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Procurement Manual



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Introduction

The Washington Metrorail Safety Commission (WMSC) is a Congressionally authorized interstate compact and the designated State Safety Oversight Agency (SSOA) for the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system. As such, the WMSC is legally and financially independent of WMATA.

The WMSC serves as the safety regulatory authority for the WMATA Metrorail system and works in cooperation with the Federal Transit Administration (FTA) and WMATA to enhance public safety. The WMSC's State Safety Oversight (SSO) program was certified by the Federal Transit Administration in accordance with the requirements of Title 49 U.S.C. § 5329(e), and the FTA's SSO regulation, 49 C.F.R. Part 674, on March 18, 2019. The WMSC's rail transit experts implement the WMSC's program and focus on verification of WMATA's compliance with its mandated safety plans to ensure that WMATA provides safe operations and transportation service.

The WMSC oversees the safety of WMATA Metrorail through six core functions: its triennial audit program, onsite inspections, safety event investigations, emergency management activities, safety certification, and oversight of WMATA's corrective active plans (CAPs).

The WMSC receives its only federal funding from the U.S. Department of Transportation's (DOT) FTA, pursuant to Title 49 U.S.C. § 5329. FTA guidance material states that these funds may be used for SSO operational and administrative expenses, including salaries, wages, overtime, training, travel, certain professional memberships and subscriptions, equipment, and vehicles and their operating costs; and to pay contractors in support of the WMSC's SSO program. Other eligible costs include office supplies; personal protective equipment; technical engineering and inspection tools; uniforms; vehicle operational expenses;



furniture; course registration and fees; conferences, workshops, and seminars; and travel, per diem expenses, mileage, and lodging.

The WMSC is required to comply with the Freedom of Information Act (5 U.S.C. § 552(a)–(d)) and the Government in the Sunshine Act (5 U.S.C. § 552b). The WMSC does not provide any services or benefits directly to members of the public.

The WMSC is comprised of Commissioners and Alternates appointed by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. Each jurisdiction appoints two Commissioners and one Alternate, none of whom is a salaried employee of the WMSC. The day-to-day work of the Metrorail Safety Commission is undertaken by its a full-time staff of about 12 individuals, including a Chief Executive Officer (CEO).

Legal authority

The legal authority for the WMSC is derived from an interstate compact, which was authorized by identical legislation enacted by each of the jurisdictions served by Metrorail: D.C. Act 21-666, which became law on February 10, 2017; Maryland H.B. 119, which became law on March 30, 2017; and Virginia H.B. 2136, which became law on March 24, 2017. The U.S. Congress granted its consent and approval of the Compact via H.J. Res. 76, which became P.L. 115-54 on August 22, 2017. This legislation is collectively referred to as the “WMSC Compact.”

Relevant to this manual, the WMSC Compact, among other things, authorizes the WMSC to establish its own procurement policies (Art. III, Sec. E, Para. 24) and enter into contracts (Art. IV, Sec. B, Para. 33(f)), and provides an exemption from sales, property, and income taxes (Art. V, Sec. E, Para. 45).

General principles

The WMSC receives public money to fund its operations; consequently, when the WMSC spends money, it is spending public funds. There is a special trust required of those who spend public money, and the public expects that its money is handled with the highest degree of accountability and care.

Further, the WMSC is a recipient of *federal* funds. When the WMSC acquires goods or services with federal funds, it must do so prudently and in compliance with all applicable federal requirements.

This manual applies to all procurements of goods and services undertaken by the WMSC. It has been written to ensure that all WMSC procurements are prudent, well-documented, and in compliance with all applicable requirements.

The primary source for procurement practices that apply to the WMSC is [FTA Circular 4220.1F, Third Party Contracting Guidance](#), which clarifies that the “Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, does **not** apply to federally assisted procurements, absent Federal laws or regulations to the contrary.”

Finally, the Circular notes that in the absence of specific guidance, other FAR standards might prove useful if the circumstances are suitable for application of a specific FAR provision under consideration. In other words, the WMSC may voluntarily adopt certain FAR principles if they are suitable to the matter at hand and do not conflict with other requirements.

This manual does not address the procurement of goods or services that are outside the scope of the WMSC’s anticipated needs, i.e., construction, or the acquisition of revenue transit vehicles.

This manual governs the entire procurement cycle: (1) Planning, (2) Selecting the type of



procurement method, (3) Evaluating proposals and award, and (4) Contract administration.

This manual establishes procedures for three types of procurements: Micro-purchases, Small Purchases, and Requests for Proposals (RFPs). The Methods of Procurement section below establishes dollar thresholds and other criteria for choosing the proper procurement method, and procedures for each method appear later in the manual. Additionally, refer to the Universal Requirements and the Definitions sections for requirements and information that apply to all procurements, regardless of anticipated dollar value.

This manual is to be carried out and executed consistent with other policies and resolutions of the WMSC. Should any conflicts arise between this manual and other policies, the WMSC will defer to federal law and guidance from federal agencies, to wit, rules, regulations and circulars from the FTA.

Procurement resources

Under the authority conferred in the Compact and in accordance with the WMSC's status as a federal grantee, the WMSC adopts the principles and best practices set forth in the following documents and the regulations cited therein, as such documents may be amended from time to time:

- Federal Transit Administration Master Agreement
- FTA C 4220.1F – Third Party Contracting Guidance
- FTA Best Practices Procurement & Lessons Learned Manual, 2016 (FTA BPPM)
- Third Party Procurement: Frequently Asked Questions
- FTA Frequently Asked Questions for State Safety Oversight Formula Grant Program

- FTA Guide for Procurement System Reviews

Methods of Procurement

Depending on the anticipated total dollar value of the procurement, the WMSC follows one of three procurement methods based on defined value thresholds, as described below.

Breaking an anticipated procurement into two or more purchases to reduce the dollar value of each to avoid more competitive procedures is known as a “split procurement.” **Split procurements (a.k.a. “split requirements”) are prohibited.**

As of June 20, 2018, the threshold for micro-purchases under federal financial assistance awards is \$250,000 for all recipients (OMB-18-18, Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance.)

Purchases not exceeding \$10,000: Micro-purchases

Purchases that do not exceed \$10,000 are known as *micro-purchases*. Micro-purchases require either no competition or minimal competition, depending on the anticipated cost. Micro-purchases must be distributed equitably among qualified suppliers, whether or not any one micro-purchase is subject to competitive selection.

Micro-purchase procedures are not appropriate when:

- There is a possibility that the procurement will exceed the micro-purchase threshold. If there is a chance that the procurement will exceed the micro-purchase threshold, the Small Purchase procedures should be used.
- Purchasing products or services with complex questions to be considered or



specific contract provisions to be included (e.g., inspection and testing, insurance, patents, price adjustments, etc.).

- Purchasing complex studies or services or other requirements that may require technical evaluation or involved negotiations, and in which award cannot be made confidently on the basis of low price. In these cases, consider refining the requirement or using the RFP process.
- Purchasing consultant services that may require a reasonably complex statement of work or multiple delivery schedules or deliverables.

Micro-purchases must be made using the specific procedures provided in the Micro-purchase Procedures section of this manual. Additionally, all the provisions that appear below in the Universal Requirements section also apply.

Typically, micro-purchases are made with a purchase card or through a purchase order.

Purchases exceeding \$10,000, but not exceeding \$250,000: Small Purchases

If the total anticipated purchase cost is \$10,000 or more and less than \$250,000 a small purchase process must be followed. The small purchase process as described in this manual is sometimes referred to as simplified acquisition procedures.

The WMSC must request quotations from an adequate number of qualified suppliers to ensure competition.

Small purchase procedures are not appropriate when:

- There is a possibility that the procurement will exceed the small purchase threshold. If there is a chance that the procurement will exceed

the small purchase threshold, RFP procedures should be used.

- Purchasing products or services with complex questions to be considered or specific contract provisions to be included (e.g., inspection and testing, insurance, patents, price adjustments, etc.).
- Purchasing complex studies or services or other requirements that may require technical evaluation or involved negotiations, and in which award cannot be made confidently on the basis of low price. In these cases, consider refining the requirement or using the RFP process.
- Purchasing consultant services that may require a reasonably complex statement of work or multiple delivery schedules or deliverables.

Small purchases must be made using the specific procedures provided in the Small Purchase Procedures Section. Additionally, all the provisions that appear below in the Universal Requirements section also apply.

Typically, small purchases are made with a purchase order or a formal written contract.

Purchases exceeding \$250,000: Requests for Proposals

If the total anticipated purchase price exceeds \$250,000, the RFP process is required.

This method allows for the procurement of goods and/or services in which every detail of the work to be done cannot be specified and/or when creativity on the part of the proposer is desired.

RFP procurements must be made using the specific procedures provided in the RFP Procedures Section of this manual. Additionally, all of the provisions that appear below in the Universal Requirements section apply. RFP procurements result in formal written contracts.



Important Reminders

Necessary approvals and funds availability

The CEO serves as the WMSC's Contracting Officer in accordance with FTA BPPM, and as the WMSC's Authorized Individual, and may designate other WMSC employees to serve as Authorized Individuals. The WMSC Contracting Officer must approve the initiation of any procurement described in this manual. No procurement may be awarded involving an annual expenditure of more than \$50,000, unless the it has been approved by the Commissioners.

Required as a condition of an FTA grant agreement, any equipment purchase that has a unit cost exceeding \$5,000 must have prior FTA approval, if federal funds will be used.

When an Authorized Individual or Contracting Officer uses a purchase card, or signs a purchase order or formal written contract, he or she is certifying on behalf of the WMSC that funds are available for the procurement and that the terms are reasonable and acceptable.

A Contracting Officer is the only official authorized to cancel or terminate a contract. Before doing so, the Contracting Officer will consult with the General Counsel, and, reasonable efforts will be made to avoid possible default by the contractor or by the WMSC. If cancellation or termination cannot be avoided, the Contracting Officer and the General Counsel will determine how to proceed so as to minimize adverse financial or other consequences to the WMSC.

Legal effect of quotations and purchase orders

A quotation is not an offer and cannot be accepted to form a binding contract. Issuing a purchase order in response to a quotation also

does not establish a contract. The purchase order is only an offer to the supplier to buy the supplies or services under the order's specified terms and conditions.

A contract is established only when the supplier accepts the WMSC's offer by:

- Signing the purchase order before delivery and returning it to the WMSC (if the nature of the procurement warrants this);
- Furnishing the WMSC with the supplies or services ordered; or,
- Proceeding to carry out the order to the point where substantial performance has occurred.

Bilateral purchase orders: When issued to a supplier, a purchase order acts as the WMSC's offer to buy at the prices and under the terms and conditions stated in the purchase order. When received and accepted by the supplier, the purchase order becomes an agreement having the same force and effect as a formal contract.

Unilateral purchase orders: When issued to a supplier without requesting that the supplier sign and return a copy, the order is a unilateral (one party) document. A unilateral purchase order is an offer to contract (i.e., to buy at the prices and under the stated terms and conditions). Issuing the order by itself gives no assurance that the supplier will provide the requested delivery or performance, nor does it obligate the supplier to perform.

Only when the supplier accepts the purchase order by performance does the unilateral order become a formal contract. The supplier accepts simply by proceeding to furnish the supplies or services ordered or carrying out the order to the point where substantial performance has occurred.

For some purchases, it is desirable to know immediately whether the supplier has accepted



the purchase order. For example, written acceptance may be desirable when the time of delivery or performance is critical, when there have been problems with the supplier in the past, or when the contract is for services. A bilateral (two party) purchase order becomes a formal contract when both parties have signed the order.

Contract administration

The WMSC ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The WMSC identifies what is needed in the procurement and documents all steps in the process (e.g., solicitation, negotiation, and contract). WMSC staff are encouraged to refer frequently to the contract during the life of the contract to ensure that the contractor is complying with all requirements.

Contract administration starts with the procurement. It is important to ensure that all pertinent information required in the contract is included in the solicitation. Any terms negotiated during an RFP process must also be included in the contract. Be vigilant for any supplier-generated changes that may not have been in the original solicitation and determine whether such proposed changes should be addressed through renegotiation or amendment of the contract.

Procurement files

The WMSC must maintain files on all procurement actions, sufficiently detailed to sustain an audit of the procurement, to clearly document what goods or services were purchased and the associated costs. The files must document compliance with the requirements contained in this manual. For specific advice about creating an appropriate procurement files see page 29.

The WMSC must retain its procurement records in accordance with records retention

schedule set forth in the WMSC Internal Controls Manual.

Standards of conduct

No WMSC employee, officer, agent, Commissioner or Alternate Commissioner, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing individuals 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 individuals previously listed has a financial or other interest in the firm selected for award.

No WMSC employee, officer, agent, Commissioner or Alternate Commissioner may solicit or accept gifts, gratuities, favors, or any other thing of more than nominal intrinsic monetary value from contractors, potential contractors, or parties to subcontracts. Meals paid for by a third party are considered gifts, gratuities, or favors.

WMSC employees, officers, agents, Commissioners and Alternate Commissioners must appropriately safeguard all proprietary and source selection information associated with procurement activities.

Any WMSC employee, officer, agent, or employee who violates the standards set forth in this code of conduct shall be subject to disciplinary action or sanctions imposed by the Commissioners or CEO, as applicable, up to and including termination of employment, appointment or contract with the WMSC.

Avoidance of waste

The WMSC actively avoids the purchase of unnecessary goods and services, including duplicative items and quantities or options that it does not intend to use or whose use is unlikely.



Use of federal supply schedules and cooperative agreements

Entities such as the WMSC are authorized limited use of federal supply schedules. Specifically, 40 U.S.C. § 502(c)(1) permits the WMSC to acquire information technology of various types through GSA's Cooperative Purchasing Program, Federal Supply Schedule 70. Further, 40 U.S.C. § 502(d) permits the WMSC to use federal supply schedules in conjunction with Presidentially declared major disaster and associated recovery.

2 CFR Part 200 permits the WMSC to enter into State and local intergovernmental agreements for procurements of property or services. This permits, for example, the WMSC to participate in the Metropolitan Washington Council of Governments Cooperative Procurement Program.

Sole source procurements

When the WMSC requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the WMSC may make a sole source award. If the WMSC requires an existing contractor to make a change to its contract that is beyond the scope of that contract, this change constitutes a sole source award that must be justified.

Occasionally, there exists only one source of goods or services sought to be procured; or, following the solicitation of quotations or offers, competition is inadequate; or, the nature of the relationship with a particular contractor is one involving special confidentiality, or fiduciary, advisory services. In such cases, selection of a contractor, without competition, may be in the best fiscal and organizational interests of the WMSC.

Prior to award of a contract without competition, if federal funding is involved, the

WMSC may be required to coordinate the award with the FTA. Also, any non-competitive contractor selection involving a contract to be funded, in whole or in part, by federal funding requires a cost analysis.

The WMSC may authorize a purchase based on a non-competitive contractor selection process, upon a written determination that at least one of the following circumstances exists:

- The goods or services are only available from a single source;
- Required compatibility of equipment, accessories, software, or replacement parts can only be met by one source;
- One contract service provider possesses unique qualifications, of a nature and to such an extent that no other contractor can be found who can perform or provide the services that are the subject of the contract;
- Time is of the essence, and circumstances will not permit a delay resulting from a competitive selection process; or,
- The proposed contract is for: the management of retirement funds, legal services, witness and other services associated with litigation or regulatory proceedings, and the like.

DBE requirements

Disadvantaged Business Enterprise (DBE) provisions apply to federally assisted contracts; consequentially, the WMSC makes efforts to purchase from, or otherwise use, DBE firms. Under the provisions in its DBE Program, the WMSC adheres to DBE requirements that include:

Three-year goal setting

The WMSC establishes an overall goal for DBE participation and submits its goal and goal-setting methodology to the FTA for review every three years. The goal flows from an assessment of the anticipated contracting opportunities during



the period and an assessment of the availability of DBE firms to fulfill those anticipated requirements. The WMSC's current goal and methodology are available [here](#) on the WMSC's public web site.

DBE Contract Clauses

All solicitations must contain the appropriate federal clauses. These clauses contain provisions related to DBE requirements, and they must be included whether there is a specific DBE goal or not. A summary of required federal clauses is attached to this manual as Appendix A.

Universal requirements

The following requirements appear in FTA Circular FTA C 4220.1F. Each requirement is preceded by the requirement number used during Procurement System Reviews, and each is followed by a citation or citations to the requirement in the circular (or in some cases to the applicable regulation) in square brackets. The following list omits requirements contained in the Circular that do not apply to WMSC procurements.

1 Written Standards of Conduct [III.1.a. – c.]

Comply with all applicable standards of conduct restricting the solicitation or acceptance of gifts, gratuities, favors, or anything of monetary value from contractors or potential contractors. The WMSC's written standards of conduct appear on page 7 in this manual.

2 Third Party Contracting Capacity [III.3.]

The WMSC has systems in place to ensure that its contractors comply with the terms, conditions, and specifications of their contracts or purchase orders as well as applicable federal, state, and local requirements.

3 Written Protest Procedures [VII.1.a., b.]

The WMSC's written protest procedures appear elsewhere in this manual. See page 30.

4 Prequalification System [VI.1.c.]

The WMSC has elected not to institute a prequalification system for proposers.

5 System for Ensuring Most Efficient and Economic Purchase [IV.1.b., c., e.]

WMSC staff carefully review each proposed procurement to ensure that only necessary and non-duplicative goods and services are procured in the most efficient and economical manner. The WMSC carefully evaluates lease versus purchase decisions and makes the most economical procurement choices.

6 Procurement Policies and Procedures [III.3.a.]

This manual serves as the WMSC's written procurement policies and procedures.

7 Independent Cost Estimate [2 CFR §200.323; 2 CFR §200.324]

The WMSC buyer must make an Independent Cost Estimate for any procurement before receiving any quotations or proposals. This estimate is an essential component of a subsequent, required price or cost analysis.

9 Unreasonable Qualification Requirements [VI.2.a(4)(a)]

The WMSC shall not restrict competition by imposing unreasonable requirements on potential suppliers for them to qualify to do business with the WMSC.



10 Unnecessary Experience and Excessive Bonding [VI.2.a.(4)(b) and (e); BPPM 8.2]

The WMSC shall not restrict competition by imposing unreasonable requirements on potential suppliers for them to qualify to do business with the WMSC.

The WMSC does not impose bonding requirements on its contractors.

11 Organizational Conflict of Interest [VI.2.a.(4)(h)]

The WMSC is prohibited from engaging in practices that result in the following organizational conflicts of interest:

- Lack of impartiality or impaired objectivity (when the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice due to other activities, relationships, contracts, or circumstances).
- Unequal access to information (when the contractor has an unfair competitive advantage due to access to nonpublic information obtained during the performance of an earlier contract).
- 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).

The WMSC is required to analyze each planned acquisition 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.

12 Arbitrary Action [VI.2.a.(4)(j)]

The WMSC is prohibited from unduly restricting competition by taking any arbitrary action during the procurement process.

13 Brand Name Restrictions [VI.2.a.(3), (4)(f)]

The WMSC is prohibited from unduly restricting competition by 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 for award.

16 Written Procurement Selection Procedures [III.3.a.]

The WMSC has established written procurement procedures. The following standards apply to solicitations:

- Technical requirements must be clear and accurate.
- Specifications and descriptions must not contain features that unduly restrict competition. Specifications that use exclusionary or discriminatory specifications are prohibited.
- A description may include minimum quality requirements, essential characteristics, and required standards.
- Technical requirements should be described in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
- When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a “brand name or equal” description may be used to define the



performance or other salient characteristics of the property or services sought. The specific features or salient characteristics of the named brand which must be met by offerors of “an equal” proposal must be clearly stated.

Further, the WMSC’s procurement policies address:

Necessity. The WMSC Contracting Officer shall contract only for the WMSC’s current and reasonably expected needs and may not add quantities or options to contracts solely to permit assignment to another party at a later date. The WMSC Contracting Officer shall not approve the purchase of unnecessary property or services (including duplicative items and quantities or options that the WMSC does not intend to use or whose use is unlikely). However, if the quantity of property or services the WMSC requires changes due to circumstances or honest mistakes, the WMSC may assign its unneeded contract authority to another entity that wishes to acquire the property or services. That said, the WMSC may take advantage of joint procurements to obtain advantages unavailable for smaller procurements, and it may utilize state or local purchasing schedules or contracts.

Lease versus Purchase. To obtain the best value, the WMSC shall review lease versus purchase alternatives for acquiring property and, if necessary, conduct an analysis to determine the more economical alternative. The WMSC may lease eligible property when leasing is more cost effective than ownership.

Metric Usage. The WMSC prefers to use the metric system of measurement to the extent practical and economically feasible.

Environmental and Energy Efficiency Preferences. To the extent practicable, the WMSC prefers products and services that conserve natural resources, protect the environment, and are energy efficient.

Finally, the WMSC’s procurement procedures also address the following matters:

Procurement Methods. The specific procurement methods that may be used are discussed beginning on page 4 of this manual.

Legal Restrictions. The WMSC must comply with all applicable federal, state, and local restrictions on WMSC acquisitions.

Third-Party Contract Provisions. The specific third-party contract provisions required for each third-party contract including any flow-down requirements third-party subcontractors

Sources. The WMSC may acquire goods and services through several available sources; the most common source used by the WMSC is the open market. Other sources include WMSC employees (for services), joint procurements, state or federal purchasing schedules, and, in certain cases, existing contracts.

Resolution of Third-Party Contracting Issues. See page 30 of this manual for the WMSC’s procedures for resolving protests, changes and modifications, disputes, and claims and litigation.

17 Solicitation Prequalification Criteria [VI.1.c.(1) – (3)]

The WMSC does not engage in procurements that involve qualification periods or prequalification lists.

18 Award to Responsible Contractors [VI, 8. b.]

The WMSC will make contract awards only to “responsible” contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. The prospective contractor must demonstrate affirmatively that it qualifies as “responsible” under the standards of 49 U.S.C. Section 5325(j),



and that any proposed subcontractors also qualify as “responsible.”

A “responsible” contractor must at a minimum:

- Have a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A);
- Be neither debarred nor suspended from Federal programs under 2 CFR Parts 180 and 1200, or under 48 CFR Chapter 1, Part 9.4;
- Be in compliance with 2 CFR part 200’s affirmative action and FTA’s Disadvantaged Business Enterprise requirements;
- Be in compliance with the public policies of the Federal Government, as required by 49 U.S.C. Section 5325(j)(2)(B);
- Have the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D);
- Be in compliance with applicable licensing and tax laws and regulations;
- Have, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D);
- Have, or can obtain, the necessary production, construction, and technical equipment and facilities;
- Be able to comply with the required delivery or performance schedule;
- Be able to provide evidence of satisfactory current performance and satisfactory past performance;

- Have key personnel, a parent firm, or key subcontractors with adequate resources, experience, and past performance;
- Have past experience carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as required; and
- Have past Deficiencies, if any, that were beyond the control of the offeror, or for which the offeror has taken appropriate corrective action.

19 Sound and Complete Agreement [IV.2.b.(6)2; IV.2.b.(6)4]

All contracts issued by the WMSC are required to include provisions adequate to form a sound and complete agreement. Contracts exceeding \$10,000 must include termination for cause and termination for convenience provisions. Contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third-party contractor.

20 No Splitting [Micro-purchase] [VI.3.a.(2)(b)]

“Split procurement” or “split requirement” means breaking down an anticipated procurement into two or more purchases to reduce the dollar value of each to avoid more competitive procedures. Split procurements (a.k.a. “split requirements”) are prohibited. A buyer may not divide or reduce the size of its procurement merely to come within the threshold of a lower category of procurement.

21 Fair and Reasonable Price Determination [Micro-purchase] [VI.3.a.(2)(c)]

The only FTA-required documentation for micro-purchases is a determination that the price



is fair and reasonable and a description of how this determination was made.

23 Price Quotations [Simplified Acquisition Purchase] [VI.3.b.(2)(a)]

The WMSC must obtain price or rate quotations from an adequate number of qualified sources for each procurement, as appropriate to the category of procurement.

24 Clear, Accurate, and Complete Specification [III.3.a.(1)(a),(b),(d); VI.2.a.; VI.3.c.(2)(c)]

Each solicitation issued and contract awarded by the WMSC must provide a clear and accurate description of the technical requirements of the goods or services to be procured. The description may not contain features that unduly restrict competition; rather, a complete, adequate, and realistic specification or purchase description will be made available so that potentially suppliers can properly respond.

Whenever possible, WMSC procurement documents will describe technical requirements in terms of functions to be performed or the level or type of performance required, including the range of acceptable characteristics or minimum acceptable standards.

25 Adequate Competition – Two or More Competitors [Sealed Bid] [VI.3.c(1)(b); VI.3.d.(2)(c)]

Whenever feasible, the WMSC seeks to foster competition, defined as two or more proposals, in the procurement process.

26 Firm Fixed Price [Sealed Bid] [VI.3.c.(1)(c)]

The WMSC may elect to conduct a procurement through the solicitation of sealed bids.

27 Selection on Price [Sealed Bid] [VI.3.c.(1)(d)]

The selection of the successful bidder may be made based on price and those price-related factors included in the solicitation.

28 Discussions Unnecessary [Sealed Bid] [VI.3.c.(1)(e)]

No discussion with bidders is necessary when using this method.

29 Advertised/Publicized [Sealed Bid] [VI.3.c.(2)(a)]

The WMSC will solicit sealed bids via public advertisement.

30 Adequate Number of Sources Solicited [Sealed Bid] [VI.3.c.(2)(b)]

Sealed bids must be solicited from an adequate number of known and qualified sources/suppliers, as appropriate to the category of procurement being conducted.

31 Sufficient Bid Time [Sealed Bid] [VI.3.c.(2)(d)]

The WMSC must provide bidders adequate time to prepare bids prior to the date set for opening the bids.

32 Bid Opening [Sealed Bid] [VI.3.c.(2)(e)]

All bids must be publicly opened at the time and place prescribed in the invitation for bids.

33-34 Responsiveness [Sealed Bid] [VI.3.c.(2)(f)]

In a sealed bid procurement, the WMSC must offer a firm fixed-price contract award in writing to the lowest responsive and responsible bidder.



When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs would be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

35 Rejecting Bids [Sealed Bid] [VI.3.c.(2)(g)]

The WMSC may reject any or all bids if there is a sound, documented business reason for doing so.

36 Evaluation [RFP] [VI.3.d.(2)(b), (d)]

When using the RFP process, all evaluation factors will be identified in the procurement documents along with their relative importance. The WMSC has a method in place for conducting technical evaluations of the proposals received and for selecting awardees.

37 Price and Other Factors [RFP] [VI.3.d.(2)(e)]

When using the RFP process, award will be made to the responsible firm whose proposal provides the best value to the WMSC.

38 Sole Source if Other Award is Infeasible [Other Than Full and Open Competition] [VI.3.i.(1)(a)-(c),(e)]

Sole source procurement may be used only when award is infeasible under competitive procedures and at least one of the following circumstances applies:

- When the supplies or services are available from only one responsible source, and no other type of supplies or services will satisfy the WMSC's requirements; or
- When the WMSC's need for the goods or services is of such unusual and compelling

urgency that the WMSC would be seriously injured unless permitted to limit the number of sources; or

- When the public exigency or emergency for the requirement will not permit a delay resulting from a competitive solicitation; or
- The FTA authorizes noncompetitive negotiations; or,
- After solicitation of several sources, competition is determined inadequate.

39 Cost Analysis Required [Sole Source] [VI.6.a.]

A cost analysis is necessary when adequate price competition is lacking and for sole source procurements, including those resulting from contract modifications or change orders.

40 Evaluation of Options [IV.1.d.; VI.7.b.(1); V.7.a.(1)(c)1]

Options may be included in contracts to assure the future availability of goods or services. An option is a unilateral right in a contract by which, for a specified time, the WMSC may elect to purchase additional equipment, goods, or services called for by the contract, or may elect to extend the term of the contract.

In awarding the basic contract the WMSC shall evaluate offers for any option quantities or periods contained in a solicitation when it has been determined prior to soliciting offers that the WMSC is likely to exercise the options. When options have not been evaluated as part of the award, the exercise of such options is considered a sole source procurement.

41 Cost or Price Analysis [2 CFR §200.323]

The WMSC is required to perform a cost or price analysis in connection with every procurement action in excess of the Simplified



Acquisition Threshold, including contract modifications. The method and degree of analysis is dependent on the facts surrounding a particular procurement situation. A cost analysis must be performed:

- When the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, (e.g., under professional consulting and architectural and engineering services contracts, etc.);
- When adequate price competition is lacking, unless price reasonableness can be established based on a catalog or market price of a commercial product sold in substantial quantities to the general public;
- When adequate price competition is lacking, unless price reasonableness can be established based on prices set by law or regulation; and,
- For sole source procurements, including those arising from contract modifications or change orders, unless price reasonableness can be established on the basis of: (1) a catalog or market price of a commercial product sold in substantial quantities to the general public, or (2) prices set by law or regulation.

A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price. The WMSC will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.

To establish a fair and reasonable profit, consideration will be given to: (1) the complexity of the work to be performed, (2) the risk being borne by the contractor, (3) the contractor's investment, (4) the amount of subcontracting, (5) the quality of its record of past performance, and

(6) industry profit rates in the surrounding geographical area for similar work.

42 Written Record of Procurement History [III.3.d.]

The WMSC is required to maintain written records detailing the history of each procurement, as follows:

- Procurement Method: The rationale for the method of procurement, including a sole source justification for any acquisition that does not qualify as competitive;
- Contract Type: The reasons for selecting the contract type (fixed price, cost reimbursement, etc.);
- Contractor Selection: The reasons for contractor selection or rejection, including a written responsibility determination for the successful contractor; and
- Cost or price: The justification for the contract cost or price.

The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. These written records will vary greatly for different procurements. For example, a receipt or bill accompanying a \$100 credit card purchase might contain all of the required information to support that procurement. Procurements that are more substantial may require extensive documentation.

43 Exercise of Options [V.7.a.(1)(a) – (c)]

Options may be included in contracts to assure the future availability of goods or services. An option is a unilateral right in a contract by which, for a specified time, the WMSC may elect to purchase additional equipment, goods, or



services called for by the contract, or may elect to extend the term of the contract.

The WMSC must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.

An option may not be exercised (in a “piggybacking” scenario) unless the WMSC has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised. Note, this requirement to conduct a market analysis of prices, and determine that the option prices are still the best obtainable prices, does not apply when the WMSC is exercising an option on a contract that it has itself awarded.

Exercising an option after a lower price has been negotiated constitutes a sole source procurement.

44 Out of Scope Changes [VI.3.i.(1)(b)]

A contract change that is not within the scope of the original contract is considered a sole source procurement.

45 Advance Payments [IV.2.b.(5)(b)]

Advance payments are payments made to a contractor before the contractor incurs costs in the performance of the contract. FTA funds may not be used to make payments to a third-party contractor before the contractor has incurred the costs for which the payments would be attributable.

If contemplation is given to using FTA or local share funds to support advance payments, FTA Regional Office concurrence must be sought. That said, FTA concurrence is required only when advance payment or payments customarily required in the marketplace exceed \$100,000. Advance payments falling into this category

would include such things as utility services, and subscriptions to newspapers and magazines.

46 Progress Payments [IV.2.b.(5)(c)]

Progress payments are payments for costs incurred by the contractor in the performance of the contract before the contract work has been completed. FTA funds may be used to support progress payments if the WMSC obtains adequate security for those payments and has sufficient documentation to substantiate the work performed for which payment is requested.

Although progress payments for construction contracts may be made on a percentage of completion basis, this payment method may not be used in non-construction contracts. Note, the WMSC does not award construction contracts.

47 Time and Materials Contracts [VI.2.c.(2)(c)]

The WMSC will employ time and materials contracts only in extraordinary emergency circumstances. Time and material type contracts may only be used when: (1) the WMSC has determined that no other type of contract is suitable, and (2) the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

49 Liquidated Damages Provisions [IV.2.b.(6)(b)1]

The WMSC may use liquidated damages if the WMSC reasonably expects to suffer damages through delayed contract completion and the extent or amount of such damages would be difficult or impossible to determine. The rate and measurement period must be specified in the third-party contract and may not be excessive. The assessment for damages is usually established at a specific rate per day for each day beyond the contract’s delivery date or performance period, but a measurement period other than a day may be established if



appropriate. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

50 Piggybacking [V.7.a.(2)]

The WMSC may assign its contractual rights to purchase goods and services to other recipients if the original contract contains an appropriate assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded, or other appropriate assignment provisions. Some refer to this process as “piggybacking.”

If the goods or services were solicited, competed, and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract.

If the WMSC obtains contractual rights through assignment, it may exercise them after first determining that the contract price remains fair and reasonable, and all federal requirements have been addressed in the contract’s clauses. A second price analysis is not required if a price analysis was originally performed. However, a determination is required that the contract price or prices originally established remain fair and reasonable.

56 Required Federal Clauses [IV.2.]

Before FTA assistance may be used to support an acquisition, all applicable Federal requirements must be fulfilled.

Appendix A to this manual contains a summary of the contract clauses required to be included in contracts for goods and services to which Federal assistance requirements apply. Appendix A is adapted from AFTA Circular

4220.1F, Appendix D. Instructions for these clauses and suggested clause language may be found in the BPPM.

Definitions

“Authorized individual” means a WMSC employee who has been granted authority to buy supplies and services using proper contracting procedures.

“Architectural and engineering (A&E) services” means professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide such services associated with research, planning, development, design, construction, alteration, or repair of real property.

“Best and Final Offer” (BAFO) means a firm’s final offer following the WMSC’s conclusion of negotiations with firms that had previously been determined to be in the competitive range. A call for BAFOs is made in writing and provides notice to the offerors that negotiations are concluded, that offerors have an opportunity to submit their BAFOs, establishes a common date and time for vendors to submit written BAFOs, and advises offerors that the WMSC will select the source presenting the best BAFO that is most advantageous to the WMSC, based only on price and the other factors included in the solicitation.

“Best value” means the expected outcome of an acquisition that, in the WMSC’s estimation, provides the greatest overall benefit in response to the requirement.

“Brand Name” means the name of a product or service that is limited to the product or service produced or controlled by one private entity or by a closed group of private entities. Brand names may include trademarks, manufacturer names, or model names or numbers that are associated with only one manufacturer.



“Cardinal Change” means a major deviation from the original purpose or method of the work, or a revision of contract work so extensive that the contractor would be required to perform very different work from that described in the original contract.

“Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public.

“Clarifications” means limited exchanges, between the WMSC and offerors, that may occur when award without discussions is contemplated. If the solicitation provides for award without conducting discussions, offerors may be given the opportunity to clarify certain aspects of their proposals (e.g., the relevance of an offeror’s past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

“Commercial item” means any item, other than real property, that is of a type customarily used by the general public and which has been sold, leased, or licensed to the general public or which has been offered for sale, lease, or license to the general public. This includes installation services, maintenance services, repair services, training services, and other services if such services are procured for the support of a commercial item and the potential source provides similar services to the general public.

“Competitive quotation” means an informal, adequate solicitation to at least two known suppliers of goods or services to confirm specifications, terms, and pricing for a specific purchase requirement.

“Cost analysis” is the element-by-element examination of the estimated or actual cost of

contract performance to determine the probable cost to the vendor. The goal is to form an opinion on whether the proposed costs are in line with what reasonably economical and efficient performance should cost. Some of the cost elements examined for necessity and reasonableness are materials costs, labor costs, equipment, overhead, and profit. The end result of a cost analysis supporting a particular purchase or contract must be a determination that the price is “fair and reasonable.”

“Competitive range” means the range of proposals that the Source Selection Chair has identified as the most highly rated, unless the range is further reduced for purposes of efficiency (provided that the solicitation notifies offerors that the competitive range might be limited for purposes of efficiency). The competitive range is determined based on the ratings of each proposal against the solicitation’s evaluation factors. Significant weaknesses, deficiencies, and other aspects of proposals remaining in the competitive range must be made known to and discussed with each offeror still being considered for award. At the time that the competitive range is determined, all offerors who have been eliminated from the competitive range must be provided with written notice that they have been eliminated from further consideration for award.

“Day,” unless otherwise specified, means calendar day.

“Disadvantaged Business Enterprise” or “DBE” means a for-profit small business that has been certified as having: (1) at least 51 percent ownership by one or more individuals who are socially or economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and, (2) its management and daily operations controlled by one or more of the socially and economically disadvantaged individuals who own it.

“Discussions” are negotiations that occur after establishment of the competitive range that



may, at the subrecipient's discretion, result in the offeror being allowed to revise its proposal.

"Dispute" is a disagreement between the WMSC and a contractor over the payment of money, the adjustment or interpretation of contract terms, any claims arising out of or relating to any aspect of any decision to deny, suspend, or cancel, terminate or not renew, any contract.

"Evaluation criteria" means the factors that will be considered in evaluating offeror responses to the solicitation's stated requirements. These must be clearly identified and describe how the offerors' responses will be evaluated.

"Fair and reasonable" means the price that a prudent businessperson would pay for an item or service under competitive market conditions, given a reasonable knowledge of the marketplace. A "fair and reasonable" pricing determination must be made during every procurement prior to award.

"Formal solicitation" refers to the structured process of seeking proposals from suppliers to provide a solution to a problem or other desired outcome. Proposals are publicly advertised, evaluated, negotiated, and awarded based on price as well as other weighted factors. All solicitations shall identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

"Full and open competition" means that all responsible sources are permitted to compete.

"Goods" means all material, equipment, supplies, printing, as well as, information technology hardware and software.

"Independent Cost Estimate (ICE)" means an estimate of the anticipated cost or price to be paid for an item, service, or project that is developed by an entity or entities not associated with the item, service, or project to be procured. To be considered "independent," the estimate cannot

be developed by any potential source, supplier, or provider of the item, service, or project. However, it is acceptable to have an "independent" third party develop the estimate for the purchasing activity if that party has no interest in bidding or offering on the procurement. For more complex procurements, the Independent Cost Estimate represents the documented result of a practical and unbiased analysis, assessment, and quantification of all costs and risks associated with a procurement. The Independent cost Estimate must be based upon the procurement's technical specifications, and it serves as an essential tool for conducting the subsequent required cost or price analysis.

"Informal solicitation" refers to the micro-purchase method of requesting supplier quotations using methods that differ significantly from the solicitation of proposals for more complex goods or services using the RFP process.

"Interested party" means, for the purpose of filing a protest, an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

"Liquidated Damages" are authorized when the WMSC reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the WMSC's costs should the standards not be met, and must be specified in the solicitation and contract. The procurement file should include a record of the calculation and rationale for the amount of damages established.

"Market prices" means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.



“Market research” means collecting and analyzing information about capabilities within the market to satisfy agency needs.

“Micro-purchase” refers to the acquisition of goods and services in amounts not exceeding \$10,000 using the procedures described in this manual.

“Negotiation” means contracting using either competitive or other-than-competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract. Negotiation is a procedure that includes receiving proposals from offerors, evaluating such proposals in accordance with the solicitation’s stated evaluation factors, bargaining with offerors, and providing offerors with an opportunity to revise offers before the award of a contract. Bargaining in the sense of discussion, persuasion, alteration of initial assumptions and positions, and give-and-take may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

“Notice of Intent to Award” means the written or electronic notice that the WMSC publishes or publicly posts indicating that it has completed bid or offer evaluations and intends to award a contract or multiple contracts under a specific solicitation. The Notice, as a minimum, must identify the: (1) Contact information for the person making the award; (2) Applicable solicitation number and title; (3) Applicable contract number, term, and value; and, (4) Intended contractor(s) and address(es).

“Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to Invitations for Bids (sealed bidding) are offers called “bids” or “sealed bids”; responses to Requests for Proposals (negotiation) are offers called “proposals.”

“Offeror” means the firm or entity that is submitting an offer in response to a Request for Proposals.

“Option” means a unilateral right in a contract by which, for a specified time, the WMSC may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

“Past performance” means an offeror’s or contractor’s performance on both active and completed contracts.

“Piggybacking” is the post-award use of a contractual document/process that allows someone who was not contemplated in the original procurement to purchase the same supplies/equipment through that original document/process.

“Price Analysis” is the process of evaluating a proposed price without evaluating its separate cost elements and profit/fee. The result of any price analysis leading to a contract or purchase is a determination that the quoted price is “fair and reasonable” and is the basis for making such a determination.

“Procurement” refers to a range of activities related to purchasing goods and services. It is a process that typically begins with the specification, proceeds through solicitation and award, and ends with receipt, acceptance, and payment. Procurement is the process by which an organization translates its requirements into purchase orders or contracts.

“Procurement Plan” means the written document that describes the overall strategy for the procurement and the efforts of all personnel responsible for coordinating and managing their activities to ensure that the WMSC’s needs are met in a timely manner and at a reasonable cost. It also describes the process for evaluating offers and making the decision to award.

“Proposal modification” is a change made to a proposal before the solicitation’s closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.



“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by the WMSC as the result of negotiations.

“Protest” is a formal challenge to the terms of a solicitation; the cancellation of a solicitation; the award, or proposed award, of a contract; or, the termination or the cancellation of an award, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

“Purchase card” means a bank-issued payment card for making authorized WMSC micro-purchases.

“Purchase order” means an authorized written offer by a recipient to buy goods or services under specified terms and conditions.

“Qualified source” or “qualified supplier” means a supplier that has the abilities, qualities, attributes, etc., necessary to perform the work required or furnish the items or services solicited.

“Quotation” means a supplier’s response to an informal solicitation of potential suppliers of goods or services to confirm specifications, terms, and pricing for a specific purchase requirement.

“Responsible” refers to a set of tangible characteristics (e.g., ability, willingness, integrity, etc.) that would make a supplier eligible for award. This is addressed in more detail on page 11 of this manual.

“Request for Proposals” means a written solicitation that will use negotiation procedures (as opposed to sealed bids).

“Responsive” refers to a quotation or proposal that meets all of the submission requirements and instructions.

“Salient characteristics” means those qualities of an item that are essential to ensure that the intended use of the item can be satisfactorily realized. The term is used in connection with a “brand name or equal” purchase description.

“Services” means any type of work, task, or activity performed by a third-party on behalf of the WMSC that does not result primarily in the acquisition of goods. The following are examples of contracts for services: accounting, auditing, catering, information technology support, legal work, management consulting, etc.

“Small purchase” refers to the acquisition of goods or services in an amount exceeding \$10,000 but not exceeding \$250,000 using the procedures described in this manual.

“Solicitation” means any request to submit offers or quotations. Solicitations under sealed bid procedures are called “Invitations for Bids.” Solicitations under negotiated procedures are called “Requests for Proposals.”

“Source Selection” means the formal process of evaluating competitive proposals in accordance with established source selection policies, procedures, and criteria to ultimately enter into a procurement contract. All solicitations shall identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

“Source selection information” means any of the following information that is prepared for use by the WMSC for the purpose of evaluating a bid or proposal to enter into a contract, if that information has not been previously made available to the public or disclosed publicly:

- Bid prices submitted in response to an invitation for bids, or lists of those bid prices before bid opening;



- Proposed costs or prices submitted in response to a solicitation, or lists of those proposed costs or prices;
- Source selection plan;
- Technical evaluation plans;
- Technical evaluations of proposals;
- Cost or price evaluations of proposals;
- Competitive range determinations;
- Rankings of bids, proposals, or competitors;
- Reports and evaluations of source selection panels, boards, or advisory councils; and,
- Other information marked as “Source Selection Information” that, if disclosed, would jeopardize the integrity or successful completion of the procurement.

“Split procurement” or “split requirement” means breaking down known requirements into two or more purchases to reduce the dollar value of each to avoid more competitive procedures. Split procurements (a.k.a. “split requirements”) are prohibited.

“Technical Evaluation Committee” is a group of individuals assigned to evaluate proposals received in response to an RFP.

“Writing,” “written,” or “in writing” means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

Procurement Procedures

The following procedures apply to all categories of procurement, with requirements

applicable to a given category of procurement specifically indicated.

Use appropriate specifications

Develop a specification that best describes the product or service needs clearly, comprehensively and accurately, and facilitates “full and open” competition. The stated evaluation factors and subfactors must be tied to significant requirements of the specification.

When there is no clear and accurate description available, the authorized individual is required to use a “brand name or equal” description, describing only the salient characteristics of the named brand that suppliers must provide. The purchase description should address only those important physical, functional, or other characteristics of the “brand name” product that an equal product must have in order to satisfy the requirement.

Micro-purchases: Excessively detailed specifications are not appropriate for micro-purchases and may discourage potential sources from providing a quotation.

Prepare an Independent Cost Estimate

An Independent Cost Estimate is required before receiving bids or proposals. Form WMSC-P-02, Independent Cost Estimate, provides a form that can be used for this purpose. When purchasing a commodity, estimate the quantity as accurately as possible. If prepared with sufficient detail and reliability, the estimate alone may be sufficient to determine whether the quoted price is “fair and reasonable.”

Sources of Independent Cost Estimates can include:

- Published catalog or price lists (citing sources);



- Past pricing from recent contracts or purchase orders regardless of whether WMSC-issued or FTA-compliant, adjusted for inflation if appropriate (citing the specific prior contracts/purchase orders); and,
- Estimates developed by in-house personnel; and/or by independent third-party firms.

For RFPs only: Prepare a written procurement plan

Prepare a written procurement plan that addresses the following items:

- The title of the procurement;
- Method of procurement;
- Contract term (including any option periods) and rationale for same;
- Estimated annual costs (ICE);
- Relevant historical contract data for similar previous procurements (if any);
- Method(s) for advertising the procurement to maximize “full and open” competition;
- Any special contract provisions (e.g., option periods, economic price adjustment, etc.);
- The evaluation criteria (factors) and weights; and,
- Proposed technical evaluation committee members.

The procurement plan must also include a milestone timeline that considers receiving approval of the Commissioners as well as the timing of any oral presentations.

For RFPs only: Prepare the RFP

Prepare an RFP that includes all documents (whether attached or incorporated by reference) furnished to prospective offerors for the purpose of submitting an offer. Do not use unnecessarily restrictive specifications or requirements that might unduly limit the number of prospective offerors. As a minimum, include provisions that clearly state or identify:

- A deadline and instructions for submitting proposals;
- Any plans to hold a pre-proposal conference;
- That offers, if appropriate, will be evaluated and may be considered for award without discussion with any offeror (in this case, “clarifications” are permitted);
- That award will be made to the responsible offeror whose offer has been determined to represent the best value to the WMSC; and,
- Option years and the method used to calculate prices for option years, if applicable.

Provide reasonable time before the solicitation closing date to enable prospective offerors adequate time to prepare and submit offers, recognizing that setting unreasonable time limitations may impact the level of competition and/or result in higher offer prices than anticipated.

The RFP must contain language describing how proposals will be evaluated for award, including identifying the evaluation factors and their relative importance (rank order); however, weights assigned to each factor need not be disclosed in the RFP.

The RFP must state that if oral presentations are held, such presentations will be time limited for all offerors, structured, and documented. Further, that no offeror will be provided an



opportunity to submit a revised proposal unless all offerors are provided the same opportunity to do so based upon a subsequent RFP amendment that addresses issues that arose during oral presentations and that would have an impact on all offerors.

The RFP must state that if negotiations are held, such negotiations will be held with all offerors in the competitive range and that no offeror will be provided an opportunity to submit a revised proposal unless all offerors in the competitive range are provided the same opportunity to do so based upon a subsequent RFP amendment that addresses issues that arose during negotiations and that would have an impact on all offerors. Negotiations will be held with all offerors in the competitive range (e.g., a change in specification, delivery requirement, etc.).

Solicit an adequate number of sources

Micro-purchases: To help facilitate adequate competition, solicit at least two qualified suppliers. There may be circumstances in which only one source is solicited (e.g., a replacement part where an existing equipment warranty might otherwise be jeopardized). If soliciting only one source, rotate the placement of orders among qualified suppliers, if more than one. Keep records of items purchased, suppliers awarded, and associated dollar amounts to help monitor the equitable distribution of like orders.

An informal solicitation may be made in through email (using Form WMSC-P04, the Request for Quotation form). Give all potential suppliers the same item description or specification as well as a closing date and time by which quotations should be submitted.

Small purchases: Generally, at least three firms should be solicited for each small purchase to ensure competition. However, there may be justifiable circumstances in which only one source is solicited (e.g., an OEM replacement

part where an existing equipment warranty might otherwise be jeopardized).

Most small purchases are obtained informally. Posting small purchase requirements of any value on the WMSC's website may help foster full and open competition. Such a posting is required for purchases exceeding \$50,000.

Give all potential suppliers the same item description or specification as well as a closing date and time by which quotations should be submitted.

No small purchase may be awarded without the required quotations or without an appropriate waiver or sole source justification. Use Form WMSC-P03, Sole Source Justification, for this purpose. Evidence of market analysis and the appraisal of competition should be included for every sole source procurement. Whether or not only one source is solicited, the buyer must always document the basis for finding the awardee's price to be "fair and reasonable."

For each procurement, compile a Bidders List that documents: the firm's name, address, status as a DBE or non-DBE, age of the firm, and, the annual gross receipts of the firm. Form WMSC-P06 may be used to compile this information.

Micro-purchases and small purchases: If a purchase requisition form is used, competitive quotes can be noted on the form. Alternatively, the Micro- and Small Purchase Source List and Abstract can be used as a single document for noting such things as the sources sought, quotes received, winning supplier, basis for award, etc. This documentation must be retained in the procurement file.

RFPs: All RFPs are to be posted on the WMSC's public website and advertised, as appropriate, in other appropriate sources to foster full and open competition



Evaluate quotations

For Micro-purchases and small purchases: Evaluate all quotations received on the basis specified in the solicitation, inclusive of transportation charges from the supplier's shipping point to the delivery destination. Discounts offered should not be evaluated (because they may not actually be taken) but must be stated on the purchase order document.

For RFPs only: Conduct a Pre-Proposal Conference

A pre-proposal conference, if held, may provide an opportunity to discuss the solicitation requirements, including explaining complicated specifications, and to address any questions from potential offerors. Such conference is held as early as possible after the RFP has been issued and before the solicitation closing date. Representatives hosting the pre-proposal conference must include individuals who can address the specifics of the procurement including any historical data that would help offerors consider whether to participate in the procurement. Although potential offerors may not be required to attend a pre-proposal conference, offerors should be highly encouraged to attend.

The pre-proposal conference must be documented. All questions raised and answers provided shall be addressed in a subsequent solicitation amendment issued to the complete list of potential sources, whether or not such potential offerors attended the pre-proposal conference.

For RFPs only: Issue appropriate solicitation amendments

Any changes in solicitation requirements (e.g., special provisions, specifications, changes in quantity, delivery schedules, closing dates, or to correct a solicitation, etc.) that will affect all potential offerors must be made by a formal written amendment to the solicitation.

All questions raised and answers provided during or as the result of a pre-proposal conference must be addressed promptly in a solicitation amendment issued to the complete list of potential sources, whether or not such potential offerors attended the pre-proposal conference.

Any questions raised by potential offerors prior to the solicitation closing date that have a potential impact on all offerors (e.g., questions that resulted in a change in the specification) must be addressed promptly in a solicitation amendment issued to all offerors before the closing date.

If negotiations are held, any questions raised during negotiations with individual offerors in the competitive range that have a potential impact on all offerors in the competitive range (e.g., questions that resulted in a change in the specification, etc.), must be addressed in a solicitation amendment issued to all offerors in the competitive range before a call for Best and Final Offers (BAFO).

Before amending the RFP, consider the time remaining until the closing date and the need to extend this period to permit prospective offerors to consider the additional information in submitting or modifying their proposals. When only a short time remains before the time set for closing, first notify offerors on the source list of the time extension by e-mail or telephone. Confirm such extension in the solicitation amendment.

Amendments shall be sent, before the time for closing, to everyone to whom the RFP has been provided, and also posted on the WMSC's public website.

For RFPs only: Receive, evaluate, score, and safeguard offeror proposals

Offers must be received at a set date and time. Offers must be evaluated and scored in strict accordance with the established criteria. All



source selection documentation must be retained with the Procurement History File.

To protect the competitive process, all offers must be safeguarded from inadvertent release to unauthorized personnel.

Once the technical evaluation committee has completed its initial technical evaluation of offers and ranked the offerors on all factors except price, the committee may:

- Open and score the attendant pricing proposals to determine the apparent successful offeror based upon the final evaluation scoring which includes price; or,
- Provide offerors with a list of questions or issues concerning their proposals that require explanation or clarification and schedule the offerors for oral presentations to address such issues concerning their proposals (but not to modify their proposals); after such presentations; or,
- Negotiate any outstanding conditions, exceptions, reservations, or understanding to any of the contractual requirements, including any pricing issues, with a "short" list of the top-ranked. This short list would be determined after the pricing proposals have been opened and made a clear demarcation between offerors who have made the short list and those who have not. Following negotiations, offerors would be required to submit a "Best and Final Offer (BAFO)" that would reflect any modifications made to their proposals as a result of the negotiations. The evaluation committee would conduct a final technical evaluation and the evaluate any revised pricing proposals, including option year pricing, if applicable, before making a determination of the apparent successful offeror.

For RFPs only: Conduct any oral presentations and/or negotiations

Oral presentations and negotiations are not required, but may be useful.

Oral presentations are an efficient way to obtain essential information from offerors regarding their proposals. Oral presentations are different from negotiations in that offerors are not permitted to modify their proposals as a result of such presentations.

Negotiations provide an opportunity for the WMSC and offerors to address pricing and other issues that may require a modification of an offeror's proposal or a contract term or condition.

The proceedings for both oral presentations and negotiations shall be formal and structured, as well as documented with each offeror provided with a date and time for its scheduled presentation or negotiation session. Oral presentations are time limited for each of the offerors and followed by a question and answer session. Negotiations sessions are not time limited.

The evaluation committee may limit the number of offeror representatives present at either oral presentations or negotiations, but attendees should generally include the proposed project manager, other key personnel, and representatives from any major subcontractor.

Following negotiations, offerors shall be required to submit a BAFO reflecting any modifications made to their proposals as a result of the negotiations. The evaluation committee shall conduct a final technical evaluation using the same criteria, structure, and format as used for the initial technical evaluation. The committee shall evaluate and rank any revised pricing proposals before making a determination of the apparent successful offeror.



Determine price reasonableness

The WMSC may only contract for goods and services at fair and reasonable prices. Before the WMSC issues a purchase order or awards a contract, the WMSC must determine that the price is fair and reasonable. "Price analysis" or "cost analysis" as described below is the process used to make this determination.

Micro-purchases: The required price analysis for micro-purchases need not be extensive, and the Cost/Price Analysis form may be used for this purpose. Among other things, the form allows the annotation of a finding of "fair and reasonable" pricing.

Small purchases: For many small purchases, it may be possible to do an abbreviated price analysis, similar to the method used for micro-purchases. One method to record this price analysis is using the Micro/Small Purchase Source List and Abstract. Among other things, the form allows the annotation of a finding of "fair and reasonable" pricing by checking off the most common reasons for such a determination (e.g., catalog or market prices for standard commercial items sold on the open market in substantial quantities to the general public, regulated prices (for example, for utilities purchases), or a comparison with recent prices for similar goods and services, etc.). These are discussed in more detail in paragraph d, below.

General requirements:

When conducting price analysis, it is important to:

- Develop and examine data from multiple sources which will help prove or suggest that the proposed price is fair;
- Determine when multiple data consistently indicate that a given price represents a good value for the money; and,

- Document the data sufficiently to convince a third-party reviewer that the conclusions are valid. This will include a statement like, "The price is fair and reasonable because it was within x% of the ICE."

Several price analysis techniques are available to determine that a price is "fair and reasonable." These techniques can be used individually or, if quoted prices vary significantly between offerors, in combination to help explain any significant price variances. The techniques are briefly described below:

- Comparison of proposed prices received. Normally, adequate price competition establishes price reasonableness. This is the most commonly used technique, as most procurements attract two or more offers that are competing independently for the award.
- Comparison with previously proposed or awarded prices. This comparison must be for the same or similar items. If using contract prices that are a year or more old, use an appropriate Consumer or Producer Price Index to update the contract price. In addition, both the validity of the comparison and the reasonableness of the previous price(s) must be established and documented in the determination. (Note: There is no requirement to limit comparisons to FTA-assisted contracts. For example, if the same or similar item has been purchased by a municipal police or public works department, it is acceptable to use those prices if the sources are properly identified and adjusted to reflect inflation, etc.)
- Using parametric estimating methods or application of rough yardsticks. For example, comparing a proposed price against an established commercial benchmark.
- Comparison with competitive published catalogs or price lists. These may include published market prices of commodities,



similar indexes, and discount or rebate arrangements.

- Comparison with Independent Cost Estimates. See the section above, "Prepare an Independent Cost Estimate."
- Comparison with prices obtained through market research for the same or similar items. For example, trade journals, newspapers, and economic indexes can provide useful comparative information.
- Analysis of pricing information provided by the offeror. This "catch-all" category includes information that does not fall into the other categories and may include verifiable sales information for like or similar items sold to the supplier's other customers.

Cost analysis must be performed on all change orders. Documentation must include the review and justification of the contractor's proposed change and any associated profit negotiations. The cost analysis form may be used for this purpose.

Determine supplier "responsibility" and "responsiveness"

Before award, a written determination that the proposed awardee is "responsive" and "responsible" and must be made. For most micro-purchases, this is a relatively simple matter to research and can be documented by checking the appropriate blocks on the Micro/Small Purchase Source List and Abstract form.

A responsive supplier is one that has followed all the procurement submission requirements and instructions.

Typical supplier "responsibility" characteristics include:

- Having a satisfactory record of integrity and business ethics;

- Not being debarred or suspended from doing business with the government;
- Being in compliance with affirmative action rules and Disadvantaged Business Enterprise requirements;
- Having, or having the ability to obtain the necessary organization, experience, accounting, and operational controls, and technical skills to perform the work;
- Being in compliance with applicable licensing and tax laws and regulations;
- Having, or having the ability to obtain, sufficient financial resources to perform;
- Having, or having the ability to obtain, the necessary production, construction, and technical equipment and facilities to perform;
- Being able to meet the required delivery or performance schedule; and
- Having a satisfactory record of past or current performance.

Data to help determine whether a potential supplier is responsible are available from multiple sources including in-house experts familiar with the supplier, external agencies or customers, and the System for Award Management (SAM) managed by the General Services Administration.

For RFPs only: Make award and notify unsuccessful offerors

After receiving approval of the WMSC Commissioners to award the contract, the WMSC will notify the awardee and notify unsuccessful offerors via email, providing unsuccessful offerors the opportunity to request a debriefing. Any debriefing should be structured and recorded in case a protest is filed.



Required clauses

Micro-purchases: No federal clauses are required for purchase orders or contracts for micro-purchases.

Small purchases and RFP procurements: A summary of required federal clauses is attached to this manual as Appendix A.

Making award and addressing a counteroffer

Micro-purchases: Award is made to the responsible supplier receiving the best evaluation score.

Small purchases: Any contract with an annual value of more than \$50,000 must be approved by the WMSC Commissioners prior to award.

General requirements:

Normally, a written purchase order is issued shortly after receiving and evaluating either quotations. The Request for Quotation form and the Micro/Small Purchase Source List and Abstract are provided to help document the required actions prior to the issuance of any purchase order.

The applicable terms and conditions, including all required federal clauses, should be stated on or included with the purchase order. Suppliers should be notified that the WMSC's terms and conditions shall govern.

If a supplier acknowledges a purchase order and inserts additional qualifying terms such as "prices subject to change prior to delivery" or "prepayment required," such qualified terms will constitute a counteroffer and will entitle the WMSC to cancel the order outright or to reject the counteroffer as unacceptable and attempt to negotiate acceptance of the governing terms. That said, if the terms of the counteroffer are acceptable, and do not conflict with the standard

terms and conditions, the counteroffer may be accepted.

Document the file

At a minimum, the Procurement History File must contain or address the following items or elements:

- A written History of Procurement;
- A funded Purchase Request with an appropriate description or Statement of Work;
- An Independent Cost Estimate and any supporting documents;
- A funded Purchase Request with an appropriate item description, specification, or Statement of Work;
- For small purchases: Evidence of competitive quotations solicited and evaluated as well as any supporting documents;
- Price or cost analysis, including any supporting documents, and a determination that the price offered by the successful offeror is "fair and reasonable" and any supporting documents;
- A written determination that the proposed contractor is "responsible";
- Evidence of any required approvals;
- For Micro-purchases and small purchases: A copy of the written and signed Purchase Order; and
- Any additional supporting documents such as Form WMSC-P06, Bidders List.

The following requirements apply to RFPs:

- The Procurement Plan and timeline;



- A sole source justification explaining the single-offer circumstances, if necessary;
- A copy of the final solicitation (as amended) and any supporting documents such as pre-proposal conference notes and questions and answers;
- The date the RFP and any amendments were posted and the closing date;
- A copy of the contract that is consistent with the solicitation, including applicable federal clauses;
- All documents relating to source selection;
- A copy of all proposals received including offeror acknowledgment of any solicitation amendments and BAFOs, if applicable; and
- Evidence of WMSC Commissioner approval; and
- A copy of the signed contract.

Changes

All post-award changes and modifications to resolve issues, make clarifications, correct errors, exercise option periods, and the like must be documented and added to the file.

Period of performance

The duration of contracts must be reasonable. Contract time extensions must be considered in light of whether they are permissible changes or impermissible cardinal changes. Once awarded, an extension of the contract term length that amounts to a cardinal change requires a sole source justification.

Options

The WMSC may include options in its contracts. An option is a unilateral right in a

contract by which, for a specified time, the WMSC may elect to purchase additional equipment, goods, or services per the contract, or may elect to extend the term of the contract.

The option quantities or periods contained in the bid or offer must be evaluated to determine contract award. When options have not been evaluated as part of the award, the exercise of such options is considered a sole source procurement.

The exercise of an option must be in accordance with the terms and conditions of the option stated in the initial contract awarded. An option may not be exercised unless the recipient has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised. At the time options are signed, updated federal clauses must be included. The contractor should have signed copies of the clauses for every year of the contract.

Protests, Disputes, Claims, and Litigation

In addressing protests, disputes, claims, and litigation, the WMSC will document and maintain records to show its reasonable and prudent measures to prevent or offset the actions or circumstances resulting in the underlying protest, dispute, claim, or litigation. The WMSC will notify, update, and consult with the FTA concerning protest, dispute, claim, or litigation, as required and described in Chapter VII of [FTA Circular 4220.1F](#).

Protests

Any aggrieved bidder or offeror may protest the WMSC's decision to award a contract. An "aggrieved bidder or offeror" is one who is an actual or prospective bidder or offeror, and who may be eligible for award of a contract if the protest is sustained. (For example: a fourth-



ranked offeror will not be considered “aggrieved” and eligible to initiate a protest, unless the grounds for a protest, if sustained, would disqualify each of the top three ranked bidders or offerors or would require that the solicitation be cancelled and reissued).

A protest must be submitted to the WMSC’s CEO (via email to correspondence@wmsc.gov) within five business days of the date when the protester has received actual or constructive notice of the WMSC’s decision to award a contract.

The written protest shall identify the action being protested, or other basis for the protest, and it shall identify the specific relief sought. The written protest shall specifically describe relevant facts and documents, and shall cite to relevant language in the solicitation, WMSC Procurement Policy, and any law relied upon.

The WMSC shall not consider a protest from an unsuccessful bidder or offeror alleging that the successful bidder or offeror is non-responsible, except for: a good faith assertion, supported by verifiable factual evidence included with the written protest, that the successful bidder or offeror is debarred by a federal, state or local governmental authority; or, a good faith assertion, supported by verifiable factual evidence included with the written protest, that the successful bidder or offeror does not hold a license or certification required by a governmental authority for or in connection with the provision of goods or services that are the subject of the solicitation. Except as noted above, no protest based on an allegation of non-responsibility of the successful offeror shall be deemed “valid” for purposes of this section.

The WMSC shall not consider a protest presented by an interested party challenging the validity of the terms or conditions of any solicitation. No such claim shall be deemed “valid” for purposes of this section.

The WMSC CEO shall have authority to make a final determination of whether a particular

protester qualifies as an “interested party,” whether a particular claim constitutes a valid protest, and to make final decisions on valid protests initiated by interested parties.

The CEO shall issue a decision via email within five working days after receipt of a protest, stating the CEO’s findings and the reasons for the action taken. However, the CEO may, in his or her sole discretion, afford an interested party the opportunity to present a valid protest in person before a final decision is rendered. If an in-person hearing is afforded, the CEO shall render his or her written decision within five business days after the presentation. Decisions of the CEO shall be final.

Pending final determination of a protest, the validity of a contract awarded and accepted in good faith in accordance with this procurement manual shall not be affected simply because a protest or appeal has been filed. The WMSC is not required or compelled to delay the award of a contract during the period allowed for initiation of protests; however, if a protest is received prior to a decision to award a contract, then no further action shall be taken to award the contract unless: the CEO renders a written determination that proceeding without delay is necessary or a bid or offer would expire before a final decision on the protest can be rendered.

Disputes

When disputes arise between the WMSC and a contractor, the WMSC will make a good faith effort reach mutually acceptable resolution at the lowest level possible and as quickly as possible. If not successful, the contractor may file a formal Dispute Resolution Request (DPR) with the WMSC CEO.

The DPR must be sent to the CEO (via email to correspondence@wmsc.gov). It shall include the following information:

- The name, address, and telephone number of the person filing the Request;



- Identification of the contract number that is the subject of the dispute;
- A statement of the factual grounds supporting the dispute;
- Any other documentation in support of the dispute; and,
- A statement of the relief requested.

The CEO shall have the exclusive authority to decide all DPRs. The CEO shall issue a written decision within thirty (30) calendar days receipt of a DPR. The decision shall include:

- A brief description of the claim;
- A reference to the pertinent solicitation or contract provision;
- A brief statement of the factual issues; and
- A statement of the CEO's decision with supporting rationale and the remedial action and/or award, if any.

Pending claims shall not delay payment for undisputed amounts that may be due the contractor.

Claims and Litigation

The WMSC will take reasonable measures to pursue its rights and remedies available under law, including settlement. If a grant agreement establishes that the FTA has a financial interest in the settlement of claims and litigation, the WMSC will consult with the FTA regarding any proceeds recovered or any liquidated damages.

The WMSC will enter into a settlement only if the terms are reasonable, and the WMSC will consult with the FTA prior to entering into a settlement agreement, if required by the provisions of Chapter VII of [FTA Circular 4220.1F](#).



Appendix A: Matrix of Required Federal Clauses

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE
All FTA Assisted Third Party Contracts and Subcontracts		
No Federal Government Obligations to Third Parties (Use of Disclaimer)		§ 3.l
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 4.e
Access to Third Party Contract Records		§ 16.t
Changes to Federal Requirements		§ 3.i.6
Civil Rights (Title VI, ADA, EEO (except special DOL construction clause))		§ 12
Disadvantaged Business Enterprises (DBEs)	Contract awarded on the basis of a bid/proposal offering to use DBEs.	§ 12.e
Incorporation of FTA Terms	Per FTA C 4220.1F.	§ 16.a
Notification of federal participation for States		§ 37
Conformance with national ITS architecture		§ 16.m
Awards Exceeding \$10,000		
Terminations		§ 11 and § 16.e(2)
Awards Exceeding \$25,000		
Debarment and Suspension		§ 16.d
Awards Exceeding the Simplified Acquisition Threshold (\$250,000)		
Resolution of Disputes, Breaches, or Other Litigation		§ 16(e)(1)
Lobbying		§ 4.c
Clean Air		§ 16(e)(7), 26(d)
Clean Water		§ 16(e)(7), 26(d)
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel.	§ 15.b
Non-construction Activities		
Non-construction employee protection	For all turnkey, rolling stock, and operational contracts (except transportation services contracts	§ 24.b



PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE
Contract work hours & Safety Standards Act	and open market contracts) exceeding \$100,000.	
Motor Vehicle Procurements		
General	49 CFR part 571	
Motor vehicle safety standards – preaward review and post delivery requirements	49 CFR part 663	
Transit Safety		
Drug use and testing – safety sensitive functions		§ 35
Alcohol misuse and testing – safety sensitive functions		§ 35

Note: This matrix only includes procurement types that the WMSC is likely to conduct. For the entire matrix, refer to FTA Circular 4220.1F, Appendix D.