



STAFF REPORT/RESOLUTION

TO: Southwest Washington Regional Transportation Council Board of Directors
FROM: Matt Ransom, Executive Director *MR*
DATE: January 30, 2018
SUBJECT: **RTC Procurement Policy – Amendment, Resolution 02-18-04**

AT A GLANCE – ACTION

The purpose of this memorandum is to transmit the attached update of the RTC Procurement Policy for Board review and approval.

BACKGROUND

RTC Procurement is carried out by the staff of RTC under the guidance of the Executive Director and Board. Best practices suggest that an organization's Procurement Policy is periodically reviewed and changed as necessary to reflect current regulatory guidance, promote purchasing efficiency, and ensure implementation of best practices.

RTC's Procurement Policy is implemented according to the most restricted funding agencies' policies. This procedure has ensured that RTC has been compliant in the use of various funding sources as reflected in the historical audit record of the agency.

RECOMMENDED AMENDMENTS

RTC staff has reviewed the current procurement practices and recommends revisions in the following areas to accomplish the purchasing goals and compliance of the agency.

Policies:

- 1.3 Code of Ethics. A clarifying clause is recommended to stipulate that the Board Executive Committee will review and take action on matters related to conflicts of interest.

Supplemental Provisions:

- 4.3.3 Exempt Procurements. Added a clause providing that accounting, actuarial, and audit services are exempt procurements.

Purchasing (Credit) Cards:

- 5.1 Parameters. Added a clause providing that no gift card purchases are allowed.

Protest and Appeal Procedures:

- 6.1 Protest and Appeal Procedures. Added several clauses that synchronize the RTC procedures with those promulgated by applicable federal grant regulations.

Miscellaneous Scrivener Corrections:

- Various typographical and related corrections were made within the document to address scrivener type errors.

POLICY IMPLICATION

Periodic update of an RTC Procurement Policy and administrative procedures implements a sound financial management practices and ensures that RTC's business activities are carried out in an efficient and compliant manner. The current update to the RTC Procurement Policy includes expansion of the conflict of interest section to meet current federal standards.

BUDGET IMPLICATION

None. The proposed action has no direct Budget impact. Indirectly, documenting procurement practices meets compliance requirements.

ACTION REQUESTED

Adoption of Resolution 02-18-04 thereby updating the RTC Procurement Policy.

ADOPTED this 6th day of February 2018,
by the Southwest Washington Regional Transportation Council.

SOUTHWEST WASHINGTON
REGIONAL TRANSPORTATION COUNCIL

ATTEST:



Ron Onslow
Chair of the Board



Matt Ransom
Executive Director

Attached: RTC Procurement Policy

RTC PROCUREMENT POLICY

Purpose

This document establishes the policy through which goods and services will be procured by the Southwest Washington Regional Transportation Council (“RTC”), a voluntary association and joint board that provides coordinated transportation planning. Where a state or federal policy or other obligation requires that goods and services be procured through a certain process, such process shall supersede the guidelines set forth in this Policy.

It is the policy of the RTC to ensure that high quality goods and services are procured: (a) at the best available price and value; (b) through sound business and ethical practices; and (c) in a manner that promotes open and free competition.

Authority to Contract

The authority to enter into, making and performing contracts of any kind and description is established in the Articles of Incorporation of RTC. The Board has the authority to commit RTC resources and assign certain authorities for the execution of contract documents to the Executive Director. Further, the Board has the authority to delegate certain responsibilities to the Executive Director to carry out the administration of a comprehensive, compliant, and efficient procurement program.

1. POLICIES

1.1 Responsibilities

The Executive Director has primary responsibility and oversight for purchasing activities of RTC in accordance with and limited by the board-approved budget and policies and has authority to delegate administrative purchasing responsibilities as appropriate. The Executive Director will establish and periodically review and evaluate procurement procedures to ensure the best internal controls possible and will implement changes as necessary.

1.2 Contract and Grant Agreement Authority

The RTC Board grants certain authority to the Executive Director for the carrying out of financial and administrative responsibilities of the RTC. Those authorities include: the administration of the financial affairs of the organization; ability to enter into contracts and agreements consistent with the Procurement Policy and specific Board Resolutions; and to fulfill the fiduciary duties and provisions of the contracts and agreements entered into on behalf of RTC. The RTC Executive Director shall carry out these responsibilities consistent with the policies, procedures, and regulations (*current edition*) of RTC and of the contracting and grant funding entity.

1.3 Code of Ethics

No employee, officer, agent, board members, spouses, or immediate family members of RTC shall participate in selection, award of administration of a contract, or authorization of a purchase

if a conflict of interest, potential, real, or apparent would be involved. In the event a potential, real, or apparent conflict exists, the RTC Executive Committee will review the conflict and take any action deemed necessary.

The Executive Director shall require any person who serves on any committee established to assist the Executive Director in evaluating competing proposals or statements of qualifications to sign a conflict of interest/disclosure statement before receiving proposals or statements of qualifications that he or she: (a) does not have a conflict of interest concerning the procurement; (b) shall not discuss the procurement with any competing vendor except as permitted through these guidelines; and (c) shall not disclose information contained in the proposals or statements to any person during the evaluation process.

1.4 Open and Free Competition

To ensure open and free competition, the Executive Director shall ensure that:

- a) Unreasonable requirements shall not be placed on firms and/or individuals in order for them to qualify to do business.
- b) No geographical preferences shall be used in the evaluation of proposals.
- c) Contract specifications or statements of work may not unduly restrict competition and must identify the requirements that proposing firms and/or individuals must fulfill and the factors to be used in evaluating bids or proposals.
- d) Splitting purchases or contracts to avoid competition is prohibited.

1.5 Cancellation of Invitation for Bids and Rejection of Bids

The Executive Director may cancel an Invitation for Bids and reject all bids at any time during the procurement process. Notice of cancellation shall be sent to all persons who received a solicitation. Bids received by RTC shall be returned to the bidder. A bidder shall not be entitled to bid preparation costs due to the cancellation. If an Invitation for Bids is canceled after bids are opened or evaluated, notice of cancellation and rejection of all bids shall be sent to all bidders. All bids shall be retained in the procurement file for six years.

1.6 Disputes

RTC will handle and resolve disputes relating to procurements and will disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with RTC before pursuing a protest with the Federal granting agency.

Procedures for handling Protests and Appeals are set forth in Section 6.

1.7 Eligibility of Bidders and Offerors

No person or entity that is currently debarred under the federal or state contracting and procurement laws is eligible to participate in an RTC procurement during the term of debarment. The Executive Director or his/her designee shall verify and document the debarment status of each bidder or offeror prior to the award of any contract.

Procedures for determining Responsibility of Bidders and Offerors are set forth in Section 7.

1.8 Suspension and Debarment

RTC shall review State and Federal database regarding suspension or debarment prior to making a contract award using state and federal funds. Should a person, partnership or corporation be suspended or debarred from state and federal contracts, then the same will apply to RTC procurements. RTC shall also establish suspension and debarment provisions pertaining to non-state and federal funded procurements.

Procedures for administering Suspension and Debarment are set forth in Section 8.

2. PROCUREMENT GUIDELINES & PROCEDURES

The Executive Director is responsible for ensuring that the appropriate procurement guidelines and procedures are followed, consistent with applicable federal, state, and local laws and regulations. Procurements may not be divided to avoid the applicable procurement process. The Executive Director shall implement practices and contract documents consistent with the policy and regulations provided for by the various granting agencies.

RTC utilizes the following guidelines to procure goods and services:

Funding Source	Policy / Regulation	Issues Covered
General funds	RTC	General purchasing and professional services
WSDOT RTPO funds	WSDOT (RCW 39.26.125, 39.80)	Professional services and general purchasing
FHWA PL funds, FHWA Grants (STPG, CMAQ, TAP, <i>other</i>)	FHWA (WSDOT LAG Manual, Current Edition)	Professional services, general purchasing, project improvements
FTA PL funds	FTA (Circular 4220.1F)	Professional services, general purchasing, project improvements

In administering RTC's procurement process, staff determines the funding source and then applies the related procurement policy/regulation. Where multiple funding sources exist (ex. in a project), staff applies the most restrictive procurement policy/regulation.

RTC may utilize Clark County Purchasing Department on a case-by-case basis for advice and assistance with purchasing pursuant to the provisions of the RTC / County Memorandum of Understanding (July 1992).

3. PURCHASING THRESHOLDS

The Executive Director shall utilize Procurement Thresholds and contracting Approval Authority set by the RTC Board as follows:

Type of Purchase	Dollar Amount	Process / Requirements (1)	Approval Authority
Goods, Materials, and Equipment	\$5,000 or Less	Direct Purchase with price checks for best available price	Executive Director
	>\$5,000 - \$25,000	Request for Quote from up to 3 qualified vendors	Executive Director
	>\$25,000	Sealed Bid (open solicitation)	Board of Directors
Professional Services Agreements	up to - \$25,000	Request for written Quote from up to 3 qualified vendors	Executive Director
	>\$25,000	RFP/RFQ Solicitation	Board of Directors
Engineer / Surveyor / Architect	No Limit	Either: 1) Request for written Quote from up to 3 qualified vendors <\$25K 2) RFP/RFQ Solicitation for work >\$25K	<\$25K Executive Director >\$25K Board of Directors
Intergovernmental Purchasing	All	Refer to existing IGA contracting provisions	(per IGA) Executive Director or Board of Directors

Notes:

- (1) The full process requirements needed to ensure compliant procurement activities will be dictated by the funding agency regulations and policies.

4. SUPPLEMENTAL PROVISIONS

4.1 Change Orders

The Executive Director may approve change orders or amendments that increase the contract amount by no more than ten percent (10%) cumulatively, provided such change order(s) do not exceed the total amount of \$50,000. The Board shall approve contract change orders or amendments in excess of \$50,000.

4.2 Intergovernmental Purchasing

When it is either economically advantageous for the agency or external expertise is required, the RTC will consider the feasibility of using qualified public resources before using a private consultant; Pursuant to RCW 39.34 and 39.26.125 Intergovernmental agreements awarded to any governmental entity, whether federal, state or local, and any department, division, or subdivision are exempt from the competitive solicitation requirements.

RTC may purchase goods or services through other governmental entities, provided the entity's procurement process substantially meets the requirements of this Policy. Where RTC is not originally identified in the contract as a possible purchaser, RTC, through the contracting governmental entity, shall as necessary obtain the approval of the contractor for the purchase

RTC may also enter into contracts with vendors who have multiple award schedule contracts with State or Federal agencies for the same items and prices offered on those group purchasing contracts. Before establishing a contract, the Executive Director or his/her designee shall compare that vendor's prices with the prices of the same items on contracts of other public entities and in the local market, and determine that a contract with the agency vendor offers the best price.

4.3 Limited or No Competition Procurement

4.3.1 Waiver of Formal Procurement Requirements

Where competition is waived based on the circumstances set forth below, the Executive Director or his/her designee shall, prior to the procurement, prepare a written plan for the procurement, including the factors to be used to evaluate proposals. Procurements under this subsection shall be conducted with as much competition as is practicable under the circumstances.

Notwithstanding any other provision in this Policy, the Executive Director may make a determination that a competitive contract through a formal procurement process, seeking competition from a wide variety of vendors, is not in RTC's best interests. The determination and the basis for the determination shall be documented in writing and retained in the procurement file. A waiver of formal procurement process is not appropriate where improper planning has resulted in delays that would make formal competition difficult. Cost or pricing analysis shall be conducted for procurements effected under this Subsection.

Circumstances in which this determination may be appropriate include but are not limited to:

- a) A sole source procurement, as defined in Subsection 4.11.3;
- b) The public's health, welfare or safety are or may be affected;

- c) A grant or gift requires RTC to contract in a particular manner, with a particular entity or for a particular item, or to undertake certain actions within a time frame that does not permit formal competition;
- d) Where special market conditions exist or it is economically infeasible to obtain reasonable competition;
- e) Compatibility of technology is necessary;
- f) Standardization is advantageous; or
- g) The item sought is developmental or sufficiently complex that the number of available competitors is limited and the drafting of specifications is impracticable due to the nature of the item.

4.3.2 Sole Source Procurement

Sole source procurements may be conducted under the following circumstances:

- a) The item is available only from a single source;
- b) The public exigency or emergency will not permit a delay resulting from competitive solicitation;
- c) The awarding agency authorizes noncompetitive proposals; or
- d) After solicitation of a number of sources, competition is determined inadequate or unfeasible.

The Executive Director shall conduct a cost analysis to verify if the proposed cost is reasonable given RTC's need or requirement to obtain the particular good or service. Results of the cost analysis and other supporting documentation shall be placed and maintained in the procurement file.

4.3.3 Exempt Procurements

The below contracts shall be exempt from the provisions of these guidelines; provided, that at the discretion of the Executive Director, a competitive process may be utilized if the Executive Director determines that such process is in the best interests of RTC:

- a) Arbitrator or mediator services
- b) Commercial Lease Agreements, Real Property Purchase Agreements, and Commercial Real Estate Brokerage Professional Services
- c) Hearing Examiner Services
- d) Broadcast Community Television Services
- e) Intergovernmental Agreements
- f) Legal Services
- g) Accounting, Actuarial, or Audit Services
- h) Risk Management Services and Insurance
- i) Settlement of Claims or Litigation

5. PURCHASING (CREDIT) CARDS

RTC may, through its Executive Director, obtain credit cards for RTC procurement, travel, and

acquisitions which include goods, supplies and other items from vendors or incurring registration, training or travel expenses in connection with the performance of duties on behalf of RTC.

The Executive Director is authorized to take all actions necessary including execution of agreements to obtain credit cards. Other rules necessary to implement or administer this policy and to implement procedures and best financial practices are documented in the RTC Procurement Manual. The Executive Director is authorized to develop further accounting procedures and documentary requirements regulating employee use of the credit cards to facilitate full compliance with this policy.

5.1 Parameters

The following parameters define the use of credit cards, and shall, as necessary, be incorporated into the Procurement Manual:

One credit card will be kept physically in control of the RTC Executive Director and other credit cards will be kept physically in control of the RTC Executive Assistant;

- a) The authorization and use of credit cards will be subject to the terms established in the Procurement Manual and in accordance with the Issuers terms and conditions.
- b) The credit limit available on the RTC account is determined by the issuer, and to not exceed a maximum of \$10,000;
- c) NO CASH ADVANCES are allowed;
- d) No Gift Card purchases are allowed;
- e) The payment of the bills will be accomplished through the standard accounts payable process after a reconciliation of the monthly statement by the Executive Director and RTC Accountant.

5.2 Violation Or Misuse

The Executive Director will disallow use of the company credit card by any employee for violation or misuse of the credit card in accordance with this policy, in addition to any other necessary disciplinary actions.

If certain credit card charges are disallowed as a result of audit or RTC policy, such charge must be repaid to RTC with RTC having the right to withhold funds payable to the official or employee in satisfaction of the disallowed charge including interest assessed by the credit card company subject to any applicable state or federal laws.

5.3 Acceptance of Terms & Conditions

Employees who use the credit card shall be required to sign an acknowledgement of acceptance of the terms and conditions, which will be filed in each employee's personnel file.

5.4 Store-Issued Charge Cards

It is sometimes necessary to use store-issued charge cards. The Executive Director will establish the authorized account in such cases; for instance, sometimes it's necessary to purchase office supplies in person rather than online.

6. PROTEST AND APPEAL PROCEDURES

Any prospective contractor or bidder who is aggrieved in connection with the solicitation or award of a bid or contract may file an appeal with the RTC.

6.1 Protest and Appeal Process:

- a) Contractors may submit an appeal of the award to the RTC Executive Director in accordance with the following procedures:
 1. Contractors shall submit an appeal no later than five (5) business days after notification of the award. Such appeals must be received by the RTC Executive Director, no later than 5:00 p.m. within five (5) days of the notice of award.
 2. All appeals must be in writing signed by the contractor or an authorized agent.
- b) The appeal shall include all of the following:
 1. The name and address of the contractor;
 2. A detailed description of the facts and disagreement(s) that form the basis of the contractor's appeal;
 3. Any supporting documentation related or referred to in the appeal; and
 4. The specific decision requested.
- c) The contractor shall also promptly supply, upon request from the RTC Executive Director, any additional documentation related to the appeal.
- d) The RTC Executive Director or authorized representative will provide the allegedly aggrieved contractor with a written decision within ten (10) business days after receipt of the appeal.
- e) In the event that the funding source for a contract or award requires it, RTC will notify the funding partner of the protest or appeal in the manner required. (For example: if involving FHWA funds, RTC will notify the Region WSDOT Local Programs Engineer according to provisions of the Current WSDOT Local Agency Guidelines.
- f) If additional time is mutually agreed upon, the RTC Executive Director will notify the contractor and any other contractor of any delay. The RTC Executive Director will notify any other contractors involved in or affected by the appeal of the receipt of the appeal. Such other contractors may be given the opportunity to submit their views and relevant information. Within the written decision, the RTC Executive Director will notify the contractor of his/her right to further appeal the decision to WSDOT, or if utilizing FTA funds the appeal may be sent to FTA.
- g) Funding partners such as a federal agency and/or WSDOT, a federal agency, or any program it facilitates, FTA may consider an appeal that alleges that the Executive Director failed to follow its written appeals procedures. An allegedly aggrieved person must file an appeal with the appropriate agency no later than five (5) business days after the Executive Director renders a final decision, or five (5) days after that person knows or has reason to know that the Executive Director failed to render a final decision.
- h) Decisions on reinstatement requests are not subject to judicial appeal.

6.2 Failure to Comply

Failure to comply with these appeal procedures will render an appeal untimely or inadequate and result in rejection thereof by the RTC.

6.3 Award Cancellation

If an award is cancelled, the RTC Executive Director, after consideration of all pertinent factors, may decide to reject all proposals and solicit new proposals. Barring such decision, an award shall be made to the next highest ranking proposer.

7. RESPONSIBILITY OF BIDDERS AND OFFERORS

7.1 Determination of Responsibility of a Bidder or Offeror

The responsibility of a bidder or offeror shall be determined before awarding any contract.

7.2 Determination of Non-Responsibility of a Bidder or Offeror

The Executive Director shall make any determination of non-responsibility in writing setting forth the basis for the determination. The determination shall be retained in the procurement file and a copy of it sent promptly to the bidder or offeror via certified mail. The unreasonable failure of a bidder or offeror to promptly supply information concerning its responsibility shall be grounds for a non-responsibility determination.

7.3 Factors That May be Considered to Determine Responsibility

Factors that may be considered in determining responsibility include:

- a) Financial, physical, personnel or other resources, including selection of subcontractors;
- b) The record of performance including but not limited to quality control, safety record, use of skilled personnel, management of subcontractors and compliance with contract documents;
- c) Whether the proposed contractor is qualified legally to contract with RTC;
- d) Whether the proposed contractor supplied all necessary information concerning its responsibility including but not limited to references provided to RTC.

The Executive Director shall have the authority to include additional supplemental bidder criteria as part of the bidding process in regards to a specific project; provided that all supplemental criteria will be provided in the invitation to bid or bid documents.

8. SUSPENSION AND DEBARMENT

8.1 Generally

The Executive Director may suspend or debar an entity, person, partnership, or corporation under this section from consideration for the award of a contract with RTC. Suspension of any person or entity shall not exceed one year. A debarment shall not exceed three years from the date of the debarment determination.

RTC shall review State and Federal database regarding suspension or debarment prior to making a contract award using state and federal funds. Should a person, partnership or corporation be suspended or debarred from state and federal contracts, then the same will apply to RTC procurements.

8.2 Causes

The causes for RTC initiated debarment or suspension may include, but are not limited to, the following:

- a) Conviction of any person or subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- b) Conviction of any person or any subsidiary or affiliate of any person under any statute of the Federal Government, this State or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offenses indicating a lack of business integrity or business honesty which affects responsibility as an RTC contractor.
- c) Conviction or civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes.
- d) Violations of contract provisions or a charter or law which are deemed to be so serious as to justify debarment action, such as either of the following:
 1. Knowingly failing without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 2. Failure to perform or unsatisfactory performance in accordance with the terms of a contract, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- e) Any other cause deemed to affect responsibility as an RTC contractor, including financial instability, failure to pay subcontractors or suppliers, or suspension or debarment of such person or any subsidiary or affiliate of such person by another governmental entity.

8.3 Notice

Before imposing a suspension or debarment, the Executive Director shall give the affected party written notice of the grounds for suspension or debarment and shall afford such person an opportunity for a hearing. If the Executive Director determines that a hearing is appropriate, the Executive Director shall notify the protestor of the time and place set for a hearing on the protest. The Executive Director shall issue a written ruling within ten days after the conclusion of the hearing. The ruling shall be final.

8.4 Reinstatement Provision

The Executive Director may at any time after a final decision on a debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists. Any debarred person may request reinstatement by submitting a petition to the Executive Director supported by documentary evidence showing that the cause for

debarment no longer exists or has been substantially mitigated. The Executive Director may require a hearing on the request for reinstatement. The decision on reinstatement shall be in writing, be made within seven days after the request for a hearing is filed and specify the factors on which it is based. Decisions on reinstatement requests are not subject to judicial appeal.