

Business Item

Metropolitan Council



Committee Meeting Date: September 14, 2022

For the Metropolitan Council: September 28, 2022

Business Item: 2022-251

Subject: Construction and Design-Build Contracts Thresholds Increase

District(s), Member(s):	All Districts, All Members
Policy/Legal Reference:	Council Procurement Policy FM 14-2, Expenditures for the Procurement of Goods, Services, and Real Estate
Staff Prepared/Presented:	Jody Jacoby, Procurement Director, 651-602-1359
Division/Department:	Regional Administration/Procurement

Proposed Action

That the Metropolitan Council adopt the attached version of FM 14-2, Expenditures for the Procurement of Goods, Services and Real Estate Policy and authorize the Regional Administrator to award construction and design-build contracts where:

- (a) The value of the contract does not exceed \$10,000,000;
- (b) The construction or design-build project was included in the Council adopted capital budget;
- (c) The amount of the project is less than the Engineer's Estimate plus 10% or a review of the engineer's estimate is evaluated to determine why it is over the 10% with management concurrence; and
- (d) Sufficient funds are available in the capital budget to complete the project

Background

Signature authority for construction and design-build services contracts are set by Council Policy. FM 14-2 Policy currently requires that contracts valued at \$2.5 million or more must be approved by the pertinent committee and the full Council and those valued at not more than \$2.5 million may be authorized by the Regional Administrator. Construction approval thresholds for were last increased in 2013 through Business Item No. 2013-268. All construction and design-build projects use a templated contract, a pre-approved budget through pertinent Committee and Council, and are based on independent cost estimates, verified through cost analysis.

Rationale

Increasing the signature authority for construction and design-build service contracts will streamline the Council's construction and design-build contract approval process. By significantly increasing the number of construction contracts which can be approved in a few hours or days with internal requests for authorization, and simultaneously decreasing the number of construction contracts which require committee and full Council hearings, the Council will be able to initiate a greater number of construction projects more efficiently than the current authorization process allows. This also allows the Council to reduce the bid validity period from 90 to 60 days, bringing the Council more in line with other governmental units in the region. Bid validity is the time from bid

opening to Notice to Proceed, during which time a bidder cannot revoke their offer.

12% of Council construction contracts executed since January 1, 2014, have been valued at \$10 million or more. Procurement Action Lead Time (PALT) is the time from date of advertisement to Notice to Proceed. An analysis of construction contract data from 2014, shows that on average 37 days are added to the PALT when an item goes to the Council. If the construction and design-build signature authority is increased the bid validity and PALT will decrease, allowing for construction projects to start sooner, providing positive impacts for the region where timing due to seasonal constraints can be an issue. Anticipated impacts to Council projects for shorter bid validity periods are less price fluctuations in contracts, quicker mobilization, fewer change orders, projects completed sooner, benefitting the public.

Thrive Lens Analysis

Increasing the signature authority construction contract approval amounts promotes the Council's Thrive Prosperity and Equity outcomes by making the construction procurement process quicker. All contractors, but especially our Metropolitan Council Underutilized Businesses and Disadvantaged Business Enterprise partners benefit from shorter spans between bidding and being awarded contracts, especially in periods of significant pricing fluctuation.

Funding

No funding is tied to the proposed action.

Small Business Inclusion

The proposed changes will have positive impacts on the small businesses that work on Council projects. Many DBE/MCUB firms have limited capacity when it comes to being able to bid and work on projects of this size. Long delays from time of bid to project award hinder their ability to bid on other work as they often are only capable of being on a few large projects each season. This proposed change would also help ensure that the work can be done at the price they submitted. Recently, we have heard of many pricing issues due to escalation from our small businesses. They have really struggled with long lead times and the escalation of materials. Large price fluctuations can be detrimental to a small business and this proposed change could help to limit this issue.



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.

1. Accept or reject any offer for any procurement of goods or services valued at not more than \$500,000
2. Accept or reject any offer for any procurement of construction or design-build services valued at not more than ~~\$2,500,000~~ \$10,000,000 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.
3. 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:

1. 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.
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 not to exceed 10% of the original contract price.
4. 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%.
5. 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:

1. 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
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 \$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 2022-17](#))

02/09/2022 – 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

02/09/2022

Next Content Review Date

07/15/2022

Former Reference #

3-3

Version

4