

**OFFICE OF PASSENGER TRANSPORTATION  
COMPLIANCE REVIEW FOR  
SECTION 5310 AND 5311 TRANSIT AGENCIES**

**PROCUREMENT COMPLIANCE REVIEW CHECKLIST**

TRANSIT AGENCY	DATE OF COMPLIANCE REVIEW
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**REQUIREMENT**

Agencies will use procurement procedures that reflect applicable agency and local laws and state and federal regulations to ensure competitive procurement. Procedures will conform to applicable federal law including 49 CFR Part 18, specifically §18.36, and FTA Circular 4220.1F, and the MDOT Master Agreement. Agencies will maintain a records system that ensures that contractors perform in accordance with terms, conditions, and specifications of their contracts or purchase orders.

**REFERENCES**

49 USC Chapter 53, Public Transportation Laws, as amended by Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) <http://www.fta.dot.gov/documents/chap53MAP21.pdf>

Transportation Equity Act for the 21<sup>st</sup> Century, Public Law No. 105-178 <http://www.fhwa.dot.gov/tea21/>

49 CFR §18.36, "Procurement." <http://www.gpo.gov/fdsys/pkg/CFR-2009-title49-vol1/pdf/CFR-2009-title49-vol1-sec18-36.pdf>

FTA Circular 4220.1G, "Third Party Contracting Guidance."  
[http://www.fta.dot.gov/legislation\\_law/12349\\_8641.html](http://www.fta.dot.gov/legislation_law/12349_8641.html)

FTA Circular 5010.1E, "Grant Management Requirements."  
[http://www.fta.dot.gov/legislation\\_law/12349\\_8640.html](http://www.fta.dot.gov/legislation_law/12349_8640.html)

MDOT Master Agreement text (Appendix A)

**OPEN COMPETITION**

Agencies must conduct procurement transactions in a manner providing full and open competition. Agencies are prohibited from restricting competition in federally supported procurement transactions. Some situations that restrict competition include, but are not limited to, unreasonable qualification requirements, unnecessary experience requirements, excessive bonding, noncompetitive pricing practices between firms, noncompetitive awards to firms on retainer, organizational conflicts of interest, "brand name" only specifications, or any arbitrary action in the procurement process. Justification for sole source and single bid awards must be documented and approved by MDOT in advance.

FTA and MDOT prohibits agencies from using local geographic preferences in the evaluation of bids or proposals in federally assisted procurements, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Geographic location may be a selection criterion in procurements for architectural and engineering services provided its application leaves an appropriate number of qualified firms to compete for the contract.

Micropurchases (\$10,000 or less) may be made without obtaining competitive qualifications if the agency determines that the price paid is fair and reasonable. These purchases should be distributed equitably among qualified suppliers in the local area and should not be split to avoid the requirements for competition above the micropurchase threshold.

Small purchase (more than \$10,000 but less than \$250,000) procedures require that price or rate quotations be obtained from a minimum of three qualified sources. The solicitations and quotations will be in writing. Quotes will be documented and available upon request.

Procurements of \$250,000 or more generally require sealed bids or competitive proposals.

Sealed Bids/Invitation for Bids (IFB) – Bids are solicited and advertised, the award is made to the lowest (best price), responsive (meets all specifications), and responsible (is qualified to perform the work) bidder. The IFB must contain specific language that low bid will be awarded the contract.

Competitive Proposals/Request for Proposals (RFP) – Proposals are publicly solicited and advertised from an adequate number of sources and the award is made to the firm whose offer is most advantageous to the agency. Agencies must identify their evaluation factors and indicate the relative importance that each has toward the award.

Architectural and Engineering (A&E) services (including some design-build procurements) must be procured using a qualifications-based process (Brooks Act). Services subject to this requirement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services that lead to construction. Firms are selected based only on their qualifications. Price is then negotiated with the most qualified firm. If an agreement cannot be reached, then the agency may negotiate with the next most qualified firm and so on until an agreement is reached on a price that the agency determines is fair and reasonable.

Revenue contracts involving FTA funded facilities or assets (e.g. advertising on buses, at bus shelters, or at transit centers) must be awarded on a competitive basis. Income derived from such contracts must be used to offset program costs.

## **REVIEW QUESTIONS**

Does this agency have a written procurement policy?      Yes      No

**Review procedures, procurement files (ensure Appendix C is in each file), legal notices and solicitation documents to determine that the agency does ensure full and open competition for all methods of procurement. Particular attention should be paid to product specifications to ensure that “brand name” only specifications have been used appropriately (e.g. the agency must also described the product’s salient characteristics in the specification). While the review of procurement files should focus on awards that exceed the simplified acquisition threshold of \$250,000, the reviewer should discuss procurement actions for micro and small purchases to ensure that these also have been conducted competitively.**

Comments:

COMPLIANCE ANALYST	DATE
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## APPENDIX A

### MDOT MASTER AGREEMENT TEXT

Competitive Procurement: If the AGENCY is not certified in accordance with COMMISSION policy or receives FEDERAL funding through the DEPARTMENT for the procurement, the AGENCY will comply with the following requirements:

- I. The AGENCY will follow the procedures outlined in the "MDOT Procurement Guidelines," dated February 1, 2011, or as revised for any procurement after February 1, 2011. The procedures can be found at <http://www.michigan.gov/mdotptd> under "Procurement," "Procurement Guidelines." All purchases must comply with federal, state, and local requirements, as applicable.
- II. The AGENCY will document how the price was determined to be fair and reasonable for purchases up to Ten Thousand Dollars (\$10,000) or, as an alternative, will document compliance with the provisions of subsections III or IV below.
- III. The AGENCY will document competitive quotations from an adequate number of qualified sources for purchases up to Two Hundred Fifty Thousand Dollars (\$250,000), except for purchases up to Ten Thousand Dollars (\$10,000), or, as an alternative, will document compliance with the provisions of subsection IV below.
- IV. The AGENCY will solicit and advertise for competitive bids/proposals for purchases of Two Hundred Fifty Thousand Dollars (\$250,000) or greater, except for contracts for architectural and engineering services. The AGENCY will ensure that there is an adequate number of qualified bidders/proposers. The AGENCY may award a contract to a responsible proposer other than the lowest in price provided that adequate provision for such action is included in the RFP. Justification for such selection will be provided to the DEPARTMENT prior to the award of the contract.
- V. The AGENCY will solicit and advertise for proposals from an adequate number of sources to permit reasonable competition for contracts for architectural and engineering services. The AGENCY will use competitive proposal procedures based on the Brooks Act, as defined in 40 USC Part 541, regardless of the dollar amount of the project.

(Please see Section 27 for additional requirements for the Specialized Services Program.)