

Management Committee

Meeting date: January 26, 2022

For the Metropolitan Council meeting of February 9, 2022

Subject: FM 14-2 Expenditures for the Procurement of Goods, Services, and Real Estate Policy

District(s), Member(s): All Districts; All Members

Policy/Legal Reference: Minn. Stat. §§ 473.123 Subd. 4(d)

Staff Prepared/Presented: Jody Jacoby, Procurement Director, 651-602-1359; Greg Ewig, Director of Real Estate, 651-602-1556

Division/Department: Regional Administration/Procurement/Real Estate

Proposed Action

That the Metropolitan Council adopt FM 14-2 Expenditures for the Procurement of Goods, Services, and Real Estate Policy version 4.

Background

This version 4 of FM 14-2 adjusts the purchasing thresholds to align with Council action taken in Business Item No. 2020-152 which increased the threshold for micro and small purchases. This version also increases the dollar approval thresholds for Council action from \$500,000 to \$1 million when acquiring real property interests, including condemnation and administrative settlements. The Policy adopts a higher threshold similar to recent project-specific real estate thresholds approved for the Green Line LRT extension and more recently, Gold Line BRT (Dec. 2020).

The Council-wide Policy and Procedure Review Team reviews all policies and procedures for consistency, clarity, and compliance. This team reviewed version 4 of Policy FM 14-2 and endorsed it to move forward to Management Committee for approval.

Rationale

Minnesota Statutes section 473.123, subdivision 4(d), permits the Metropolitan Council to adopt policies and procedures governing its operations. These revisions clarify the policy, align with best practices and previously taken Council action.

Thrive Lens Analysis

This action supports the previous Council actions of increasing the dollar thresholds for goods and service contracts consistent with the Council's Thrive Equity Outcome. This will further promote equity by using the Council's influence and investments to build a more equitable region. This action also supports the Council's Thrive Stewardship Outcome because the Policy provides direction for managing and responsibly expending public funds and managing the real estate assets of the Council, consistent with the public purpose doctrine.

Funding

No funding is tied to the proposed action.

Known Support / Opposition

There is no known opposition to the proposed action

POLICY

Expenditures for the Procurement of Goods and Services Policy

FM 14-2

Category: Financial Management

Business Unit Responsible: RA: Procurement

Policy Owner & Contact: Jody Jacoby, Director, Procurement Department
Laura Vedder, Assistant Director, Procurement Department

Synopsis: Provides direction for the management and responsibility of expending public funds of the Council.

POLICY

The Metropolitan Council will expend funds consistent with the public purpose doctrine, governing laws, rules, and regulations. Expenditures must be within the approved annual operating or capital budgets and consistent with established policies and procedures. No expenditures shall be made without approval by the Council, Regional Administrator or Division Directors/General Managers, or others within delegated authority.

The Regional Administrator may delegate expenditure authority and develop expenditure procedures consistent with this policy.

Expenditures for the Procurement of Goods and Services

The Regional Administrator is authorized to:

1. Accept or reject any offer for any procurement of goods or services valued at not more than \$500,000; and
2. Accept or reject any offer for any procurement of construction or design-build services valued at not more than \$2,500,000, provided that:
 - a. the project for which the services are required is included in the Council-adopted capital program;
 - b. the amount of the offer the Regional Administrator would accept is less than the engineer's cost estimate plus 10% and/or a review of the Engineers Estimate is evaluated to determine why it is over the 10% with General Manager or Division Director approval;
 - c. sufficient funds are available in the capital budget to complete the resulting contract; and
3. Set the Micro Purchase (or single bid) level at \$5,000.

Each quarter, the Regional Administrator shall ensure that a report is made to the Council, through the Management Committee, on all procurements valued between \$100,000 and \$250,000 and \$250,000 and \$500,000.

Expenditures for Incremental Amendments to Contracts for Goods and Services

The Regional Administrator is authorized to amend contracts and increase the Contract Prices in the following amounts:

1. For any non-construction contract with an original Contract Price of \$500,000 or less, the Regional Administrator, or to staff as delegated, may increase the Contract Price by an aggregate amount up to a maximum of \$550,000 (10%);
2. For any non-construction contract with an original Contract Price of more than \$500,000, the Regional Administrator may increase the Contract Price by an aggregate amount of up to 10% of the original Contract Price;
3. For any construction or design-build contract with an original Contract Price of \$2,500,000 or less, the Regional Administrator, or staff as delegated, may increase the Contract Price by an aggregate amount up to a maximum of \$2,750,000 (10%);
4. For any construction or design-build contract with an original Contract Price of \$2,500,000 or more, the Regional Administrator, after Council approval, may increase the contract Price up to a maximum of 10%; or
5. As otherwise delegated by the Council.

Emergency Expenditures

The Regional Administrator is authorized to declare an emergency on behalf of the Council, if it is determined by the Regional Administrator that an emergency situation exists. An emergency situation exists when:

1. The health, safety or welfare of the public, including Council employees or facilities, is compromised or potentially compromised and remedial action is necessary or desirable; or
2. A significant cost savings is immediately available through circumstances previously unknown and requires prompt action to take advantage of the situation.

The Regional Administrator may authorize appropriate contracts and payments necessary to meet the emergency situation provided that, if the cost to correct the emergency situation totals \$100,000 or more, the emergency declaration shall also be presented to the appropriate committee for formal ratification at its next regular meeting.

Expenditures for the Acquisition of Real Property

The Regional Administrator is authorized to approve the expenditure in the aggregate amount of up to \$500,000 for an individual acquisition, and no more than a total of \$500,000 for multiple acquisitions related to or part of the same project, for:

1. the acquisition of parcels real property;
2. the acquisition of interests in real property, such as easements and leases; or
3. the acquisition of personal interests in real property, such as licenses and permits.

Where the Council has approved the acquisition of real property at its appraised value, the Regional Administrator is authorized to approve the expenditure of up to \$250,000 in settlement costs for each parcel.

This Expenditures Policy does not authorize the Regional Administrator to initiate any condemnation proceeding without prior approval by the Metropolitan Council.

For Southwest Light Rail Transit (SWLRT) and Blue Line Extension (BLRT) projects, the Council modified the authorization levels as follows (BI 2016-01 Revised on September 14, 2016):

	Approval Threshold	Oversight Authority
Initial Offer and Approve Administrative Settlements	Over \$250,000 \$150,000-\$250,000 \$100,000-\$150,000 Up to \$100,000	Regional Administrator General Manager Program Director Project Director
Initiate Condemnation	Over \$1,000,000 \$150,000-\$1,000,000 Up to \$150,000	Metropolitan Council Regional Administrator General Manager

Expenditures for Contracts with Other Governmental Entities

The Regional Administrator is authorized to enter into contracts with other governmental entities for the expenditure of amounts not exceeding \$500,000.

PURPOSE OF POLICY

This policy provides direction for the management and responsibility of expending public funds of the Council.

BACKGROUND & REASON FOR POLICY

[Council Resolution No 2016-26, Public Purpose Doctrine](#)

[Minnesota Statutes, Section 12.37](#), Political subdivision's powers to fast provide emergency aid

[Minnesota Statutes, Section 473.504](#) Subdivision 12, Pacts with other government

IMPLEMENTATION & ACCOUNTABILITY

The Regional Administrator is expected to establish the framework and accountability for the effective implementation of this policy.

PROCEDURES

- [FM 14-2a Delegation of Procurement and Contract Authority Procedure](#)

RESOURCES

Related Procedures:

- [FM 2-2a Food and Refreshment Procedure](#)

Statutory Resources (Minnesota Statutes or Rules, U.S. Code, Federal Regulations)

- [Council Resolution No 2016-26, Public Purpose Doctrine](#)
- [Minnesota Statutes, Section 12.37](#)
- [Minnesota Statutes, Section 473.504](#) Subdivision 12

HISTORY

Version 3 – Template Update

10/12/2020 - Updated content into new template.

Version 2 – Approval Date

09/16/2016

Version 1 – Approval Date

09/11/1998

Last Reviewed Date

11/12/2021

Next Content Review Date

07/15/2022

Former Reference #

3-3

Version

3

POLICY

Expenditures for the Procurement of Goods, Services, and Real Estate Policy

FM 14-2

Category: Financial Management

Business Unit Responsible: RA: Procurement

Policy Owner: Director of Procurement Department
Assistant Director of Procurement

Policy Contact: Jody Jacoby, Director of Procurement Department
Laura Vedder, Assistant Director of Procurement

Synopsis: Provides direction for managing and responsibly expending public funds of the Council.

POLICY

The Metropolitan Council will expend funds consistent with the public purpose doctrine, governing laws, rules, and regulations. Expenditures must be within the approved annual operating or capital budgets and consistent with established policies and procedures.

The Regional Administrator may delegate expenditure authority and develop expenditure procedures consistent with this policy. No expenditures may be made without approval by those with delegated expenditure authority. Any expenditures beyond the delegated limits must be approved by the Metropolitan Council.

Expenditures for the procurement of goods and services

The Regional Administrator is authorized to perform the actions identified below.

4. Accept or reject any offer for any procurement of goods or services valued at not more than \$500,000
5. Accept or reject any offer for any procurement of construction or design-build services valued at not more than \$2,500,000 that meet these identified conditions.
 - a. The project for which the services are required is included in the Metropolitan Council-adopted capital program.
 - b. The amount of the offer the Regional Administrator would accept is less than the engineer's cost estimate plus 10% or a review of the engineer's estimate is evaluated to determine why it is over the 10% with General Manager or Division Director approval.
 - c. Sufficient funds are available in the capital budget to complete the resulting contract.
6. Set the micro purchase (or single bid) level:
 - a. Up to \$10,000 for all funding types or
 - b. Up to \$25,000 when purchasing from a Metropolitan Council Underutilized Business (MCUB) vendor with only local funds

The Regional Administrator must ensure that a quarterly report is made to the Metropolitan Council, through the Management Committee, on all procurements valued between \$175,000 and \$500,000.

Expenditures for incremental amendments to contracts for goods and services

The Regional Administrator is authorized to amend contracts and increase the contract prices in the following amounts:

7. For any non-construction contract with an original contract price of \$500,000 or less, the Regional Administrator, or staff as delegated, may increase the contract price by an aggregate amount not to exceed 10% of the original contract price.
8. For any non-construction contract with an original contract price of more than \$500,000, the Regional Administrator may increase the contract price by an aggregate amount of up to 10% of the original contract price.
9. For any construction or design-build contract with an original contract price of \$2,500,000 or less, the Regional Administrator, or staff as delegated, may increase the contract price by an aggregate amount not to exceed 10% of the original contract price.
10. For any construction or design-build contract with an original contract price of \$2,500,000 or more, the Regional Administrator, may increase the contract price up to a maximum of 10%.
11. As otherwise delegated by the Metropolitan Council

Emergency expenditures

The Regional Administrator is authorized to declare an emergency on behalf of the Metropolitan Council, if the Regional Administrator determines that an emergency situation exists. An emergency situation exists when:

12. The health, safety or welfare of the public, including Metropolitan Council employees or facilities, is compromised or potentially compromised and remedial action is necessary or desirable or
13. A significant cost savings is immediately available through circumstances previously unknown and requires prompt action to take advantage of the situation.

The Regional Administrator may authorize appropriate contracts and payments necessary to meet the emergency situation provided that, if the cost to correct the emergency situation totals \$175,000 or more, the emergency declaration shall also be presented to the appropriate committee for ratification no later than the next regular meeting.

Expenditures for the acquisition of real property

The Regional Administrator is authorized to approve the expenditure in the aggregate purchase amount of up to \$1,000,000 for an individual acquisition or multiple project-related acquisitions, for

The fee acquisition of real property or the acquisition of interests in real property, such as easements and leases. The following matrix incorporates the expenditure thresholds for acquisition of real property and real property interests.

	Approval Threshold	Approver
Initial offer, administrative settlements and relocation assistance claims	Over \$1 million Up to \$1 million \$200,001-\$250,000 Up to \$200,000	Metropolitan Council Regional Administrator General Manager Delegated Staff

Initiate condemnation (Metropolitan Council must first authorize all acquisitions as to public purpose)	Over \$1 million Up to \$1 million	Metropolitan Council Regional Administrator
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The above threshold amounts apply to the purchase price or just compensation amounts and exclude closing costs. Also:

1. FTA concurrence may be required for certain transit acquisitions.
2. The Regional Administrator may not initiate any condemnation proceeding without prior approval and finding of public purpose by the Metropolitan Council.

Expenditures for contracts with other governmental entities

The Regional Administrator is authorized to enter into contracts with other governmental entities for the expenditure of amounts not exceeding \$500,000.

PURPOSE AND SCOPE

This policy provides direction for managing and responsibly expending public funds of the Council, consistent with the public purpose doctrine.

The public purpose doctrine permits a governmental entity to expend public funds only if the primary purpose of the expenditure is public and the expenditure directly relates to the governmental purposes for which the entity was created. [Council Resolution No. 2016-26, Public Purpose Doctrine](#), acknowledges the legal doctrine and sets some parameters and guiding policies as to what is within the public purposes of the Metropolitan Council so that the Regional Administrator may establish administrative procedures and policies consistent with the Resolution.

IMPLEMENTATION & ACCOUNTABILITY

The Regional Administrator is expected to establish the framework and accountability for the effective implementation of this policy.

PROCEDURES

- [FM 14-2a Delegation of Procurement and Contract Authority Procedure](#)

RESOURCES

Related Policies

- [FM 9-1 Real Estate Policy](#)

Related Procedures:

- [FM 2-2a Food and Refreshment Procedure](#)

Statutory Resources

- [Council Resolution No 2016-26, Public Purpose Doctrine](#)

HISTORY

Version 4 – Template Update (Business Item 2022-XX)

Not Set – Updated procurement threshold and language pursuant to Business Item 2020-152.

Version 3 – Template Update

10/12/2020 - Updated content into new template.

Version 2 – Approval Date

09/16/2016

Version 1 – Approval Date

09/11/1998

Last Reviewed Date

Not Set

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07/15/2022

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3-3

Version

4