progress Payments	(FTA C 4220.1F CH. IV, 2.b(5)(c))	11	2	22	35	<p>By November 20, 2017, submit to the FTA Region V Office a corrective action plan and schedule. The corrective action plan should include provisions to ensure that progress payments will be based on actual costs incurred only.</p> <p>Provide additional information by February 3, 2018</p> <p>Corrective Action Plan: The following language will be added to Council contracts: The Contractor must certify that funds have been expended in an amount equal to the milestone percentage, or the progress payment amount, which may be less than or equal to the invoiced amount. The Council will not pay an invoice that does not contain substantiating backup documentation of expenditures by the Contractor, nor will it make payment in advance of services rendered.</p> <p>Complete by June 1, 2018.</p> <p>Person Responsible: Micky Gutzmann, Procurement Director</p>
47)	Time and Materials Contracts	(FTA C 4220.1F CH. VI, 2.c(2)(b))	1	0	34	35	
48)	Cost Plus Percentage of Cost	(FTA C 4220.1F CH. VI, 2.c(2)(a))	19	0	16	35	
49)	Liquidated Damages Provisions	(FTA C 4220.1F CH. IV, 2.b(6)(b1))	5	0	30	35	
50)	Piggybacking	(FTA C 4220.1F CH. V, 7.a(2))	0	0	35	35	
51)	Qualifications Exclude Price [A&E]	(FTA C 4220.1F CH. VI, 3.f(3)(b))	5	0	30	35	

No.	Element	Basic Requirement	ND	D	NA	Tot	Corrective Action Plan and Schedule
52)	Serial Price Negotiations [A&E]	(FTA C 4220.1F CH. VI, 3.f(3)(d))	5	0	30	35	
53)	Bid Security [Construction over \$100,000]	(FTA C 4220.1F CH. IV, 2.h(1)(a))	8	0	27	35	
54)	Performance Security [Construction over \$100,000]	(FTA C 4220.1F CH. IV, 2.h(1)(b))	7	0	28	35	
55)	Payment Security [Construction over \$100,000]	(FTA C 4220.1F CH. IV, 2.h(1)(c))	7	0	28	35	