

PROCUREMENT GUIDELINES

For Grantees Receiving Federal Transit Funds via MDOT

Revised June 2022

PURPOSE

The purpose of these guidelines is to explain the procurement requirements for federal and state funding provided by the Michigan Department of Transportation (MDOT) Office of Passenger Transportation. This is not an all-inclusive reference on federal and state procurement requirements.

The federal requirements are extensive and the Federal Transit Administration (FTA) has prepared detailed guidance on these requirements. These resources include:

- FTA Circular 4220.1 F (Third Party Contracting Requirements)
- FTA Best Practices Procurement & Lessons Learned Manual
- FTA Construction Project Management Handbook
- FTA Project and Construction Management Guidelines
- FTA Third Party Procurement FAQs (Frequently Asked Questions)

This guidance is available at <https://www.transit.dot.gov/funding/procurement/procurement>.

The MDOT Office of Passenger Transportation also has prepared procurement guidance for transit agencies at <https://www.michigan.gov/mdot/travel/mobility/pub-transit/state-vehicle-contracts-and-procurement/procurement-guidelines>.

PROCUREMENT METHODS

Selecting the best procurement method for the acquisition is a key part of procurement planning. Procurement methods become more restrictive and time-consuming as the dollar amount increases. Transit agencies can always choose to use a more restrictive method than the federal guidance requires. Local procurement requirements may also be more restrictive than the federal requirements.

Procurement Method	Purchase Amount	Description	MDOT Pre-Approval Required
Micropurchase	\$10,000 or less	Equitably distributed among qualified suppliers	No
Request For Quotes	More than \$10,000 up to \$250,000	Lowest quote from a responsive and responsible firm	Yes
Invitation For Bids	Any dollar amount; required for more than \$250,000	Lowest bid from a responsive and responsible firm	Yes
Request For Proposals	Any dollar amount; required for more than \$250,000	Evaluation criteria are scored; award to highest scored, responsive and responsible firm	Yes
Request For Qualifications	Any dollar amount	Qualifications-based selection of A&E services	Yes
Sole Source	Any dollar amount	Documented reason	Yes

MICROPURCHASE

Micropurchases are procurements of \$10,000 or less. Micropurchases can be made without obtaining competitive quotes but the grantee must determine the price is fair and reasonable. The determination must be documented. These purchases should be equitably distributed among qualified suppliers. Purchases cannot be split to stay under the \$10,000 threshold to avoid competition.

The Davis-Bacon Act applies to construction procurements greater than \$2,000. Micropurchases of more than that threshold must meet Davis-Bacon requirements.

REQUEST FOR QUOTES (*Small Purchase*)

The Request For Quotes method (RFQs) can be used for procurements of more than \$10,000 up to \$250,000. (Note: the upper threshold is \$100,000 for grants awarded before 12/26/2014). An RFQ is a direct solicitation to an adequate number of qualified vendors. An adequate number is defined as enough to obtain three responsive quotes.

MDOT must review and approve the RFQ and the required forms before the solicitation is issued.

RFQs are not advertised and are not publicly posted on any website. Award is to the lowest responsive quote

A copy of the RFQ as issued, selected quote, required forms and a copy of the third-party subcontract must be forwarded to MDOT for review prior to the award being made.

INVITATION FOR BIDS (Sealed Bids)

The Invitation For Bids method is only feasible where it's possible to have a complete, adequate and realistic specification or purchase description in sufficient detail that firms can submit proper bids. IFBs must be publicly advertised, and bids must be directly solicited from an adequate number of known suppliers. There must be a public bid opening and the date, time and location of the public bid opening must be in the IFB. Award goes to the responsible bidder whose bid, conforming to all the material terms and conditions of the IFB, is the lowest price.

The procurement must also lend itself to a firm, fixed-price contract and the selection of the successful bidder can be made principally on the basis of price. Three or more responsible bidders should be willing and able to compete effectively for the award. Firms must be provided sufficient time to prepare bids prior to the bid-opening date. No discussions with bidders after bids have been submitted are anticipated although a pre-bid conference before bids have been received can be useful.

MDOT must review and approve all IFBs and the required forms before the IFB is advertised.

Any or all bids may be rejected for sound, documentable, business reasons and award must be made in writing to the lowest, responsive and responsible bidder. The IFB method is the preferred method for procuring construction if complete, adequate and realistic specifications are possible.

A copy of the IFB as issued, selected bid, required forms and copy of the third-party subcontract must be forwarded to MDOT for review prior to the award being made.

REQUESTS FOR PROPOSALS (RFP)

The RFP procurement method solicits competitive proposals. It is a generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding such as when the desired goods are described in a performance or functional specification. Due to the nature of the procurement, the contract award need not be based exclusively on price or price-related factors. Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals.

Proposals are scored according to evaluation criteria specified in the RFP. The relative importance of the factors must be specified but the numerical or percentage ratings or weights need not be disclosed.

RFPs must be publicly advertised, and proposals solicited from an adequate number of qualified sources in order to receive at least three responsible offeror(s). There is not a public opening of the proposals.

MDOT must review and approve the RFP and the required forms before the solicitation is advertised.

Grantees must establish and use a specific method to conduct technical evaluations of the proposals received. Award recommendations must be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered. Qualitative considerations may include technical design, technical approach, quality of the proposed personnel, and/or management plan.

A copy of the RFP as issued, selected offeror's proposal, required forms and a copy of the third-party subcontract must be forwarded to MDOT for review prior to the award being made.

ARCHITECTURAL AND ENGINEERING SERVICES (A&E)

A Request For Qualifications (RFQ) is a procurement method used to procure A&E services. It uses competitive, qualifications-based procedures based on the Brooks Act as defined in 40 U.S.C. Sections 1101 through 1104. Qualifications-based procedures must also be used when procuring other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. These other services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contactor, determine whether qualifications-based procurement procedures must be used. This procurement method cannot be used to obtain other types of services

The Brooks Act requires that an offeror's qualifications are evaluated and price must be excluded as an evaluation factor. Price negotiations must then be conducted with only the most qualified offeror. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

RFQs must be publicly advertised and proposals solicited from an adequate number of qualified sources. An adequate number is defined as enough to obtain three responsive qualifications. All evaluation factors must be identified along with their relative importance, but numerical or

percentage ratings or weights do not need to be disclosed. The RFQ must be structured so that the cost information is submitted separately from the proposal itself.

Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract.

MDOT must review and approve the RFQ and the required forms before the solicitation is advertised.

Grantees must have a method in place for conducting technical evaluations of the proposals received and for selecting awardees. The method of evaluation does not need to be included in the solicitation.

A copy of the RFQ as issued, selected offeror's proposal, required forms and a copy of the third-party subcontract must be forwarded to MDOT for review prior to the award being made.

NONCOMPETITIVE PROPOSALS (*Sole Source*)

Sole-source procurements are accomplished through solicitation or acceptance of a proposal from only one source, or after solicitation of a number of sources, competition is determined to be inadequate. A contract amendment or change order that is not within the scope of the original contract is considered sole-source procurement.

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible using other procurement methods and at least one of the following circumstances applies:

- The item is available only from a single source;
- The public urgency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- FTA authorizes noncompetitive negotiations;
- After solicitation of a number of sources, competition is determined inadequate; or
- The item is an associated capital maintenance item as defined in 49 U.S.C. Section 5307(a) (1) that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA: (1) that such manufacturer or supplier is the only source for such item; and (2) that the price of such item is no higher than the price paid for such item by like customers.

A detailed cost analysis must be prepared to verify the proposed cost and the evaluation of the specific elements of costs and profit.

The cost information must accompany the grantee's award recommendation when the award documents are submitted to MDOT for review and concurrence prior to the award being made.

COMPETITION

The goal of any procurement is to obtain optimal quality and service at minimum cost through free and open competition. The procurement must also guard against favoritism and profiteering at public expense and give every potential vendor a fair opportunity to participate.

Procurement practices should only disqualify or limit vendors for sound, documentable, business reasons. Exclusionary practices that limit competition are not allowed. FTA will not fund procurements that restrict competition by using exclusionary or discriminatory specifications such as:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience or excessive bonding;
- Allowing noncompetitive practices between firms (collusion, price fixing);
- Providing noncompetitive awards to any person or firm on retainer contracts;
- Allowing conflicts of interest within the agency;
- Specifying a name-brand product without listing its salient characteristics and not allowing an alternative product to be offered;
- Using any arbitrary action in the procurement process; and
- Including geographic preference. Geographic preference for local or state firms is prohibited, except in cases where federal statutes expressly mandate or encourage geographic preferences. Geographic location may be a selection criterion in the purchase of architectural and engineering services (A&E) provided that an appropriate number of qualified firms are eligible to compete for the contract.

PROCUREMENT OPTIONS

A grantee may conduct its own procurement or join with other systems in a joint procurement. A grantee may use a state-administered procurement conducted on behalf of transit systems or use an existing contract from the state or another agency. In all cases, the procurement process must satisfy FTA requirements.

Consortium – A consortium is a competitive procurement involving more than one transit system. The transit systems must work together with one lead agency to develop common specifications that every system agrees on. The lead agency must keep track of the number of items purchased under the resulting contract.

Piggy-backing – This is the post-award practice of allowing another agency who was not included in the original procurement to purchase the same supplies or equipment through the original contract. The practice is allowed under specific situations:

- The original solicitation must include an assignability clause that provides for the assignment of all or part of the deliverables as originally advertised and competed;
- The original solicitation and contract must contain both a minimum and maximum quantity;
- No additional quantities can be added;
- Units must be as originally specified with no "cardinal changes"; and
- The lead agency needs to keep track of the number of items purchased by all participants.

State-Administered Procurements – MDOT in conjunction with the Michigan Department of Technology, Management and Budget (MDTMB) establishes contracts for revenue vehicles that follow FTA procurement requirements. Federal and state funds can be used only for items included in the state contracts. Any non-cardinal changes to the state contract must be purchased with local funds. Cardinal changes are not permitted.

MDTMB MiDEAL contracts for purchases of non-revenue vehicles, tires, radios, computers, and other items are not FTA-compliant. MDOT-administered federal and state funds cannot be used to procure items off these contracts.