OCTOBER 2025

Schloesser, Shawn

MANKATO TRANSIT PROCUREMENT POLICY

1. Purpose and Introduction

1.1. Objective

The objective of this policy is to update the revised October 2024 policy which now references out of date resources.

Federal Transit Administration (FTA) regulations (2 CFR § 200.319(c) and FTA Circular 4220.1G, Chapter III, § 3a) require written procurement procedures when utilizing federal and state funds. This policy is designed to meet FTA and Minnesota Department of Transportation (MnDOT) requirements in this regard.

This policy supersedes any existing purchasing policy. When any conflict exists between this policy and the existing policies, the procedures in this policy shall prevail. Procurements by City of Mankato when utilizing federal funds shall conform to applicable Federal law and the standards identified in this policy. City of Mankato shall maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchases. If an employee determines that a conflict exists between these policies and state or local law, report the conflict to a supervisor who shall contact MnDOT and communicate the conflict seeking a resolution.

1.2. Purpose

This policy establishes guidelines and minimum standards for use in the management of third-party contracts. This manual is intended to ensure compliance with Federal Transit Administration (FTA) and the Minnesota Department of Transportation's standards to ensure full and open competition and equitable treatment of all potential sources for all purchases made with funding derived from the federal, state, and local governments. In all purchasing activities, the goal is to ensure maximum open and free competition consistent with:

- General Procurement Standards, 2 CFR § 200.318 – 200.327
- Third Party Contracting Guidance, FTA Circular 4220.1G, dated January 17, 2025
- FTA Best Practices Procurement & Lessons Learned Manual, FTA Report No. 0105, dated October 2016
- City of Mankato Financial Management Policies, May 22, 2023

The goal of this procurement policy is to provide an atmosphere in which all procurement transactions will be conducted in a manner providing full and open competition while preventing the use of state or federal funds for unallowable costs, as discussed in 2 C.F.R. 200 and other applicable regulations.

1.3. Procurement Planning

Planning is the first step in the procurement process. Effective planning requires the internal organizational capability with the proper checks and balances to facilitate the procurement process with the highest degree of integrity. Mankato Transit System invests the time and resources to establish standards of conduct, organize effectively, and develop short- and long-range plans to avoid last minute or ill-planned procurements, which are contrary to open, efficient and effective procurements. Procurement planning is a cooperative, continuous, and comprehensive process with Mankato/North Mankato Planning Organization (MAPO) and MnDOT.[1]

1.4. Policy Review and Amendment

Once per year the Associate Director Transportation Planning Services, Transit Superintendent, and Transit Finance Specialist shall meet and review this policy for revisions or updates. The Mankato City Council will be notified of changes to this policy at their next regularly scheduled meeting and act upon the revisions or updates to the Policy.

If changes or revisions to this policy are adopted, the updated policy will be uploaded to BlackCat Transit Data Management System[2] with an indication of the date when the changes were adopted.

2. Code of Ethics and Conflict of Interest Policy

2.1. Purpose

Federal grant management rules (2 CFR § 200.318(c)(1)) require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. This policy must address personal conflicts of interest, gifts, and violations. These items are addressed in the City of Mankato Financial Management Policies, May 22, 2023, and included below for ease of reference.

2.2. Personal Conflicts of Interest

The credibility of the City of Mankato rests heavily upon the confidence which taxpayers have in City employees to render fair and impartial services to all without regard to personal interest and/or political influence. The delivery of public services to our citizens requires that employees avoid any activity which suggests a conflict of interest between their private interests and City responsibilities.

City employees and their family members shall not engage in or have financial interest in any business or other activity which could reasonably lead to a conflict of interest with the employee's primary City responsibilities. “Family members” shall be deemed to include the employee; the spouse, parents, children, and siblings of the employee; the parents, children and siblings of the spouse [or partner]; and direct descendants of any family members. No employee, officer, or agent of City of Mankato may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of City of Mankato may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. Any Employee determined to be in violation of this section, could be subject to discipline action up to and including termination.

[1] MnDOT Agreement #1029081

[2] Minnesota - Log In (blackcattransit.com)

Examples of activities which violate this policy include, but are not limited to:

- having an interest in any business which has contracts or other direct dealings with the City of Mankato.
- activities which require the employee to interpret City Codes, ordinances, or regulations when such activity involves matters with which the employee has business and/or family ties.
- consulting activities carried out within the City of Mankato if such consulting involves talents or skills primarily related to the employee's City work responsibilities.
- using City time or equipment to engage in activities intended to produce income for the employee.

2.3. Organizational Conflicts of Interest

All potential conflicts of interest must be disclosed in writing to the federal awarding agency.

City officials need to be aware of other interests' employees may have or own. For example, if they are involved in a sideline business or a spouse involved in a business.

- Officials must be aware of their own business interests.
- Officials need to keep note of other businesses employees may be involved with.
- Officials should state to their employees and ask questions whether they are involved with other businesses.
- All employees should read and understand the code of Conduct in the City of Mankato employee handbook.

Federal award recipients must disclose, in a timely manner, all violations of Federal criminal law in writing that involve fraud, bribery or gratuities that affect a federal award. This information must be reported to the federal agency or pass-through entity. If you fail to do so you may forfeit a portion or all the federal award.

2.4. Receipt or Solicitation of Gifts (Gift Law)

No employee shall receive or solicit any gift from any person, business or organization having any business, administrative, legislative, and contractual or any other relationship with the City. A gift is any money, tangible or intangible personal property, food, beverage, loan, forbearance or forgiveness of indebtedness, promise, service, or entertainment that is given and received without the giver receiving consideration of equal or greater value in return.

Gifts may not be accepted which are intended for a specific employee or official. Goodwill gestures not exceeding an estimated $5 are permitted. An example of an acceptable goodwill gesture is holiday cookies from a resident which can be shared among employees. Employees attending a grand opening, expo, or other public event, where food, gifts or small memorabilia are available to the public, are permitted. City employees are also permitted to accept food or beverage given at a reception, meal, or meeting away from the recipient's place of work by an organization before whom the recipient appears to make a speech or answer questions as part of a program. The prohibitions do not apply if a gift is given to a staff member due to their membership in a group when an equivalent gift is given to the other members of the group.

The law prohibits gifts to city officials, not to cities themselves. Cities may accept gifts of real or personal property and use them in accordance with the terms prescribed by the donor. Unless otherwise set forth in City Code or state law, a resolution accepting the gift and the donor's terms must receive an affirmative vote of two-thirds of the members of the City Council. A city may not, however, accept gifts for religious or sectarian purposes.

2.5. Penalties

Violations of a provision of this Code of Ethics and Conflict of Interest may result in discipline to the extent possible under criminal or civil penalties under State or Federal Law.

- An employee shall be subject to individual disciplinary action up to and including discharge as determined by the City Manager.
- The City Manager, member of the City Council, or officer or agent of the City of Mankato shall be subject to individual disciplinary action or sanction as determined by the City Council.
- Bidders or potential contractors' violations may be considered making such proposal or bid ineligible or non-responsive.
- Contractors or their agents' violations may be considered a breach of contract and may be subject to cancellation of a contract, suspension, and debarment from future contracting with the City of Mankato.

3. Responsibilities

3.1. Third-Party Contracting Capacity

City of Mankato must maintain adequate technical capacity to carry out its FTA and State assisted projects and comply with Federal and State rules. Third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements.

3.2. Contract Administration System

Mankato Transit System must maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State, and local requirements.

3.2.1. Adequate Third-Party Contract Provisions

Third-party contracts must include provisions that are adequate to form a sound and complete agreement. Provisions identified in the solicitation must be carried over into the contract.

3.2.2. Revenue Contracts

Entry into a contract with a third-party to generate revenue in connection with a transit-related activity, or to create business opportunities utilizing an FTA or State funded asset is encouraged.

Revenue from the sale of advertising when the advertising media (bench, bus, shelter) is included in an open federal grant can be reported as program income earned to reduce the non-federal share of future Awards, not the Award from which it was earned. Account for this type of program income on the appropriate Federal Financial Report (FFR) in Line Q - Total Federal Program Income Earned.[3]

3.2.3. Record Keeping

Prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. Maintain records in the event of litigation or in other limited circumstances, until six years[4] after Mankato Transit System and any contractors or subcontractors have made final payment, and all other pending matters are closed or unless otherwise required to be retained for longer pursuant to City's retention schedule. For all procurements above the micro-purchase level, maintain the following:

(a) Procurement Method: Provide rationale for the method of procurement used for each contract, including sole source justification for acquisitions that do not qualify for competitive bidding process under state law.

(b) Contract Type: State the reason for selecting the contract type used.

(c) Contractor Selection: State the reasons for selecting or rejecting the contractors.

(d) Contractor Responsibility: Provide a written determination of responsibility for the successful contractor.

(e) Cost or Price: Evaluate and state the justification for the contract cost or price.

(f) Reasonable Documentation: Retain documentation commensurate with the size and complexity of the procurement.

(g) Vendor Verification: Include verification of acceptance with a selected vendor, supplier, or manufacturer, through the Federal System of Award Management (SAM) system for each project and associated project file.

Provide FTA and MnDOT officials, Minnesota Department of Management and Budget, the State Auditor, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance.

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[3] FTA Circular 5010.1F
[4] General Records Retention Schedule for Minnesota Cities, March 2021.

3.3. Determination of Needs

Maintain and follow adequate procedures for determining the types and amounts of products and services to acquire.

City expenditures must meet the following standards:

- Public Purpose – There must be a public purpose for the expenditure.
- Authority – There must be specific or implied authority for the expenditure in statute or the City's charter.
- Proper Procedure – City processing guidelines must be followed including obtaining an appropriate receipt or invoice, meeting approval requirements, and timely processing of information.

Comply with the following requirements when determining the types and amounts of products and services for acquisition:

3.3.1. Eligibility

All products and services acquired with FTA or State funds must be eligible under the Federal or State law authorizing the FTA or State assistance award and any regulations thereunder. All products and services to be acquired with FTA or State funds must also be eligible for support within the scope of the underlying grant or cooperative agreement from which the FTA or State assistance to be used is derived.

3.3.2. Necessity

Adhere to the following standards for avoiding the purchase of duplicative and/or unnecessary products and services.

(a) Unnecessary Reserves: Limit the acquisition of Federally or State-assisted property, goods, and services to the amount needed to support its public transportation system.

(b) Acquisition for Assignment Purposes: Contract only for current and reasonably expected public transportation needs and not add quantities or options to third-party contracts solely to permit assignment to another party at a later date. These limits on assignments, however, do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements such as participation in MnDOT Sponsored Vehicle Procurements.

(c) Procurement Size: For every procurement, consider whether to consolidate or break out the procurement to obtain the most economical purchase. Absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms and women's business enterprises (irrespective of whether they qualify as DBEs), do not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.

(d) Options: Justify, as needed, all option quantities included in every solicitation and contract. An option is a unilateral right in a contract by which, for a specified time, to acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract.

(e) Lease Versus Purchase: Review lease versus purchase alternatives for acquiring property and prepare or obtain an analysis to determine the most economical alternative. If chosen to lease an asset, then prepare a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset.

(f) Lease of Rolling Stock: For rolling stock and related equipment, the Fixing America's Surface Transportation (FAST) Act requires reporting to MnDOT, on behalf of FTA, within three years of executing a rolling stock lease that includes:

(1) An evaluation of the overall costs and benefits of leasing rolling stock; and

(2) A comparison of the expected short-term and long-term maintenance costs under a lease versus maintenance costs when buying rolling stock.

(g) Specifications: Procurement specifications shall clearly describe the products or services to be procured and shall state how the proposals will be evaluated. Procurement specifications shall not be exclusionary, discriminatory, unreasonably restrictive, or otherwise in violation of Federal or Minnesota laws or regulations.

3.4. Contract Price and Cost Analysis

The Common Grant Rules requires a cost analysis or price analysis in connection with every procurement action, including contract modifications before receiving bids or proposals. The method and degree of analysis depend on the facts and circumstances surrounding each procurement. City shall 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 must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

For both price and cost analysis, a written justification must be submitted. This justification must include Procurement summary, which analysis was performed and why, supporting evidence, fair and reasonable determination, special considerations, and signed approval.

3.4.1. Price Analysis

Costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. City shall make independent estimates before receiving bids or proposals. In any event the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting contract shall be consistent with respect to:

(a) The classification of elements or functions of cost as direct or indirect;

(b) The indirect cost pools to which each element or function of cost is charged or proposed to be charged; and

(c) The methods of allocating indirect costs to the contract.

3.4.2. Cost Analysis

Obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost, or when only a sole source is available, even if the procurement is a contract modification or change order. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs are incurred, or cost estimates included in negotiated prices would be allowable for the City.

Obtain a cost analysis when the offeror submits elements (labor hours, overhead, materials) of the estimated cost, such as for professional consulting or Architectural and Engineering contracts.

It is not necessary if it is possible to justify price reasonableness based on a catalog or market price of a commercial product sold in substantial quantities to the public or based on prices set by law or regulation.

3.4.3 Change Order Reporting Requirements

All contract modifications and change orders must include an Independent Cost Estimate (ICE), cost or price analysis, written justification, and confirmation that the modification does not constitute a cardinal change. Written justification must include the following:

- Background summary: Identify the original contract and provide a brief scope of the original work.
- Description of the change: Clearly describe what's being changed.
- Scope (adding or deleting work, altering specifications, changing timelines), Price (increase or decrease in total contract value),
- Schedule (extension, acceleration). If it's a no-cost change, state that explicitly.

Reason for the change:

- Unforeseen site conditions or latent defects.
- Design changes necessary to meet project requirements.
- Error or omission in plans/specifications.
- Regulatory changes after contract award.
- Owner-directed change for project improvement.
- Force majeure or emergency conditions.
- Compatibility with existing systems (e.g., proprietary integration needs).
    - Include a narrative that connects the change to the project's goals and explains why it wasn't in the original scope.

Funding impact: State whether the change is within the available budget or requires budget modification.

New cost analysis: Provide evidence that the cost for the change is fair and reasonable, Independent cost estimate (ICE) before negotiating with the contractor, Comparison to historical costs for similar work, Published price lists or industry benchmarks, Documentation of negotiation process,

Impact on competition: If the change could have been competitively bid but wasn't, explain why the incumbent contractor is the only practical option. Why competitive procurement is not feasible without major project disruption. This is essentially a "sole source" mini justification for the modification.

Schedule impact: Identify any new milestone dates or completion dates. Explain how delays (if any) will be mitigated.

Compliance statements and written approval: Confirm the change does not alter federal compliance terms and get required signatures.

3.5. Contractor Responsibilities

In awarding contracts financed as a whole or in part with FTA financial assistance, follow guidance in this section to evaluate contractor capabilities to perform the contract.

In addition to the Federal rules[5] that require contract awards be made only to responsible contractors, Federal law at 49 U.S.C. § 5325(j) and Minnesota Statute 16C.285 limits third-party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for the award, consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

3.5.1. Debarment and Suspension

U.S. Department of Transportation (DOT) regulations apply to each third-party contract at tiers of $25,000 or more, to each third-party contract at any tier for a federally required audit, and to each third-party contract at any tier that must be approved by an FTA official irrespective of the contract amount (2 C.F.R.1200). Apply DOT's debarment and suspension requirements to itself and each third-party contractor at every tier to the extent required by regulations that incorporate the requirements of the Office of Management and Budget[6] (OMB).

(a) Search and ensure that every offeror considered appears as a registered vendor within the results of a System for Award Management SAM.gov search and print the screen with the results of the search to be included in the procurement file. Verify that the prospective third-party vendor is not listed as a debarred contractor on SAM.gov.

(b) Verify that the prospective third-part vendor is not listed as a Suspended/Debarred Vendor with the state of Minnesota.[7] Print the screen with the results of the search for inclusion in the procurement file.

[5] 2 CFR § 200.318(h)

[6] Guidelines to Agencies on Governmentwide Debarment and Suspension (non-procurement)

[7] https://mn.gov/admin/osp/government/suspended-debarred/

3.5.2. Lobbying Certification and Disclosure

If a third-party contract exceeds $100,000, before awarding the contract, obtain a signed lobbying certification, and if applicable, a lobbying disclosure from a prospective third-party contractor. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award

3.5.3. Protest Procedure Provision Requirement

Insert protest procedures set forth in Section 7.6 herein for all solicitation documents having an estimated value of $100,000 or greater.

3.5.4. Required Contract Clauses

In addition to the requirements outlined above, there are various required clauses that will apply to third-party contracts, depending upon the type of procurement and the anticipated dollar value of said contract. Assess each procurement and determine the applicable FTA third party terms and conditions that should be included in the solicitation and contract documents. Coordination with MnDOT on the appropriate clauses will be completed. See the following guidance to identify the required clauses:

- FTA Circular Subject: Third Party Contracting Guidance (FTA C. 4220.1G, Appendix D)
- FTA Master Agreements[8]
- ProcurementPRO[9] (free web-based application).
  If used, confirm accuracy with FTA C. 4220.1G, Appendix D.

In addition to other provisions required by the Federal agency or non-Federal entity and if not otherwise listed in resources linked above, all contracts made by City of Mankato under the Federal award must contain provisions covering the following, as applicable:

- Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity" and implementing regulations at 41 CFR pa1t 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor."

[8] https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements
[9] https://www.nationalrtap.org/Technology-Tools/ProcurementPRO

- Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by City of Mankato must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. City of Mankato shall report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a halftime the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business film or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended-Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-767 1q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

3.6. Bonding

Bonding requirements apply to construction contracts exceeding the Simplified Acquisition Threshold ($250,000). Minimum coverage: 5% bid guarantee, 100% performance bond, and 100% payment bond. MnDOT/FTA may accept reduced bonding if the Federal interest is adequately protected.

Federal rules require bonds for all construction contracts exceeding the Simplified Acquisition Threshold[10] unless FTA determines that other arrangements adequately protect the Federal interest. City of Mankato requires performance and payment bonds for contracts over $175,000 (Simplified Acquisition Threshold).

- Bid Guarantee equivalent to 5 percent of its bid price ensures the bidder will honor its bid upon acceptance.

- Performance Bond for 100 percent of the contract price to ensure completion of the obligations under the third-party contract. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

- Payment Bond for 100 percent of the contract price to ensure the contractor will pay all people supplying labor and material for the third-party contract. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

3.6.1. Payment Bond Thresholds

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold,[11] when bonding is required, MnDOT may accept the bonding policy and requirements of the Subrecipient provided that MnDOT has decided that the Federal interest is adequately protected. FTA determined the following amounts are adequate to protect their interest:

- Contracts less than $1 Million – Fifty percent of the contact price

- Contracts more than $1 Million but less than $5 Million - Forty percent of the contract price

- Contracts more than $5 Million – Two and one half million dollars

[10] $175,000 City of Mankato Financial Management Policies, May 22, 2023.
[11] $175,000 City of Mankato Financial Management Policies, May 22, 2023.

3.6.2. Acceptable Sureties

The Common Grant Rule for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, "Surety Companies Doing Business with the United States," 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury's Listing of Approved Sureties.[12] As FTA encourages governmental recipients to require similarly acceptable sureties, it shall be the policy to accept such sureties.

3.7. Buy America requirements

Buy America requirements apply to procurements exceeding $150,000. Rolling stock purchases require pre-award and post-delivery audits, and final assembly must occur in the U.S., per 49 U.S.C. 5323(j) and 49 C.F.R. Part 661.

Transit projects exceeding $150,000 with FTA assistance to purchase iron or steel products, manufactured products including rolling stock purchases, construction materials, and capital leases will comply with FTA's Buy America requirements, unless FTA has granted a waiver authorized under the Buy America provisions. FTA's Buy America regulations are complex and differ from the Federal "Buy American Act" regulations in FAR Subparts 25.1 and 25.2.[13]

- Requirements apply to third-party procurements by FTA grant recipients. A grantee must include in its bid or request for proposal (RFP) specification for procurement of iron, steel, or manufactured goods (including rolling stock) an appropriate notice of the Buy America provision and require, as a condition of responsiveness, that the bidder submit with the bid or offer a completed Buy America certificate.[14]

- Final assembly for rolling stock also must occur in the U.S. Additionally, rolling stock procurements are subject to the pre-award and post-delivery Buy America audit provisions.[15]

Provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States of America, even when Buy America and other regulations do not apply.[16]

4. Sources of Acquisitions

4.1. Force Account

The use of force account labor is a project management function, rather than a procurement and contract administration function, except in the general sense of the ability to perform work with its own forces rather than contracting with another entity to acquire the property or services needed,

[12] Department of Treasury Circular 570 http://fms.treas.gov/c570/c570.html
[13] FTC C. 4220.1G, Chapter IV(2)(c)(5)
[14] 49 CFR §§661.6 or 661.12.
[15] 49 U.S.C. § 5323(m) and 49 CFR part 663
[16] 2 C.F.R. § 200.322

and the cost implications of the decision. Mankato Transit System does not charge force account labor to its FTA grants.

4.2. Joint Procurements

One or more entities agree from the onset to use a single solicitation document and enter into a single contract with a vendor for delivery of products or services. The following apply:

- The item, due to nature of the item or lack of availability of vendors, is available only from a single source or the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- Solicitation documents may not be drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of the contract.
- Ensure the joint procurement solicitation and contract complies with all Federal and State requirements and includes all required clauses and certifications.

4.3. State or Local Government Purchasing Schedules or Contracts

An arrangement that a state or local government establishes with several vendors, such as cooperative purchasing, who agree to provide essentially an option to the state or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. An arrangement like the General Services Administration's (GSA) Cooperative Purchasing Program for Federal Government use.

When this method is used, obtain Buy America certification before entering into the purchase order. This method cannot be used to circumvent FTA's Buy America requirements.

4.3.1. Small Quantity of Rolling Stock

Conducting a stand-alone procurement for fewer than five buses requires written justification for not using an innovative procurement tool authorized in section 3019 of the FAST Act.[17]

4.3.2. Applicability of Federal Provisions

While MnDOT takes precautions to ensure that all Federal requirements, clauses, and certifications are in the master intergovernmental contract or in the recipient's purchase document, it is ultimately Mankato Transit System's responsibility to ensure such documents and certifications are obtained. Solicitation of these vendors is conducted in the same manner as any other procurement. If such requirements, clauses, and certifications were not included, request the vendor append the required Federal clauses in the purchase order or other document that affects the procurement.

[17] 49 USC § 5339(a)(10)(B)

4.4. Existing Contracts

May be used as an acquisition source. Existing contracts are formed to be limited to the original parties.

4.4.1. Permissible Actions

Exercise of Options held by another recipient of FTA assistance may be used with the following limitations:

(a) Consistency with the Underlying Contract. Ensure that the terms and conditions of the option are substantially similar to the terms and conditions of the options as stated in the original contract at the time it was awarded.

(b) Price. Option prices must be better than prices available in the open market, or that when intended to exercise the options are more advantageous.

(c) Awards Treated as Sole Source Procurements:

(1) Failure to Evaluate Options before Awarding the Underlying Contract. If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.

(2) Negotiating a Lower Option Price. Exercising an option after a negotiated lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured.

(d) Assignment of Contract Rights (Piggybacking) – If found that inadvertently acquired contract rights are in excess of need, another MnDOT subrecipient may be assigned those contract rights if the original contract contains appropriate assignment provisions, allowing the other subrecipient to contract in the same manner as the original contract at the same or lower price. Contractual rights through assignment from another recipient of FTA assistance may be used after determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. A second price analysis is not necessary if one was performed for the original contract. Mankato Transit System, as a subrecipient, shall be responsible for ensuring the contractor's compliance with FTA's Buy America requirements and execution of all the required pre-award and post-delivery Buy America review certifications. Before proceeding with the assignment, review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities needed, do not exceed the amounts available under the assigning recipient's contract.

4.4.2. Impermissible Actions

(a) Improper Contract Expansion - A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient's reasonably anticipated needs, other than unanticipated change orders. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.

(b) Cardinal Changes (Tag-On) - A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change. A change within the scope of the contract is not a cardinal change.

5. Procedures for Open Market Procurements

5.1. Solicitation Requirements and Restrictions

Every procurement solicitation issued above the micro-purchase level (currently established in Federal guidance at $10,000), must include the following information and be advertised in a manner that ensures adequate and open competition.

5.1.1. Description of the Property or Service

The solicitation and the contract awarded must include a clear and accurate description of technical requirements for the products or services to be acquired in a manner that provides for full and open competition.

Prepare descriptions of property, goods, or service in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications should be avoided if possible; however, there is no prohibition against their use when appropriate.

5.1.1.1. Brand Name or Equal

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a “brand name or equal” description may be used to define the performance or other prominent characteristics of a specific type of property.

5.1.2. Quantities

Additional quantities or options above needs at the time of acquisition, may not be added solely to allow assignment later.

5.1.3. Period of Performance

The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract considering competition, pricing, fairness, and public perception. Document the rationale for determining the performance period in the procurement files.

5.1.4. Evaluation Factors

All solicitations shall identify all factors to be used in evaluating bids or proposals. At the discretion of Procurement Officer, the relative order of importance and/or weights shall be communicated to prospective offerors.

5.1.5. Award to Other Than the Low Bidder

Solicitations must specifically reserve the right to award a contract to other than the low bidder or offeror, if allowed to do so pursuant to state competitive bid law. If the solicitation documents do not specify this right, Mankato Transit System will be obligated to award the contract to the low bidder.

5.2. Permissible Contract Types

State the type of contract that will be awarded in all solicitation documents. The following types of contracts will typically be executed with the successful vendor:

5.2.1. Firm Fixed Price

A price that remains fixed irrespective of the contractor's cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.

5.2.2. Cost Reimbursement

The contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. To the extent permitted under state law, allowable costs may include incentives if the recipient believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

5.2.3. Prohibited or Restricted Contract Types

- Cost plus Percentage of Cost type contracts is prohibited.
- Time and Materials type contracts may be used only after a written determination is made that no other contract type is suitable. In addition, the contract must specify a ceiling price that the Contractor may not exceed except at its own risk.

5.3. Other Federal Requirements

The solicitation and resulting contract must identify those Federal requirements that will affect contract scope and performance that a bidder or offeror must fulfill before and during contract performance.

5.4. Prohibited Practices

Solicitations with requirements that contain features that unduly restrict competition may not be used if they:

(a) Impose unreasonable business requirements for bidders or offerors.

(b) Impose unnecessary experience requirements for bidders and offerors.

(c) Use pre-qualification procedures that conflict with the prequalification standards described in Methods of Procurement (Section 5.2).

(d) Make a noncompetitive award to any person or firm on a retainer contract if that award is not for the property or services specified for delivery under the retainer contract.

(e) Impose unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.

(f) Specify 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.

(g) Specify in-state or local geographical preferences or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. The only exception expressly mandated or encouraged by Federal law that may be applicable is the procurement of Architectural and Engineering (A&E) Services. Geographic location may be a selection criterion in the procurement of A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.

(h) Engage in practices that result in organizational conflicts of interest when any of the following circumstances arise:

  (1) Lack of Impartiality or Impaired Objectivity – When the bidder or offeror is unable, or potentially unable, to provide impartial and objective assistance or advice due to other activities, relationships, contracts, or circumstances.

  (2) Unequal Access to Information – When the bidder or offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.

  (3) Biased Ground Rules – When during the conduct of an earlier procurement, the bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

(i) Support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.

(j) Take any arbitrary action in the procurement process.

6. Methods of Procurement

Use competitive procedure(s) appropriate for the acquisition undertaken. The procedures used must comply with Minnesota and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of 2 CFR § 200.318 – 200.326, supplemented by FTA and State policies that address the needs of FTA recipients.

Prohibited Divisions (Bid Splitting): The size or dollar value of procurements may not be divided or reduced merely to come within the micro or small purchase limit or to avoid state competitive bid thresholds. The only allowable exception is for the express purpose of fostering greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms and women's business enterprises (irrespective of whether they qualify as DBEs) in Federally assisted procurement .

Value of Purchase or Contract	Type of quote required – construction, contracted goods and services	Approval Required by	Contract Required
Less than $10,000	Quotation (two if practicable) or open market	Department Head	No
$10,001 - $49,999	Two telephone quotes are preferred	City Manager	No
$50,000 - $174,999	Direct negotiation (at least two written quotes) but must first consider the availability, price and quality through the state's Cooperative Purchase Programs	City Manager	Construction yes. Commodities, at City Manager's discretion
Greater than $175,000*	Competitive Bidding (sealed bids) required. City Clerk must advertise in City's legal newspaper.	City Council	Yes
**Federal guidelines are less restrictive than MN State Statute. These amounts represent the more restrictive State Statute guidelines.*			

6.1. Purchase Card

As approved by the City Manager and pursuant to Section 3.05 of the City Charter, purchase cards will be issued to departments and various divisions as deemed necessary for use during emergencies, employee travel, online purchase(s) or unpredictable circumstances. Each purchase card, unless otherwise authorized by the City Manager, will contain a maximum limit of $1,000 per purchase, with a total monthly transaction limit not to exceed $5,000. These limits can be increased with a request, accompanied by a demonstrated need, to the Director of Administrative Services or designee.

6.2. Micro-Purchases

Micro-Purchases are allowed up to the current Federal threshold ($10,000) or higher if self-certified in accordance with FTA Circular 4220.1G. Documentation of self-certification, including justification and approval by the City Manager, must be maintained in the procurement file

Approved electronically in Tyler Munis by the Associate Director of Transportation Planning services, then by the Director of Community Development (if needed) and pursuant to Mankato's City Charter, Micro-Purchases are allowed for informal procurement of products and services that cost $10,000 or less (or current threshold established by Federal Acquisition Regulations (FAR)) as a means to expedite the completion of small purchase transactions and minimize the administrative burden and cost.

Micro-purchases should be distributed equitably among qualified suppliers. Two quotes if practicable or through the open market for the informal acquisition of products and services.

Micro purchases are exempt from FTA's Buy America requirements.

Davis-Bacon prevailing wage requirements apply to federally funded or assisted construction, alteration, or repair contracts of public buildings and public works exceeding $2,000, even though the recipient uses micro-purchase procurement procedures.

Every Micro-Purchase must be accompanied by a written determination that the price is fair and reasonable, and a description of how that determination was made. A sample checklist is at the end of this document.

Micro-purchase thresholds may be self-certified at a higher rate than the federally established threshold, provided that the proper documentation is provided.

6.3. Simplified Acquisitions

Simplified Acquisitions (formerly Small Purchases) apply to procurements above the micro-purchase threshold up to $250,000 price or rate quotations from an adequate number of qualified sources must be obtained.

Every Simplified Acquisition Purchase must be documented in the written procurement history file.

Price or rate quotations must be obtained from an adequate number (two preferred) of qualified sources and kept on file.

> $10,000 but less than $50,000 – informal procurement, two telephone quotes are preferred and kept on file.
>
> $50,000 but less than $175,000 – formal procurement methods with two or more responsible bidders willing and able to submit an offer, and kept on file, unless special circumstances are noted. Consult Cooperative Purchase Programs before procurement for minimized administrative burden and cost.

6.4. Competitive Bidding (Full and Open) Procurements

Approved by the City Council through a Resolution signed by the Mayor, Competitive Bidding Procurements are those purchases of products and services that cost greater than the current State threshold of $175,000 which is more restrictive than the Federal threshold of $250,000.

Every competitive purchase must comply with Minnesota Statutes Section 471.345.

There are two primary methods of procurement for large purchases of products and services:

- Sealed Bid Method – Invitation For Bid (IFB)

  Bids are publicly solicited, and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids (IFB), is lowest in price.

- Competitive Proposals Method – Request for Proposals (RFP)

  Written proposals are publicly solicited, and a contract is awarded to the responsible offeror whose proposal, taking into consideration price and other factors, is considered to be the most advantageous or best value.

There may be alternatives to the primary methods and specialized procurements not covered by this plan. Consult the Third-Party Contracting Guidance.[18]

- Two-Step Procurement – Can be used for both sealed bid and competitive proposals.
- Architectural and Engineering (A&E) Services and Other Services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.
- Design-Bid-Build procurement method requires separate contracts for design services and for construction.
- Design Build procurement method consists of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction.

6.4.1. Sealed Bid Method – Invitation For Bid (IFB)

The preferred method for acquiring products and services that, including construction services, cost greater than simplified threshold or Small Purchase threshold. May also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:

(a) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.

(b) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.

(c) Fixed Price Contract – The procurement generally lends itself to a firm fixed price contract.

(d) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined based on other factors whose costs cannot be measured at the time of award.

(e) Discussions Unnecessary – Award of the contract will be made based on price and price-related factors alone. Discussions with bidders are unnecessary.

See the Mankato Financial Management Policies for the appropriate steps.

[18] FTA Circular 4220.1G

6.4.1.1. Requirements for Sealed Bid Method of Procurement

(a) Funds Availability – Ensure funds have been appropriated for the project and included in the City's Capital Improvement Program (CIP) and Mankato/North Mankato Transportation Improvement Program (TIP) as appropriate for the funding year.

(b) Publicity – Make proper publication in the official City newspaper(s) for at least ten days before the last date for submission of bids. Other methods of notice may be used to supplement but not substitute for the official publication notice such as compiled vendor list, prospective offerors, or electronic advertising means. The published notice must contain the following:

- A description of the project or purchase being sought
- The availability and location of specifications
- Bid requirements such as a sealed bid or any accompanying bid security
- Where the bids must be submitted
- Deadline for submitting the bids
- Time and place of the opening of the bids
- The City Officers who will be present for the opening of the sealed bids
- Statement indicating that the City may delay the award until certain events occur
- Statement indicating that the City reserves the right to reject all bids submitted

(c) Adequate Sources – Must solicit from an adequate number of known suppliers.

(d) Adequate Specifications – Must describe the property or services in sufficient detail that a prospective bidders can submit a proper bid. Include any specifications and pertinent attachment.

(e) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of public bid opening. Minimum 10 days.[19]

(f) Public Bid Opening - All bids must be publicly opened at the time and place prescribed in the Invitation for Bids. Bids must remain unopened until the public opening; a bidder may withdraw the bid at any time prior.

(g) Fixed Price Contract - A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allows for award of a fixed price incentive contract or the inclusion of an economic price adjustment provision.

(h) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.

6.4.2. Competitive Proposals Method – Request for Proposals (RFP)

For the acquisition of products and services that cost greater than $175,000 when the nature of the procurement does not lend itself to the sealed bidding method and it is expected that more than one source will be willing and able to submit a proposal. May also be used for small purchases if it

[19] City of Mankato Financial Management Policies, May 22, 2023

is determined to be appropriate. May not be used for the procurement of construction services. The competitive proposal method of procurement is appropriate when any of the following circumstances are present:

(a) Types of Specifications - The products or services are described in a performance, functional specification, detailed technical specifications, or other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.

(b) Uncertain Number of Sources - Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids.

(c) Price Alone Not Determinative - Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.

(d) Discussion Expected - Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals.

6.4.2.1. Requirements for Competitive Proposals

(a) Funds Availability – Ensure funds have been appropriated for the project and included in the City's Capital Improvement Program (CIP) and Mankato/North Mankato Transportation Improvement Program (TIP) as appropriate for the funding year.

(b) Publicity – Make proper publication in the official City newspaper(s). Other methods of notice may be used to supplement but not substitute for the official publication notice such as compiled vendor list, prospective offerors, or electronic advertising means. The published notice must contain the following:

(c) Evaluation Factors – All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed.

(d) Adequate Sources – Proposals must be solicited from an adequate number of qualified sources.

(e) Evaluation Method – A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.

(f) Price and Other Factors - An award must be made to the responsible offeror whose proposal is most advantageous or that represents the "best value" with price and other factors considered.

(g) Best Value - Contract may be awarded to the offeror whose proposal provides the greatest value based upon an analysis of the tradeoff of qualitative technical factors and price or cost factors. To do so, the solicitation must inform potential offerors that the award will be made on a "best value" basis and identify what factors will form the basis for award.

6.5. Noncompetitive (Other Than Full and Open) Procurement

Normally, full and open competition is provided when soliciting bids or proposals. The Common Grant Rule[20] acknowledges that under certain circumstances, procurement may be conducted without providing for full and open competition only when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances is present:

(a) Adequate Competition. After soliciting several sources, review the specifications to determine if they are unduly restrictive, or if changes can be made to encourage submission of more bids or proposals. If found that specifications are not unduly restrictive, and changes cannot be made to encourage greater competition, perform a cost analysis in lieu of a price analysis from among the sources that submitted.

(b) Sole Source. When supplies or services are available from only one responsible source, and no other supplies or services will satisfy its requirements, a sole source award may be justified. When an existing contract is changed beyond the scope of the agreement a sole source award must be justified.

(c) When Prohibited. Less than full and open competition is not justified based on:

- Failure to Plan. The recipient's lack of advance planning, or
- Limited Availability of Federal Assistance. Concerns about the amount of Federal assistance available to support the procurement (for example, expiration of Federal assistance previously available for award).

6.5.1. Sole Source

Unique Capability or Availability. The property or services are available from one source if one of the conditions described below is present:

(a) Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and are available only from one source and has not in the past been available from another source.

(1) Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.

(2) Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.

(3) Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it

[20] 2 C.F.R. 200.320(f)(1) – (4)

is likely that award to another contractor would result in unacceptable delays in fulfilling the needs.

(b) Single Bid or Single Proposal. Upon receiving a single bid or single proposal in response to a solicitation, determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and will include a survey of potential sources that chose not to submit a bid or proposal.

(1) Adequate Competition. FTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient's control. Many unrelated factors beyond the recipient's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequately, FTA's competition requirements will be fulfilled, and the procurement will qualify as a valid competitive award.

(2) Inadequate Competition. FTA acknowledges competition to be inadequate when, caused by conditions within the recipient's control. For example, if the specifications used were within the recipient's control and those specifications were unduly restrictive, competition will be inadequate.

(c) Unusual and Compelling Urgency. The Common Grant Rule limits the number of sources from which it solicits bids or proposals when an unusual and urgent need for the property or services would be seriously injured unless it were permitted to limit the solicitation. Also allowed to limit the solicitation when the public need or emergency will not permit a delay resulting from competitive solicitation for the property or services.

(d) Procurement Procedures. When less than full and open competition is experienced, the Common Grant Rule directs:

(1) Potential Sources. Solicit offers from as many potential sources as is practicable under the circumstances.

(2) Sole Source Justification. If decided to solicit an offer from only one source, justify the decision adequately considering the standards of this section and ensure the justification listing the applicable standard is documented in writing and signed by the Procurement Officer. This justification must include a statement of need, how the decision to sole source was decided on, market research documentation, and an explanation of the undue hardship not proceeding with sole source would bring the agency.

(3) Cost Analysis. Prepare or obtain a written cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits.

(4) Pre-award Review. Submit the proposed procurement to Mankato's Director of Administration for pre-award review and approval to proceed.

(5) Submit the proposed procurement for FTA pre-award review if FTA so requests.

6.6. Evaluation Requirements

When evaluating bids or proposals in response to a solicitation, consider all evaluation factors specified in the solicitation documents and evaluate proposals only on the factors included in the solicitation documents. If evaluation factors are modified, the solicitation must be re-opened.

When awarding contract that includes options, evaluate any option quantities or periods contained in a solicitation if intended to exercise those options after the contract is awarded. For competitive procurements, the use of a team to conduct the evaluation will be used.

6.7. Designating a Prospective Contractor

To designate a prospective contractor "responsible" as required by 49 U.S.C. § 5325, at a minimum, determine and ensure that the prospective contractor satisfies the criteria of Integrity and Ethics, Debarment and Suspension, Affirmative Action and DBE, Public Policy, Administrative and Technical Capacity, Licensing and Taxes, Financial Resources, Production Capability, Timeliness, and Performance Record.

6.8. Lowest Responsible Bidder

For contracts procured through sealed bids or multiple quotes, the City must award the contract to the lowest responsible bidder.[21] The bidder who submits the lowest bid or quote in dollars is not necessarily the "lowest responsible bidder." Responsibility in bids means financial responsibility, but also integrity, skill, and the likelihood of the bidder doing faithful and satisfactory work. A contract must be awarded to the lowest responsible bidder unless the "Best Value" alternative is followed.

6.9. Rejecting Bids or Offers

Solicitations must specifically reserve the right to reject bids or offers. The City has the right to reject any and all bids (requests for proposals, requests for bids, sealed bids). All data submitted in response to bid requests are private until bids are opened. If bids are rejected prior to the completion of the evaluation or selection process, all data, other than that made public at the bid opening, remain private until a re-solicitation of bids results in completion of the selection process. If the rejection occurs after the completion of the selection process, the data remains public. If a re-solicitation of bids does not occur within one year of the bid opening date, the remaining data becomes public.

7. Administrative Requirements and Considerations

7.1 Staff Responsibilities

Prior to development of the procurement solicitation, conduct a coordination meeting with necessary City staff to establish duties and responsibilities such as which department is

[21] Minn. Stat. § 412.311, subd. 1.

responsible for delivering the project to the appropriate approval authority, and agree upon the designated Project Manager

Project Manager serves as the principal contact with the contractor and as the primary administrator of the contract. The designated Project Manager for each contract shall have responsibility for directing and overseeing the work performed by the contractor; reviewing and approving deliverables and invoices from the contractor; determining percentage of contract completion for progress payments (if applicable); making recommendations on the exercise of contract options (if applicable); recommending contract changes; preparing justifications for contract changes; performing independent cost estimates and cost or price analyses for contract changes; making recommendations on approval or rejection of subcontractors; assisting with the resolution of contract disputes; making recommendations on contract termination or other contractor disciplinary actions; maintaining complete contract files; and other contract administration duties that may be necessary.

7.2 Price Analysis

If determined that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. A price analysis for micro-purchases may be limited. Similarly, an abbreviated price analysis for small purchases may be used in most cases.

One method to record this price analysis is through the use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.

7.3 Contract Scope and Cardinal Changes

Changes Clauses limit the authority of the issuer in two ways. First, they stipulate that changes are permitted only when they are “within the general scope of the contract.” Second, they contain descriptive words setting forth the types of changes that may be made. For the change to be binding on the contractor, it must meet both tests, namely:

(a) It must be within the general scope, and

(b) it must be one of the types of changes described in the clause.

With respect to the FTA requirements governing changes, the change must be within the scope of the original contract. If it is not within the scope, it is considered a cardinal change. Such changes are not processed as changes under the Changes Clause but are processed as new procurements.

7.4 Change Clauses

Third party contracts should contain a Changes Clause except for routine supply contracts. The language of the clause may differ depending upon the nature of the contract and the end-item being procured, however, these clauses are intended to achieve the following purposes:

(a) Flexibility to unilaterally order changes in the work, which may be necessary due to advances in technology or changes in requirements.

(b) Provide the contractor with a method of suggesting changes to the work, thus improving the quality of the contract end-items. The equitable adjustment provisions of the Changes Clause will encourage the contractor to suggest improvements when those suggestions increase the contract price. When, however, the situation calls for suggestions regarding dollar savings, the Changes Clause may not incentivize the contractor if it stands to lose the dollar savings because of a price reduction in the contract. For this reason, value engineering clauses are included in contracts.

(c) Authority to order additional work that is within the general scope of the contract, thereby avoiding separate procurement.

(d) Require the contractor to proceed with the changed work and resolve the issue of compensation later. This is important since it gives the recipient a unilateral contract right to order changes without having to agree beforehand on the price of the work. Emergency situations can thus be handled expeditiously without placing the contractor in a position of demanding a certain amount of compensation before the work can proceed. In the event of a failure to agree on price, the issue can be resolved by a third party in accordance with the dispute procedure in the Disputes Clause of the contract. But disputes concerning compensation will not impede the progress of the contract as changed.

7.5 Time Extensions

Contract time extensions shall be considered in light of whether they are permissible changes or impermissible cardinal changes. Once a third-party contract is awarded, an extension of the contract term length that amounts to a cardinal change, will require a sole source justification.

The funding approval authority has the sole authority to approve and execute contract modifications. The Procurement Officer for the contract shall recommend all contract time; prior to making a recommendation for a contract time extension. The Procurement Officer shall prepare a written justification and cost analysis for the contract time extension and shall negotiate the appropriate contract modification with the contractor.

7.6 Protest Procedures

FTA retains the right to review protests only where: (1) a grantee fails to have written protest procedures, (2) a grantee fails to follow its procedures, or (3) a violation of Federal law or regulation is alleged. MnDOT may also review appeals as the pass-through entity.

Protests must be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor and be signed by the Protestor. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action.

All protests must be directed to the Procurement Officer at the address shown in the solicitation documents.

7.6.1 Pre-Proposal Protest

All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing to the Procurement Officer as specified below not later than ten (10) business days prior to the deadline for submission of bids/proposals.

The Procurement Officer may, within their discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline is postponed by the Procurement Officer as the result of a protest, the postponement will be announced through an addendum to the solicitation.

The decision by the Procurement Officer shall be the final decision on the matter but shall be subject to judicial review as set forth by FTA below.

7.6.2 Pre-Award Protest Procedures

With respect to protests made after the deadline for submission of bids/proposals but before contract award, protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposal's evaluation and award process, failure to have or follow its protest procedures or its failure to review a complaint or protest. Protests shall be submitted in writing to the Procurement Officer as specified below not later than five (5) business days after the Recommendation for Contract Award announcement.

The Procurement Officer may, within their discretion, postpone the award of the contract, but in any case, provide a written response to all protests not later than three (3) business days prior to the date of announcement of the contract award.

The decision by the Procurement Officer shall be the final agency decision on the matter but shall be subject to judicial review as set forth or review by MnDOT as specified below.

7.6.3 Protest Response

The Procurement Officer shall issue written responses to all protests received by the required response dates. Responses shall be transmitted by first class mail using the U.S. Postal Service to the address indicated in the protest letter.

For convenience, a copy of the response to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The response transmitted by U.S. Postal Service shall be the official response to the protest and Mankato Transit System will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

7.6.4 Protest Appeals

MnDOT limits its reviews of protests to a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation.

Appeals to MnDOT must be received within five (5) working days of the date the Protester has received actual or constructive notice of the final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to MnDOT.

7.7 Disputes

Notify FTA Program Manager and MnDOT Program Manager of protests or complaints involving contracts financed with state or Federal assistance or if the subject involves:

(a) Value exceeding $100,000,
(b) Involve a controversial matter, irrespective of amount, or
(c) Involve a highly publicized matter, irrespective of amount.

Provide the following information:

- A brief description of the dispute,
- The basis of disagreement, and
- If open, how far the dispute has proceeded, or
- If resolved, the agreement or decision reached, and
- Whether an appeal has been taken or is likely to be taken.

Date: ________________________

Grantee/Sub-Grantee Name: ____
Grantee/Sub-Grantee Project Contact Name: ____
Contact Signature: ____

Project Name: ____
Description: ____
____

History Detail Worksheet

PLANNING DOCUMENTATION

Identified Method of Procurement:
(check the appropriate method of procurement planned)

☐ Micro Purchase <$10,000 ☐ Small Purchase $10,001-$49,999 ☐ Small Purchase $50,000-$174,999
☐ Request for Quotes - 2+ ☐ Request for Quote - 2+

☐ Small Purchase > $175,000
☐ Request For Proposals (RFP) ☐ Invitations For Bid (IFB)
☐ Other: _______________________
☐ Sole Source ☐ Piggyback ☐ Non-Competitive Quotation
☐ Design-Bid-Build ☐ Design-Build ☐ Architectural/Engineering (A&E) Services

Description of rationale for method of procurement: ________________________________
____
____
____
____

SOLICITATION DOCUMENTATION

DETERMINATION THAT SOLICITATION IS COMPLETE AND MAXIMIZES COMPETITION

SOLICITATION DOCUMENT DEVELOPED:

- ☐ Micro Purchase (with federal funding) -- Scope of Work
- ☐ RFQ --- REQUEST FOR QUOTES
- ☐ RFP --- REQUEST FOR PROPOSALS (FORMAL SOLICITATION)
  - ☐ BEST VALUE REQUIREMENT
  - ☐ TIMELINE/ TABLE OF CONTENTS
  - ☐ REQUIRED ATTACHMENTS: (CHECK ALL THAT ARE APPLICABLE)
    - ☐ FEDERAL CLAUSES AND CERTIFICATIONS
    - ☐ DO NOT UNDULY RESTRICT COMPETITION
    - ☐ IDENTIFY ALL REQUIREMENTS THAT OFFERORS MUST FULFILL
    - ☐ IDENTIFY ALL FACTORS TO BE USED IN EVALUATION OF PROPOSALS
    - ☐ NON-COLLUSION DECLARATION
- ☐ IFB --- INVITATION FOR BID (LOW BID, NO REVIEW REQUIREMENT)
- ☐ SOLE SOURCE
  - ☐ SOLE SOURCE JUSTIFICATION (ATTACHED)

☐ SOLE SOURCE COVER LETTER (ATTACHED)

☐ FUNCTIONAL REQUIREMENTS (ITS)

☐ Completion of Independent Cost Estimate – Date submitted: ______________
☐ Completion of Solicitation document – Date submitted: __________________
☐ Written approval from Project Manager to proceed to solicitation – Date: _______________

NUMBER OF POTENTIAL BIDDERS/PROPOSERS NOTIFIED: ___________ DATE RELEASED: ___________

METHOD USED TO SOLICIT POTENTIAL BIDDERS/PROPOSER
☐ LOCAL NEWSPRINT – NUMBER ___ PRINT DATES: __________ ☐ MN STATE REGISTER: PRINT DATES: __________
☐ ATTACHED AFFIDAVITS OF PUBLICATION
☐ AGENCY WEBSITE ____
☐ KNOWN PROVIDERS: NUMBER: _______ VIA: ☐ EMAIL ☐ VIA MAIL
☐ OTHER MEANS (SPECIFY):

☐ ATTACHED COPIES OF NOTICES SENT TO BIDDERS/PROPOSERS

NUMBER OF PROPOSALS/BIDS RECEIVED: _____________ DATE PROPOSALS/BIDS DUE: ___________

ANALYSIS FOR PROCUREMENTS ABOVE THE SIMPLIFIED ACQUISITION THRESHOLD:
☐ PRICE ANALYSIS DATE COMPLETED: ______________ SUBMITTED: _____________
☐ COST ANALYSIS DATE COMPLETED: ______________ SUBMITTED: _____________

CONTRACT MANAGEMENT

IDENTIFIED SELECTION OF CONTRACT TYPE:

☐ Firm Fixed Price Contract or Fixed Price Contract
(Firm Fixed to lowest responsive and responsible bidder/ Fixed Price based on negotiation of cost estimates)

☐ Cost Reimbursement
(Contract for projects where the requirement can only be defined over a period of time. AKA: On-call, task order Use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract.

☐ Time & Materials
(cost-plus-fixed-fee. Restricted: only permitted to use; 1) determine no other type of contract is suitable; and 2) contract specifies a ceiling price that the contractor will not exceed except at its own risk)

** Cost Plus Percentage of Cost Contracts is Prohibited

Describe Method and Rationale for selection of contract type: ____________________________________
____
____
____
(i.e.: This project was released as an RFP as staff required specifications with evaluation and best value approach and was advertised in public newspapers of general circulation, via agency website, and in Construction Exchange listing)

Successful contractor identified: ____

Basis for selection: ____
____
____

☐ Responsibility Determination completed for successful contractor.
☐ Excluded Parties List System was verified at https://www.sam.gov
☐ Attached search page results (must show date of search)

Name of Bidder/Proposer Not Recommended	Reason for Rejection

☐ Submittal of proposer documentation and review materials for MnDOT Review – Date submitted: _________________
☐ Written approval from Project Manager to proceed to Contract Award – Date submitted: _________________

The basis for the contract cost or price awarded: ____
____
____

FORMAL CONTRACT PROVIDES THE FOLLOWING:

☐ Outlines terms, conditions, parties involved, and dates contract commences and is completed.
☐ Signed and dated by both parties
☐ Specifications – Referenced in its entirety, including all attachments
☐ Proposal (in its entirety)
☐ all required attachments completed and submitted
☐ price proposal ☐ bid
☐ operations budget workbook (includes narrative and price breakdown)
☐ other: ____
☐ Attached Federal Clauses (completed and signed)
☐ Attached Debarment and Suspension Certification (completed and signed)
☐ Attached Lobbying Certification (completed and signed)
☐ Attached Disadvantaged Business Enterprises (DBE) Special Provisions
☐ Bidders Form (for both RGN or for a Goal)
☐ DBE Goal – required paperwork and compliance requirements

FAIR AND REASONABLE PRICE DETERMINATION FORM

Project Grantee Information:

Grantee/Sub-Grantee Name: City of Mankato

Grantee/Sub-Grantee Address: 10 Civic Center Plaza, PO Box 3368, Mankato, MN 56002-3368

Grantee/Sub-Grantee Project Contact Name: ______________________

Title: ______________________

Phone: ______________ eMail: ______________________

Project Name ______________________

Project Description: ______________________

I hereby determine the price to be fair and reasonable based on at least one of the following:

Check one or more, as they apply

- ☐ Found reasonable on recent purchase.
- ☐ Obtained from current price list.
- ☐ Obtained from current catalog.
- ☐ Commercial market sales price from advertisements.
- ☐ Similar in related industry.
- ☐ Personal knowledge of item procured.
- ☐ Regulated rate (utility).
- ☐ Other.

Comments: ______________________

☐ Copy of purchase order, quotes, catalog page, price list, etc. is **attached for one-time purchases**.

One-time budgeted goods or services purchased within the year, would attach the invoice or similar document and this form in the month the purchase was paid.

☐ For budgeted goods or services that are a fixed amount each month, totally under $10,000 for the year. **Aggregated purchases** of the same goods or services are tracked and reported at the end of the year to identify as a micro purchase(s). Provide in Contract Documents and name: **i.e. sample:** "Monthly Copier Lease 2025 Fair and Reasonable determination and invoice(s)". Can utilize a spreadsheet in lieu of an invoice.

Invoice is stamped or written with the following statement:

THIS IS A COMMERCIAL ITEM SOLD IN SUBSTANTIAL
QUANTITIES TO THE GENERAL PUBLIC.

Aggregated purchases: For purchases under the Micro Purchase threshold of $10,000 aggregated, system would track expenses for each purchase throughout the year, to assure that the aggregated amount remains under the micro threshold. If the aggregated amount is close to the top of the threshold, a small purchase must be completed at that time.

______________________ ______________________

Project Grantee Contact Name Project Grantee Contact Signature

Date