

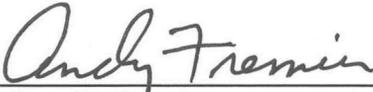
Metropolitan Transportation Commission Administration Committee

July 10, 2019

Agenda Item 3a

Procurement/Contracting Update

- Background:** MTC's procurement and contracting efforts are an integral component in achieving the goals of the agency. Therese McMillan, MTC Executive Director and Michael Brinton, Assistant Director, Contracts/Compliance Manager will present information to the Committee on the following areas:
- Contracts Group and Procurement/Contract Trends
 - Procurement/Contracting Policies – Executive Director Management Memorandum 352
 - Signature Authority Resolutions
 - Sole Source Activity
 - Multi-Year Contract Strategy
 - Pre-Qualified Bench Procurements
 - Executive Director Signature Authority
- Issues:** None – Information Item.
- Recommendation:** None – Information Item.
- Attachments:** Attachment A: Presentation
Attachment B: EDMM 352 – Third Party Contracting



Andrew B. Fremier

Attachment A
Presentation



PROCUREMENT AND CONTRACTING UPDATE



PRESENTATION CONTENTS

- Relevant Policies and Authority
 - Executive Director's Management Memorandum (EDMM) 352
 - Delegated Signature Authority
- Sole Source Trends
- Multi-Year Contracts
- Executive Director Authority



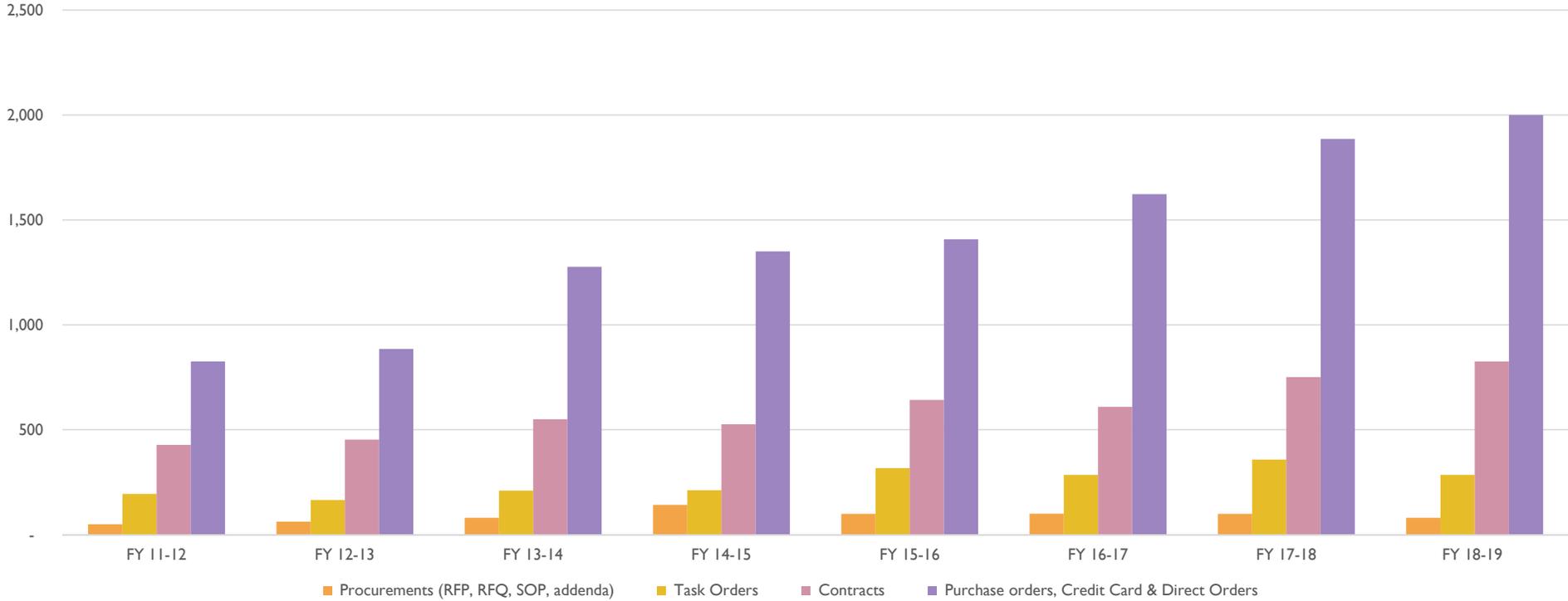
PROCUREMENT / CONTRACTS INFO

ACCOMPLISHMENTS AND TRENDS

- Procurement and Contract volume has increased 218% since FY 11/12
- Complexity of procurements and contracting activities has also increased over this time period
- Adopted and implemented an SBE Program in 2015
- Implemented a web based procurement system (Bonfire), electronic signatures (DocuSign)
- Implemented a paperless approval routing and database system (eContracts) and compliance tracking systems (B2GNow, LCPTracker)



Contract/Procurement Actions





EDMM 352

EDMM 352 sets forth the Agency's policy and procedures for entering into and administering contracts with vendors, contractors and consultants.

Formal policies date back to 1997 however EDMM 352 in its current form was established July 1, 2010 and has been revised twice (May 15, 2015 and June 1, 2017).

DELEGATED SIGNATURE AUTHORITY

- MTC Resolution No. 3619, Revised
- MTC SAFE Resolution No. 44, Revised
- BATA Resolution No. 46, Revised
- BAHA Resolution No. 1, Revised
- BAIFA Resolution No. 1, Revised

Resolutions establish the delegated signature authority of the Executive Director, Deputy Executive Directors and Section Directors

Executive Director and Deputy Executive Directors Authority increased from \$100,000 to \$200,000 in 2015 for all contracts, except for emergency contracts, for which authority was increased from \$100,000 to \$1,000,000, with subsequent report to and approval by the Commission.



SOLE SOURCE INFORMATION

POLICY

- EDMM 352, Attachment A – General Contracting Guidelines, Article 9, Sole Source Contracts, pages 6-7:

To receive Agency approval for a sole source contract, the Project Manager must prepare a sole source justification memorandum detailing the reasons why a competitive procurement is not feasible and citing one or more of the following reasons.

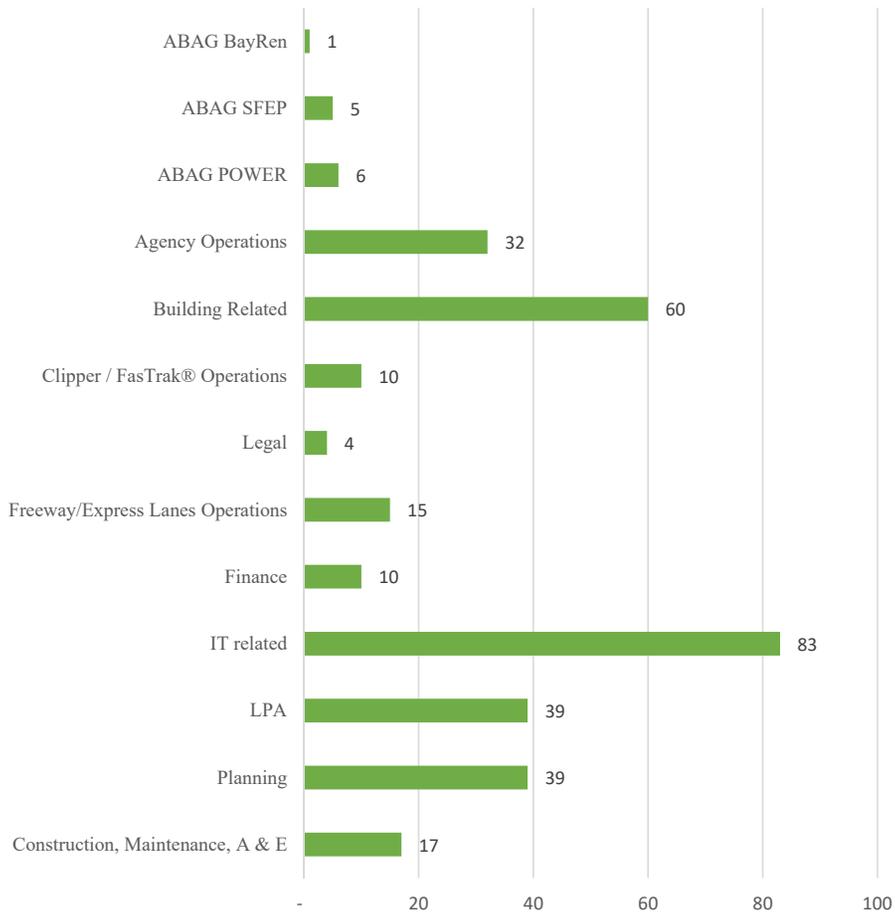
- Single source
 - Compelling urgency
 - Compelling business reason
- In collaboration with Executive Office and Office of General Counsel, Contracts Group intends to develop criteria to further define “Compelling Business Reasons”
 - Evaluating future changes to EDMM 352

Table 5: Sole Source Memoranda
(EDMM 352, Attachment D, Table 5 on page 18)

Type	Office of General Counsel	Section Director	Deputy Executive Director⁽¹⁾	Executive Director or Designee
Single Source	Review for Legal Sufficiency	Concur	Approve up to \$100,00	Final Approval >\$100,000
Compelling Urgency	Review for Legal Sufficiency	Concur	Approve up to \$100,00	Final Approval >\$100,000
Compelling Business	No Review	Concur	Approve up to \$100,00	Final Approval >\$100,000

(1) A Deputy Executive Director may not approve a sole source contract proposed by a Section Director under his/her supervision.

Sole Source Contracts/POs: By Type of Work
FY 15/16 thru FY 18/19 (3.31.19)



Sole Source Contracts & POs FY 15/16 through FY 18/19 (thru 3.31.19)

Volume By Type of Work

	FY 15/16	FY 16/17	FY 17/18	FY 18/19	Total
Construction, Maintenance, A & E	3	6	2	6	17
Planning	10	5	11	13	39
LPA	9	8	11	11	39
IT related	20	14	21	28	83
Finance	0	1	6	3	10
Freeway/Express Lane Operations	0	1	4	10	15
Legal	3	0	1	0	4
Clipper / FasTrak® Operations	3	1	2	4	10
Building Related	22	15	16	7	60
Agency Operations	4	11	11	6	32
ABAG POWER	0	0	0	6	6
ABAG SFEP	0	0	4	1	5
ABAG BayRen	0	0	0	1	1
Total Sole Source Contract & POs/FY	74	62	89	96	321
Total Contracts & POs/FY	2,049	2,232	2,637	1,998	8,916
Sole Sources as a % Total Volume	3.61%	2.78%	3.38%	4.80%	3.60%

	FY 15-16	FY 16-17	FY 17-18	FY 18-19
Sole Source Contracts + POs (\$)	\$ 10,785,710	\$ 5,128,878	\$ 16,504,499	\$ 5,494,463
Total Contracts + POs (\$)	\$ 180,012,201	\$ 173,086,593	\$ 196,744,546	\$ 631,659,676
% Sole Source Contracts + POs / Total Contracts + POs	6.0%	3.0%	8.4%	0.9%

Highlighted Cells show numbers that are skewed by 3 outliers: FY17-18 Lindsay Barrier Sole Source; FY 18-19 C2 System Integrator and FasTrak RCSC Extension



MULTI-YEAR CONTRACTS

PROCUREMENT/CONTRACT PLANNING PROCESS

- Project Teams, Contracts Group and OGC evaluate important aspects of all projects when determining the appropriate Period of Performance, including:
 - Scope of Work
 - Risk
 - Potential pool of qualified consultants/contractors
 - Procurement process/duration
 - Available resources (internal staff, professional consultant assistance, budget)
 - A typical procurement process, from drafting to award requires 4 – 5 months whereas the more complex, larger projects may require a year or more

WHY CONSIDER MULTI-YEAR AGREEMENTS

- Overall, need to balance potential benefits/risks of competition through re-bidding environment, compared to benefits/risks of a stable multi-year contract period.

For Example:

- Consultant/Contractor switch over can result in extended project delivery
- Continuity resulting from longer term contracts can improve pricing
- Consistency over time could result in missed opportunities for new perspectives or ideas on project delivery



AGENCY APPROACH

Standard Procurement Language – Period of Performance:

“B. Period of Performance

MTC expects the work to commence on or about _____, 201____, and to be completed no later than _____, 201____. At MTC’s sole option, the contract may be extended for (____) additional years for work contemplated by *Appendix A, Scope of Work.*”

MTC’s strategy is to structure a multi-year Contract period of performance into a base period with option years.

- Allows staff to manage performance and re-procure if Contractor/Consultant performance is lacking.
- Reduces the risk associated with poor Contractor/Consultant performance.



EXAMPLES

Project:	Next Generation Clipper (C2) Regional Transit Fare Payment System Integrator	FasTrak® Regional Customer Service Center	Transit Passenger Surveying Services
RFP Period of Performance:	10 Years	6.5 Years	3 Years
Options:	<ul style="list-style-type: none"> - 2 additional 5 year terms; and - up to an additional 5 years in annual increments, if necessary, in order to bridge a subsequent procurement or system implementation. 	Annually renewable thereafter at BATA's discretion for up to 10 additional years	2 additional years



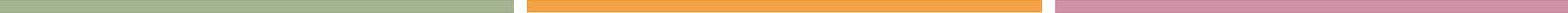
PRE-QUALIFIED BENCH STRATEGY



History and Strategy

- Primary use of benches initially focused on
 - Construction Management & Design Services
 - Transportation Engineering and Planning Services
 - Priority Development Area (PDA) Assistance
- Over past 5 – 6 years, use of benches expanded to other areas of the agency including:
 - Finance, Technology Services Section (TSS), Legislation and Public Affairs (LPA), Planning
- 18 active benches in use by Agency (see next slide)

#	NAME	LEAD AGENCY	TERM			AWARD	
			End	Options to Extend	Approx. Total Years	Authority	Date
1	2018 Architectural and Engineering Services	BAHA	6/30/2021	up to two (2) additional years in increments of BAHA's choosing	5	BAHA	7/25/2018
2	2018 Construction Management	BATA	12/31/2020	--	3	BATA Oversight	12/13/2017
3	2018 Design Services	BATA	12/31/2020	--	3	BATA Oversight	12/13/2017
4	2014 Priority Development Area Technical and Staffing Assistance	MTC	12/31/2017	One year increments for up to two total additional years	5+	Administration	4/9/2014
5	2015 Electronic Payment Section Consultant Assistance	MTC	6/30/2019	up to 2 years in increments of MTC's choosing	5	Operations	5/13/2016
6	2015 Future Mobility Research Program	MTC	6/30/2019	2 years	5 years	Administration	1/6/2016
7	2016 Building Construction Review Services	BAHA	2/20/2020	up to three (3) additional years	6	BAHA	3/22/2017
8	2016 Transportation Engineering and Planning	MTC	6/30/2019	one time for two (2) additional years	5	Operations	6/10/2016
9	2016 Website Operations, Maintenance and Improvement	MTC	6/30/2019	up to two (2) additional years	4	Administration	4/12/2017
10	2017 Climate Initiatives Technical Assistance	MTC	4/30/2018	up to two (2) additional years	4	ED	5/9/2017
11	2017 Design Services (Print, Digital, Website Mapping, Wayfinding)	MTC	6/30/2020	three additional years	6	Administration	6/14/2017
12	2017 Video Services	MTC	9/1/2017	6/30/2020	2 years 10 months	ED	9/26/2018
13	2018 Legal Services	MTC	6/30/2022	1 year	4	Administration	5/9/2018
14	2018 Public Engagement, Digital Engagement and Market Research Support	MTC	6/30/2021	--	4	Administration	2/14/2018
15	2018 Project and Program Management	MTC	2/28/2023	up to one additional year	5	Operations	4/16/2019
16	2018 Toll Bridge Asset Management	BATA	4/14/2020	--	2	BATA Oversight	4/11/2018
17	2013 Transportation Management System (TMS) Technical Advisor	MTC, BATA, MTC SAFE, BAIFA	6/30/2016	to 06/30/2020	7	Operations	10/11/2013
18	2017 Transit Passenger Surveying Services	MTC	6/30/2020	2 years	5 Years	Administration	5/10/2017



FY 19-20 Efforts

- Contracts Group is exploring ways to improve and expand bench strategy including:
 - Research of best practices at peer agencies
 - Agency wide benches versus department specific approach
 - Using a bench strategy to expand opportunities for Disadvantaged Business Enterprises (DBEs) and Small Business Enterprises (SBEs)



ED SIGNATURE AUTHORITY

Delegated Signature Authority Resolutions

EDMM No. 352

- The Executive Director or a designated Deputy Executive Director is hereby authorized to sign contracts and/or amendments to contracts totaling \$200,000, without referral to a standing Committee of the Commission with contract approval authority.
- The Executive Director may authorize MTC Section Directors to sign contracts and/or amendments to such contracts with a total contract value up to \$25,000 cumulatively.
- The Executive Director or a designated Deputy Executive Director is authorized to sign change orders and contract amendments that in total do not exceed the approved contract allotment (contract amount + contingency), without further referral to the appropriate authorizing Committee.

**Agenda Item 2c
Attachment A**

Purchase Orders and Contract actions executed under Executive Director Authority are reported as part of the Financial Statements presented monthly to each Committee

**PURCHASE ORDERS EXECUTED BY EXECUTIVE DIRECTOR
\$2,500-\$200,000**

		March, 2019
VDW Government Inc.		\$19,390
	<i>Computer Equipment</i>	
Granicus		\$15,899
	<i>Software License Renewal</i>	
Insight Global LLC		\$3,648
	<i>PC Technical Consultant</i>	
Everbridge Inc.		\$50,000
	<i>Software License Renewal</i>	
Milliman		\$25,000
	<i>FY2018-19 Actuarial Services</i>	
Govinvest Inc.		\$57,500
	<i>Software License Renewal - for OPEB and Pension</i>	
Altec Products Inc.		\$14,000
	<i>2019 Bay Nature Advertising</i>	
Interstate Fence Company		\$3,000
	<i>Repair and Maintenance</i>	
Auriga Corporation		\$100,000
	<i>Temporary Staff</i>	
Extra Space Storage		\$10,500
	<i>FY 2018-19 Extra Space for Storage</i>	

Attachment B

EDMM 352 – Third Party Contracting

EXECUTIVE DIRECTOR'S MANAGEMENT MEMORANDUM NO. 352

EDMM NO.: 352
(This EDMM combines and supersedes MTC EDMMs 310, Purchasing and 352, Contract Procedures)

SUBJECT: **THIRD-PARTY CONTRACTING POLICIES AND PROCEDURES**

PURPOSE: This memorandum establishes the Agency's policy and procedures for entering into and administering contracts with vendors, contractors and consultants (sometimes referred to generically in this EDMM as "contractors").

APPLICABILITY: This memorandum applies to all purchases of goods, services, equipment, professional services agreements and other third-party contracts of any type entered into by MTC, BATA, MTC SAFE, BAHA, and BAIFA (each, an "Agency").

The competitive procurement requirements in this EDMM do not apply to the following types of purchases:

1. Agency business travel
2. Agency sponsored training and professional development
3. Professional organization memberships
4. Utilities, postage, transit tickets, and other goods and services that cannot be procured competitively
5. Temporary agency personnel services
6. Employee computer purchase program
7. Agency sponsored business meetings or events (including tickets, food, rentals, etc.)
8. Agreements with other public entities
9. Utilization of financial services authorized through an approved board resolution pursuant to the issuance and administration of approved debt issuance
10. Software, hardware, and equipment included in the approved IT Standards and Sole Source Purchasing Memorandum
11. Specialized legal services of an urgent nature, such as litigation, after properly disclosing the nature of the legal services and estimated costs to the Authorizing Board (as defined on page 6)

The preceding types of purchases must comply with contract approval requirements and thresholds.

POLICY:**A. Authority to Contract**

MTC's power to contract stems from its enabling statute, Section 66500 *et seq.* of the California Government Code. More specifically, MTC may "[c]ontract for or employ any professional services required by the commission or for the performance of work and services which in its opinion cannot satisfactorily be performed by its officers and employees or by other federal, state, or local government agencies." California Government Code Section 66506(c).

BATA's power to contract stems from its enabling statute, Section 30910 *et seq.* of the California Streets and Highways Code. More specifically, BATA may "make and enter into contracts" and "acquire, construct, manage, maintain, lease, or operate any public facility or improvements." California Streets and Highways Code Sections 30951(a) and 30951(c).

MTC SAFE's power to contract stems from its enabling statute, Section 2550 *et seq.* of the California Streets and Highways Code. More specifically, MTC SAFE may "contract and may undertake any act convenient or necessary to carry out this chapter and any other law relating to the authority." California Streets and Highways Code Section 2554.

BAIFA's and BAHA's power to contract stems from the Joint Exercise of Powers Act, Section 6500 *et seq.* of the California Government Code, and MTC and BATA's powers as summarized above. More specifically, "two or more public agencies by agreement may jointly exercise any power common to the contracting parties." California Government Code Section 6502.

B. Full and Open Competition

It is the policy of the Agency that goods and services be procured in a manner that provides full and open competition, consistent with applicable federal and state statutes and regulations. (See 49 *Code of Federal Regulations (CFR) § 18.36(c)* and 2 *CFR § 200.319*; and *Federal Transit Administration (FTA) Circular No. 4220.1F* or its successor publication).

C. Standard for Award in Competitively Negotiated Contracts

It is the Agency's policy to award professional service and other contracts, not suitable for selection, based on low bid to the responsible individual or firm whose services are the most advantageous and of the best value to the Agency. Factors such as the quality of professional personnel, technical design, approach to performance, soundness of the management plan, financials, and cost are relevant to determining the most advantageous and highest value offer.

D. Conflict of Interest

1. No employee, officer, advisor, or agent of the Agency shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise if any of the following has a financial or other interest in the prospective consultant or contractor (or any subcontractors) considered for award:

- a) The employee, officer, advisor, or agent;
- b) Any member of his or her immediate family;
- c) His or her domestic or business partner; or
- d) An organization that employs any of the above, or with which any of them have an arrangement concerning prospective employment. (See 49 CFR § 18.36(b)(3).)

2. No employee, officer, advisor, or agent of the Agency may have a financial interest in any contract made by them in their official capacity, or in the case of Authorizing Board members, by the Authorizing Board when they are members. Government Code §§1090 and 87100. (See MTC Resolution No.1198, Revised, Agency Conflict of Interest Code, which has been adopted by all the other Agencies).

3. No employee, officer, advisor, or agent of the Agency shall solicit or accept gratuities, favors, or anything of monetary value from consultants, vendors, contractors or potential consultants, vendors, contractors or parties to sub-agreements where the gift is an unsolicited item of \$50 or more in value (Government Code §87207), or multiple items aggregating \$470 or more in value (as that amount is adjusted by the Fair Political Practices Commission) within twelve months prior to the time the decision is made (Government Code §87103(e)).

4. It is the Agency's policy not to award contracts to consultants when there is an organizational conflict of interest. An organizational conflict of interest exists when a consultant or contractor, because of other activities, relationships, or contracts, is unable or potentially unable to render impartial assistance or advice to the Agency, and the consultant's objectivity in performing the contract work is or might be otherwise impaired or a consultant has an unfair competitive advantage. Whenever the Agency is awarding a contract that involves the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the consultant. (See FTA Circular 4220.1F(VI.2.a(4)(h)).

5. Agency conflict of interest policies apply to both personal and organizational conflicts of interest (1 and 4 above) and apply to both real and apparent conflicts. An apparent conflict of interest exists when a reasonable person with all of the material facts believes that there appears to be a conflict.

6. Violators of these conflict of interest standards are subject to penalties, sanctions or other disciplinary actions, up to and including termination (see MTC Resolution No. 1198, Revised; Government Code §§1090 and 87100 *et seq.*).

7. Any questions regarding a potential conflict of interest should be referred to the Office of the General Counsel for advice and consultation.

E. Nondiscrimination in the Procurement Process

No employee, officer, advisor, or agent of the Agency shall, on the grounds of race, color, sex, sexual orientation, religion, national origin, ancestry, age, physical or mental disability, medical condition, or pregnancy, childbirth or related medical conditions, permit discrimination against any person or group of persons in connection with the procurement of professional services (*California Civil Code § 51; California Government Code § 11135; Title VI of the Civil Rights Act, as amended (42 U.S.C. § 2000d); Section 303 of the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6102); Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12132); and 49 U.S.C. § 5332*).

F. Disadvantaged Business Enterprise (DBE)

It is the policy of the Agency to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts and to create a level playing field on which disadvantaged business enterprises, as defined in 49 Code of Federal Regulations Part 26, can compete fairly for contracts and subcontracts relating to Agency's procurement and professional services activities. In connection with the performance of applicable agreements with the Agency, Agency consultants carrying out projects that receive federal funds are required to cooperate with the Agency in meeting these commitments and objectives. (MTC Resolution No. 3196 and annual MTC resolutions authorizing the DBE program; MTC SAFE Resolution No. 34, revised; 2 *CFR* § 200.321 and 49 *CFR* § 18.36(e); and 49 *CFR* Part 26.)

G. Intergovernment and Interagency Procurements

Where it benefits the Agency to do so, the Agency may satisfy its procurement requirements through:

- collaborative intergovernmental procurements such as, but not limited to, the California Multiple Award Schedule (CMAS) administered by the State of California through the Department of General Services, or those administered by the General Services Administration. (see *FTA Circular 4220.1F (V.4)*);
- joint procurements with other government agencies, provided that all applicable federal, state, grant and other funding source requirements are properly followed and documented (see *FTA Circular 4220.1F (V.3)*); or

- following a documented public procurement process conducted by another government agency where the governing board approves the recommended contractor or the recommended contractor has been placed on a valid eligibility list.

H. Recycled Paper Products

It is the policy of MTC to use recycled paper products containing post-consumer and secondary waste materials whenever feasible (See EDMM 350, Resources Conservation Policy).

I. Environmentally Preferable Purchasing

The Agency encourages staff to conserve and reduce the use of paper, and other consumable office products such as file folders, toner, etc. whenever feasible.

RESPONSIBILITIES:

- A. The Authorizing Board is the appropriate governing board or committee with responsibility for authorizing the Agency to enter into purchase orders, contracts, and their related amendments. All purchase orders and contracts not subject to the Executive Director's (or designee's) signature authority are approved by the appropriate Authorizing Board.
- B. The Executive Director is responsible for promulgating these procedures and overseeing their implementation. In addition, the Executive Director, Deputy Executive Director(s) or other designee approves covered procurements and contracts within the delegated signature authority.
- C. Finance is responsible for certifying the availability of funds, issuing purchase orders, processing of invoice payments, auditing purchases, financial reporting, and for assuring that all contracts are included in the appropriate authorized budget, including MTC's Overall Work Program where applicable, and that the required funds are included in the adopted annual budget.
- D. The Office of the General Counsel (OGC) is responsible for interpreting the legal and regulatory requirements of this EDMM and for the legal reviews and approvals specified in the attachments to this EDMM. The Office of General Counsel shall also be the project manager of all legal services contracts.
- E. The Disadvantaged Business Enterprise Liaison is responsible for ensuring compliance with the U.S. Department of Transportation DBE requirements, for U.S. Department of Transportation funded procurements.
- F. The Section Director is responsible for ensuring purchases are in compliance with the adopted budget, reviewing and approving properly completed paperwork, authorizing purchases and contracts within the delegated signature authority, and authorizing vendor payment once goods and services have been rendered.
- G. The Contract Administrator is responsible for ensuring all procurements, purchase orders and contracts are in compliance with these contract procedures and applicable federal agency requirements for federally funded procurements.

PROCEDURES:

The procedures for soliciting and awarding purchase orders, professional services agreements and other third party contracts of any type entered into by an Agency are set forth in the attachments to this EDMM. Refer to the Project Manager's Guide for specific guidance on implementation. In the event that this EDMM and the Project Manager's Guide are not consistent, this EDMM prevails.

REFERENCES:

Delegation to Agency Committees:
MTC Resolution No. 1058, Revised

BATA Resolution No. 20, Revised
MTC SAFE Resolution No. 36, Revised

Delegated Signature Authority:
MTC Resolution No. 3619, Revised
MTC SAFE Resolution No. 44, Revised
BATA Resolution No. 46, Revised
BAHA Resolution No. 1, Revised
BAIFA Resolution No. 1, Revised

Project Manager's Guide (*Located in J: Contracts\Proj Mgr Guide*)

EFFECTIVE DATE: June 1, 2017
(*Supersedes EDMM 352, dated July 1, 2010, as revised May 15, 2015*)

DocuSigned by:
Steve Heminger
021DA2847D43405...
Steve Heminger, Executive Director

- Attachment A: General Contracting Guidelines
- Attachment B: Procurement Guidelines for Low Bid/Price Contracts
- Attachment C: Competitive Negotiation Procedures for Professional Services Contracts
- Attachment D: Review and Approval Guidelines
- Attachment E: Bench Contracts: Ranking and Selection Procedures

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EDMM 352
Procurement and Contracting Procedures and Guidelines
(June 1, 2017)

Procurement and Contract Guidelines

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ATTACHMENT A, GENERAL CONTRACTING GUIDELINES

1. General Guidelines

Goods and services shall be acquired through a procurement process that provides full and open competition consistent with all federal, state and agency regulations. The purchase of goods and services shall not be fragmented to circumvent the competitive procurement requirements.

2. Types of Procurements and Solicitations

Table 1 summarizes the various levels of competitive procurements and solicitations. Within those levels, Attachments B and C describe in general different types of procurement vehicles, such as low bid procurement, competitive proposals (requests for proposal, two-step procurements, and requests for qualification). More detailed descriptions of the types of procurements appear in the Project Managers' Guide.

Table 1 - Types of Procurements and Solicitations	
Type	Description Summary
Micro-Purchases <i>≤ \$3000</i> <i>Cumulative</i>	<ul style="list-style-type: none"> ▪ Project Manager makes a reasonable selection based on his/her experience or knowledge of the available resources and provided the price is fair and reasonable. ▪ Type of Agreement: Direct Order or Purchase Order; competitive procurement documentation is not required.
Informal Procurements <i>\$3,000 - \$25,000</i> <i>Cumulative</i>	<ul style="list-style-type: none"> ▪ Minimum of 3 bids solicited by telephone, internet, email and/or fax. ▪ May issue a written Solicitations of Quotations or Proposals (SOQ or SOP). ▪ Type of Agreement: Direct order or Purchase Order accompanied by documentation supporting the competitive bid process. ▪ If bids exceed \$25,000, Executive Office must approve the purchase. ▪ The Executive Office must approve amendments to purchase orders procured informally that cause the total contract value to exceed \$25,000.
Formal Procurements <i>> \$25,000</i> <i>Cumulative</i>	<ul style="list-style-type: none"> ▪ The Project Manager prepares a formal, written solicitation: Solicitations of Quotations or Proposals (SOQ and SOP), Invitations for Bid (IFB), Requests for Proposal (RFP), Requests for Qualifications (RFQ) or two-step procurements (RFQ/RFP). ▪ Type of Agreement: Purchase Order (SOQ or IFB) or Contract (Letter or Standard).
Combined or bundled purchases or similar Intergovernment Procurement Agreements <i>Any value</i>	<ul style="list-style-type: none"> ▪ The competitive solicitation requirement is satisfied if the firm is selected through a competitive bid process formally conducted by another government agency and the award specifically permits other government agencies to piggyback on the agreement. ▪ Type of Agreement: Purchase Order or Contract (Letter or Standard) accompanied by documentation of intergovernmental agreement.
Architectural and Engineering (A/E) Procurements - Any value	<ul style="list-style-type: none"> ▪ The Project Manager prepares a formal, written qualifications-based Request for Qualifications (RFQ). ▪ Type of Agreement: Purchase Order or Contract (Letter or Standard).
Pre-qualified Pool (Multiple Consultants/Bench) RFPs or RFQs <i>Any value</i>	<ul style="list-style-type: none"> ▪ When MTC plans to accomplish multiple projects relying upon the same or similar expertise and background, the Project Manager may elect to generate a panel of qualified firms from which to select particular consultants. ▪ Type of Agreement: Contract (Standard). ▪ If the total budget for the bench procurement exceeds the Executive Director's signature authority, the selection of the bench must be approved by an Authorizing Board when the bench is selected.

3. Procurement Document Review and Approval Process

In general, procurements do not require Authorizing Board approval before issuance. Written procurement documents are reviewed by the Section Director, Contract Administrator, Finance, Executive Office and the Office of General Counsel for adherence to this EDMM.

Procurement of all commercially available IT software, hardware, supplies and services that will be used within or connected to an Agency's computer systems and network (including Agency-hosted web sites) must be reviewed and approved by the Director, Technology Services or designee for adherence to IT technology standards, security policies and industry best practices. For procurement of IT software, hardware, supplies and services that will be used entirely outside of Agency computer systems and network, such as technology projects that are outsourced to contractors or hosted off-site, IT review may be requested to provide advice on industry best practices.

There is also a separate BATA network with standards for software, hardware, supplies and services that are to be approved by the BATA IT representative. IT review for other Agency purchases will be coordinated and approved by the appropriate IT representative for the Agency.

See Attachment D: Tables 4a and 4b for the review and approval process for written procurements and solicitations.

4. Notification to Potential Bidders/Proposers, and List of Proposers

All written solicitations must be posted on the MTC website, with notices (i.e. mail, email or fax) sent to firms in the MTC Vendor/Consultant database, the statewide DBE database and the Project Manager's vendor list. Other sources (i.e. websites, newspapers) may be used to ensure a diverse pool of potential bidders including local, woman-owned, minority-owned, and small businesses. Documentation of the vendor notification list must be maintained in the contract file.

After bids/proposals are due, the Contracts section must create a bid list that includes a list of actual bidders/proposers and that contains the following information:

1. Name and address of Firm,
2. DBE & non-DBE status (check http://www.dot.ca.gov/hq/bep/find_certified.htm),
3. SBE status (check <http://www.bidsync.com/DPXBisCASB>),
4. Age of Firm, and
5. Annual gross receipts.

5. Bidders' or Proposers' Conference

Solicitations may include a provision for a bidders' or proposers' conference to explain or clarify project requirements and to answer questions regarding the solicitation. It is Agency policy to hold a bidders' or proposers' conference in connection with all federally-funded procurements. Documentation of those who attend the conference must be maintained in the contract file.

Any changes to the provisions in the solicitation document must be issued as an Addendum to the solicitation and posted on the website for bidder reference. Responses to requests for clarifications in the solicitation materials shall be posted on the website for bidder reference.

6. Federally-funded Procurements

Federal funds have specific regulations that apply to procurements, particularly in the area of DBE. Therefore, the project manager should review current DBE regulations, requirements, and

compliance with the Agency DBE Liaison. RFPs for federally-funded projects must include the federal requirements included in the boilerplate Request for Proposal saved at J:\Contract/Procurement/Standard Forms/DOT Requirements (or a successor location). The DBE provisions to be included in federally-funded procurements appears in J:\CONTRACT\Procurements\Formats\RFP Template_final.dotx (or a successor location). Additional provisions may be required if the RFP involves research and development, procurement of materials and supplies, or construction.

A complete description of the procurement requirements for federally-funded contracts is set forth in 2 CFR Parts 200 and 1201 and 49 CFR Part 18.36. The Federal Transit Administration (FTA) has provided procurement guidance by means of FTA Circular 4220.1, most recently issued as 4220.1F on March 18, 2013. This circular, as it is revised from time to time by FTA, should be consulted any time a FTA-funded contract over \$3,000 is entered into. No specific procedures for selecting consultants using CMAQ or STP funds have been issued by FHWA; State or Federal-aid highway-funded contracts are governed by the Caltrans Local Assistance Procedures Manual.

FTA does not permit contracts that were originally procured as non-federal to be “federalized.” In other words, federal funds cannot be added to a non-federally funded contract simply by adding or amending the agreement with federal clauses. In these instances, it is necessary to rebid the scope of work under federal guidelines.

Notwithstanding any other provision of this EDMM, the Office of General Counsel (OGC) must approve all federally-funded purchases exceeding \$3,000. Approval by the OGC means that, in the professional judgment of the reviewing attorney, federal requirements were followed.

7. Insurance Requirements

Detailed descriptions of the types of insurance coverage required of our contractors have been developed by the Agency’s insurance broker and may be obtained from the Contract Administrator. The standard insurance coverage levels (as listed in Agency contract boilerplates), at a minimum, should always be required when the type of work suggests more than nominal risk to the Agency (e.g., the contractor will interact with the public; use an automobile; or provide professional services such as architectural, engineering, legal, construction, or physical work such as equipment maintenance or installation).

Solicitations and resultant contracts must include language which requires that contractors obtain insurance at specified levels and to add the appropriate Agency (or Agencies), and its commissioners, officers, employees, and agents as additional insureds with respect to the activities under the project. In addition, for contracts resulting from informal purchase procedures or sole source selection, the applicable insurance requirements should be faxed or emailed to the prospective vendor/contractor with the procurement information.

The contractor is required to provide the Contract Administrator with certificates of insurance as evidence of coverage. Upon approval of the award and before payment can be authorized,

insurance compliance must be verified by the Agencies' insurance/risk manager vendor, as designated by the Administrative Services Section.

Requests for modification or waiver of insurance requirements must be cleared through the Contract Administrator.

8. Protests

I. All formal solicitations must notify prospective bidders/proposers that they may protest as follows:

- a) Any provision of a solicitation on the grounds that it is inconsistent with Agency procedures, including EDMM 352, or in violation of applicable federal, state or local law or regulation; or
- b) An Agency finding that the bidder's/proposer's bid/proposal is nonresponsive or that the bidder/proposer fails to meet minimum qualifications or that the bidder/proposer is nonresponsive; or
- c) The selection of a particular contractor on the grounds that Agency procedures, the provisions of the solicitation or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied.

II. The written protest must be submitted to the Project Manager with an explanation of the basis for the protest no later than the deadline specified in the solicitation as follows:

- a) Typically three (3) business days prior to the due date for proposals, for objections to the solicitations provisions;
- b) Typically three (3) business days after notification for determinations of non-responsiveness, failure to meet minimum qualifications, or other findings of nonresponsibility; or
- c) No later than a specified number of working days (at least three (3)), after the date on which the contract is awarded or the date the proposer is notified that it was not selected, whichever is later, for objections to contractor selection. Unless otherwise specified in the written solicitation, where there are multiple Authorizing Boards (i.e. where a standing committee refers a contract action to the full Commission for approval) the protest period shall begin upon the action of the first Authorizing Board.

Protests of recommended awards must clearly and specifically describe the basis for the protest in sufficient detail for the Agency review officer appointed by the Executive Director to recommend a resolution to the Executive Director or Section Director, as applicable.

Except with regard to the limited disclosures required for protests of initial determinations of nonresponsiveness, nonresponsibility, or failure to meet minimum qualifications, the evaluation record shall remain confidential until the first action (i.e. referral or approval) by an Authorizing Board or as otherwise specified in the written solicitation or, for contract approvals delegated to

the Executive Director (as of the date of this EDMM, contracts not exceeding \$200,000), the Executive Director authorizes award.

For contracts approved by an Authorizing Board, the Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer appointed by the Executive Director. For contracts approved by the Executive Director, the Section Director will respond to the protest in writing, based on the recommendation of the staff review officer appointed by the Section Director.

Should the protesting proposer/bidder wish to appeal the decision it may file a written appeal as follows:

For contracts approved by an Authorizing Board: The protesting proposer/bidder may file a written appeal of a decision of the Executive Director with the Authorizing Board specified in the procurement no later than the period specified in the procurement (usually three (3) business days after receipt of the written response from the Executive Director). The Authorizing Board's decision will be the final agency decision.

For contracts approved by the Executive Director: The protesting proposer/bidder may file a written appeal of a decision of the Section Director with the Executive Director no later than the period specified in the procurement (usually three (3) business days after receipt of the written response from the Section Director). The Executive Director's decision will be the final agency decision.

For protests of award, authorization to award a contract to a particular firm shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest, or if the decision is appealed, the issuance of the Authorizing Board or Executive Director's decision, as applicable.

A protest procedure for contracts approved by the Executive Director, or his designee, consistent with the above procedures, shall be set forth in procurements for such contracts. (See J:Contracts\Contract Formats\Formats or successor location.)

9. Sole Source Contracts

Competitive procedures are not required for one-time purchases of \$3,000 or less. Otherwise, sole source (noncompetitive) contracts may not be entered into by the Agency, except in the following situations in which the award of contract is infeasible under a competitive process:

- a) the goods or services are available only from a single source;
- b) the timeframe for conducting a competitive procurement will result in a public exigency or compelling urgency; or
- c) there is a compelling business reason to award to a particular contractor; cannot be a justification for federally funded purchases.

To receive Agency approval for a sole source contract, the Project Manager must prepare a sole source justification memorandum detailing the reasons why a competitive procurement is not feasible and citing one or more of the above reasons.

The sole source justification memorandum must be signed by the Section Director. In addition, the Office of General Counsel must review all “single source” and “compelling urgency” sole source justification memoranda (a and b above) for legal sufficiency. Finally, the Executive Director or Deputy Executive Director must approve and sign all sole source memoranda, regardless of the amount of the contract. A Deputy Executive Director may not approve sole source contracts proposed by a Section Director under his/her supervision.

After the sole source purchase is authorized by the Executive Office, the Project Manager may proceed with the contract award. Approval of the contract by the designated Authorizing Board is also required if the contract award is over the Executive Director’s delegated authority.

Upon approval of the sole source memorandum, the Project Manager shall forward the original signed document to the Contracts Section for retention with the original executed contract. A copy of the approved sole source justification memorandum should be attached to the purchase requisition or contract as it circulates for internal approval.

Subsequent purchases, for goods or services previously approved under a sole source memorandum, will not require legal review if the Contract Administrator determines the existing sole source applies.

See Attachment D: Table 5 for the review and approval process for sole source memorandums.

10. Emergency Actions

The Executive Director is authorized (*MTC Resolution No. 3619, Revised; MTC SAFE Resolution No. 44, Revised; BATA Resolution No. 46, Revised; BAIFA Resolution No. 1; BAHA Resolution No. 1* or their successor resolutions) to waive competitive procurement requirements for emergency contracts, with the approval of the Authorizing Board Chair, or in his/her absence, the Vice Chair, provided that funds for the contract are available in the adopted agency budget, and that each emergency contract may not exceed \$1,000,000.

An “emergency” contract is defined as necessary to deal with “Acts of God” or other threats to public safety or well-being when the delay caused by waiting for the next meeting of the Authorizing Board would increase that threat.

11. Budget Approval

Funding for all purchases and contracts must be included in the adopted Agency budget.

12. Approval of Awards

The Commission has delegated contract approval authority for MTC and MTC SAFE to the Administration and Operations Committees in MTC Resolution No. 1058 revised, and BATA has delegated contract approval authority for BATA to the BATA Oversight Committee in BATA Resolution No. 20, as those resolutions may be amended from time to time. Notwithstanding any delegation, the Commission and BATA may also approve contracts.

Pursuant to MTC Resolution No. 3619, BATA Resolution No. 46, MTC SAFE Resolution No. 44, BAIFA Resolution No. 1, and BAHA Resolution No. 1, as those resolutions may be amended from time to time or replaced, some covered contracts may be signed by the Executive Director, Deputy Executive Director, or a designee of the Executive Director without prior approval by the applicable Authorizing Board. As of the effective date of this EDMM, the delegation of signature authority for Agency contracts is as follows:

- a) Contracts or amendments up to \$200,000 cumulatively (or as amended by Agency resolution);
- b) Contract amendments or change orders up to the amount of a committee-approved contract allotment.
- c) Emergency purchases or contracts.

Regarding (a) above, “cumulatively” means that the person(s) with signature authority may sign a contract and one or more amendments without requesting Authorizing Board approval as long as the total of such contract and amendments does not exceed \$200,000. Once a contract or amendment has been approved by the Authorizing Board, the Executive Director’s delegated signature authority is replenished, and amendments up to \$200,000 may be signed without Authorizing Board approval.

In addition to the above delegation, BATA has authorized the Executive Director or his designee to authorize contract changes in excess of these thresholds under specified conditions, in BATA Resolution No. 21.

Contracts or amendments in excess of \$200,000 or otherwise not included in the delegation of contracting authority established by Agency resolution must receive approval from the Authorizing Board before a contract is executed. A copy of the signed Authorizing Board approval must be attached to the contract document that circulates for review and approval.

Micro-purchases (\$3,000 or less), selected without competitive procurement, may only be amended after documentation of an informal procurement process, and may not exceed the total cumulative contract amount of \$25,000. In addition, amendments to purchase orders, selected through an informal procurement process, may only be amended above \$25,000 with approval by the Executive Office.

13. Contract Review and Approval

Contracts are reviewed by the Section Director, Contract Administrator, Finance, Executive Office and the Office of General Counsel for adherence to this EDMM. The routing and approval process varies, depending on the type of contract.

License agreements for software that is developed or modified for MTC by consultants must follow the regular review process. In general, software license agreements for commercially available software (e.g. Microsoft Office) generally contain boilerplate language that cannot be amended by MTC as the licensee. This includes agreements for software service, technical support, warranty and maintenance. The Director of Technology Services or designee is authorized to sign these documents and accept the Terms and Conditions without legal review. The BATA, BAIFA, BAHA, and MTC SAFE IT representatives are also authorized to accept the terms of conditions, without legal review, for software license agreements for BATA, BAIFA, BAHA, and MTC SAFE. All other license agreements must be reviewed by OGC.

OGC will also review third-party agreements, such as those for licensing and rental of equipment and facilities for indemnification, insurance and other obligating clauses. Once the agreement is approved by OGC, it follows the review and approval process for any other contract.

For purchases requiring a Purchase Order and a Letter Agreement, both the requisition and Letter Agreement should be circulated concurrently for approval.

See Attachment D: Table 6 for the review and approval process for purchase orders (requisitions and amendments) and Table 7 for contracts and agreements (new and amendments).

14. Payment Provisions

Typical payment mechanisms are discussed in the Project Manager's Guide. Consult with OGC for payment restrictions in federally-funded contracts.

15. Invoice Approval

Contractors are required to mail invoices directly to Accounts Payable for processing. Upon review and approval by the Project Manager and Section Director, the invoice shall be returned to Finance for payment. The Project Manager is responsible for resolving any invoice disputes with the vendor.

16. Record Retention

All associated records, including but not limited to, purchase orders, contracts, agreements and supporting documents, audit reports and work papers, if appropriate, shall be retained in accordance to EDMM 322, Records Management and Retention Policy and/or applicable federal, state or grant requirements. (*See 2 CFR Section 200.333, 49 CFR Section 18.42, and pertinent federal retention requirements.*)

The required documentation for federally funded contracts is set forth in Attachment C, Section 6.

17. Public Disclosure

A. Proposals received in response to an agency solicitation are public records, as defined in the California Public Records Act (PRA) Government Code § 6250 *et seq.* and as such are subject to disclosure, unless exempt according to Gov. Code § 6254 or other statutes regarding exemptions. Solicitations must always notify prospective proposers of this requirement. This disclosure also includes lists of vendors who attended a bidders/proposers conference and planholders who obtain solicitation documents.

Unless otherwise specified in the written solicitation, the vendor recommendation shall remain confidential until approval by the Executive Director or once an Authorizing Board's agenda packet is officially posted for public review. The evaluation record shall remain confidential until approval by the Executive Director or the first action (i.e. referral or approval) by an Authorizing Board, or as otherwise specified in the written solicitation; the evaluation record is then subject to public disclosure. However, bids received in response to an IFB will be kept sealed until the bid opening date and time, at which time a public bid opening will be held.

B. Contract actions requesting Authorizing Board approval to enter into or amend a legal services contract with litigation counsel during the pendency of the litigation will not include the amount of the contract or contract amendment, provided that funds are available in the current Agency budget and that the scope and amount of the contract have been reviewed by the Authorizing Board in a duly authorized closed session; provided that all information regarding any such contract and its costs will be subject to public review upon the conclusion of the litigation.

18. Architectural and Engineering (A&E) Services

Under state and federal law, a qualifications-based (Request for Qualifications (RFQ)) selection is required for services performed by members of the architectural and engineering professions, including architectural, landscape architectural, engineering, environmental, surveying, comprehensive planning, design, feasibility study, mapping, construction engineering, or project management services with respect to a construction project or other development, construction, alteration or repair of real property. Price or budget may not be considered as an evaluation criterion in the ranking process. See Attachment E, Bench Contracts: Ranking and Selection Procedures, for procedures relevant to bench contracts.

Attachment B, Procurement Guidelines for Low Bid/Price Contracts

1. Types of Written Low Bid Solicitations

The following table summarizes the various types of written low bid solicitations that generally result in the award of a Purchase Order. *Refer to Attachment C if the resultant award is a contract or agreement. For more detailed information, refer to the Project Manager's Guide.*

Purchases shall not be split up to avoid solicitation thresholds.

Table 2: Types of Low Bid/Price Solicitations	
Type	Description Summary
Solicitation of Quotations (SOQ) >\$3,000 - \$25,000	<ul style="list-style-type: none"> ▪ The specifications can be described succinctly and precisely and the bidder does not require background information in order to submit a responsive bid, and a lump sum bid is solicited. ▪ The determining factor is the lowest price. ▪ Most often used for small one-time purchases of equipment, maintenance and repairs, printing and other services/items.
Invitation for Bid (IFB) >\$25,000	<ul style="list-style-type: none"> ▪ Most often used in equipment purchases and construction contracts. Building contracts that qualify under California law as “public works¹” projects must be awarded on the basis of low bid (IFB). ▪ Once the threshold qualifications in the IFB are met, the determining factor is price. ▪ Award is to the lowest responsive, responsible bidder. ▪ Bids received in response to an IFB will be kept sealed until the bid opening date and time.

2. Direct Orders

Purchase orders are not required for purchases of \$25,000 or less but they may be issued if requested by the vendor or Agency. Upon written authorization of the purchase by the Section Director, the Project Manager may place the order for the goods and services directly with the vendor. Payment shall be made by direct order or upon receipt of an invoice by Finance.

¹The definition of “public works” for the purposes of low bid procurements is found in California Public Contract Code Section 22002. It generally includes such work as construction, reconstruction, erection, alteration, renovation, improvement, and repair including painting and repainting of publicly-owned property. It does not include maintenance work such as routine or recurring work for protection or preservation, minor painting, or landscape maintenance. Note that this definition of “public works” is different than the definition of “public works” applicable to prevailing wage requirements, which is found in California Labor Code Section 1720 and the California Code of Regulations, and which does include some maintenance work. Questions as to whether a project is a “public work” subject to low bid requirements should be referred to the OGC.

3. Purchase Orders

The Agency may issue a Purchase Order (PO) as evidence of a contractual agreement with a supplier of goods or services that specifies items, quantities, delivery dates, shipping and freight terms and all other obligations and conditions (e.g., insurance requirements).

For purchases of \$25,000 or less, a PO is not required to be issued.

For purchases over \$25,000, a PO is required.

If a PO is requested or required, the Project Manager is responsible for submitting a purchase requisition for approval by the appropriate parties. Once approved, a PO will be issued by Finance. The vendor will be paid upon submission of an invoice(s) and verification by the Project Manager that the goods and services were received and that all terms and conditions of the PO have been met.

4. Purchase Order Amendments

Changes to the original PO (type of goods, pricing, etc.) must be made by an amendment. The Project Manager cannot request additional work or goods without prior approval of the proposed amendment(s). An amendment to the purchase order will also be required if there are insufficient funds to pay the outstanding invoices or the total charges exceed the original purchase order by \$100 or more.

5. Expiring Purchase Orders

Purchase orders for operating expenses funded with operating budget monies are issued for the fiscal year and expire on June 30, the last day of the fiscal year if operating funds are utilized. Unspent or available monies do not automatically carry over into the next fiscal year. Therefore, it is the Project Manager's responsibility to work with the vendor to ensure goods and services are delivered in the fiscal year in which the purchase order is issued, and the related invoices are received by the deadline established by Finance for fiscal year closing. Purchase orders that have expired at the end of the fiscal year cannot be amended.

Attachment C, Competitive Negotiation Procedures for Professional Services Contracts

1. Type of Competitively Negotiated Written Solicitations

The following table summarizes the various types of competitive/negotiated written solicitations that generally result in the execution of a contract or agreement. *Refer to Attachment B if the resultant award is a Purchase Order. For more detailed information, refer to the Project Manager's Guide.*

Table 3 – Competitive / Negotiated Solicitations	
Type	Description Summary
Solicitation of Proposals (SOP)	<ul style="list-style-type: none"> ▪ A vendor can be selected based on (in no particular order) price, references, experience, and/or samples and without an evaluation of their approach to providing the goods/services; ▪ The proposer does not require detailed information on the project or the Agency in order to submit a responsive proposal; ▪ There is no need for a proposers' conference or interview; ▪ A lump sum or time and materials payments are contemplated; and ▪ There is not a DBE goal (federally funded project).
Letter RFP (short form)	<ul style="list-style-type: none"> ▪ Firm fixed-price (deliverables-based) contract or labor-hour contract (not cost reimbursement type) is contemplated. ▪ Work scope focuses on results, rather than approach, and desired results can be described succinctly and precisely. ▪ Reasonableness of price or cost effectiveness can be evaluated based on hourly rates or a detailed task budget. ▪ Scope of services, procurement procedure, complexity, and size of the procurement lends itself to a simple procurement approach.
Standard RFP (long form)	<ul style="list-style-type: none"> ▪ For all other procurements that do not meet the criteria for SOPs or Letter RFPs or for which a letter RFP is not appropriate because of the complexity or size of the procurement. ▪ Must be used for federally funded procurements.
Request for Qualifications (RFQ)	<ul style="list-style-type: none"> ▪ Primary focus of the evaluation is qualifications and experience. ▪ The proposer is not requested to propose an approach to performance of a particular project or to provide a work plan. ▪ Under state and federal law, a qualifications-based (Request for Qualifications (RFQ)) selection is required for services performed by members of the architectural and engineering professions, including architectural, landscape architectural, engineering, environmental, surveying, comprehensive planning, design, feasibility study, mapping, construction engineering, or project management services with respect to a construction project or other development, construction, alteration or repair of real property.
RFQ/RFP	<ul style="list-style-type: none"> ▪ Initial solicitation to identify qualified firms or teams. ▪ Proposals requested from pre-qualified firms or teams.

Table 3 – Competitive / Negotiated Solicitations	
Type	Description Summary
Pre-qualified Pool (Multiple Consultants/ Bench) RFPs or RFQs	<ul style="list-style-type: none"> ▪ When an Agency plans to enter into multiple projects relying upon the same or similar expertise and background, the Project Manager may elect to generate a panel of qualified firms from which to select particular consultants. ▪ If a bench is selected, a direct selection can be made, if permitted by the original procurement, after a memo to the project file from the Project Manager documenting that the selected firm is the most advantageous based on the evaluation criteria. In the alternative, a Mini-Procurement (RFQ or RFP) may be issued. If the Mini-Procurement is issued to less than all firms on the bench, a memo to the file must be written explaining why the Mini-Procurement went solely to the targeted firms. After the Mini-Procurement is evaluated the contract/Task Order must be issued to the most advantageous firm based on the evaluation factors. Special rules apply to Mini-Procurements for A&E services. See Attachment E, Bench Contract: Ranking and Selection Procedures.

2. Content of Solicitations

The level of detail required in an RFP will vary depending upon the size and scope of the project. However, all competitively negotiated procurements must include:

- a) A clear and accurate description of the technical and other requirements for the services to be performed under the agreement and the deliverables to be produced. Such description must not unduly restrict competition.
- b) All requirements that proposers must fulfill and all other factors to be used in evaluating bids or proposals.
- c) A summary of the key terms and conditions to be included in the Agency's contract with the selected consultant with particular attention drawn to the insurance requirements. The Agency's standard provisions for professional service agreements should be attached to standard RFPs described in Table 3 above.
- d) A statement assuring compliance with the California Levine Act (Cal. Gov. Code § 84308).
- e) Procedures for protesting award.
- f) References with descriptions of similar projects and a contact person per project.

In addition to (a) – (f) above, all RFQs must include:

- g) A clear and comprehensive description of the professional background, technical experience, education and other qualifications necessary to perform work required under the project. If threshold minimum qualifications are included, they must be quantifiable and not subject to subjective interpretation.

3. Evaluation Criteria

Evaluation criteria must be stated and listed in the written solicitation in order of relative importance and weight, if not equal. The Project Manager shall establish a scoring method before proposals are reviewed. Evaluation procedures should be developed for procurements of \$200,000 or more (see 4 below). Unless otherwise provided in the procurement document, the evaluation record remains confidential until the Executive Director authorizes award or the first action is taken by an Authorizing Board to either refer or approve the award.

4. Evaluation Procedures

For procurements of \$200,000 or more staff must develop evaluation procedures (a) describing how the evaluation panel will apply the evaluation criteria and arrive at a recommendation and (b) setting forth any conflict of interest provision applicable to the procurement.

5. Cost or Price Analysis

A cost or price analysis must be conducted for all federally-funded contracts (except RFQs where selection is qualifications-based). Additionally, a cost analysis must be performed:

- For cost-reimbursement type contracts;
- In fixed price contracts when adequate price competition is lacking; and
- For sole source procurements, including contract amendments (change orders) and task orders, unless price reasonableness can be established on the basis of catalog or market price.

Where there is adequate competition, relative prices may establish cost reasonableness. A summary of the cost or price analysis performed, including acceptance of special or unusual costs and determination of reasonableness of profit or fee, should be part of the project documentation.

6. Project Documentation

Permanent evaluation documentation must be retained for all procurements for the period specified in the Agency's retention policy.

Documentation should include the following, which must be retained for the full retention period:

- a) the solicitation document;
- b) the proposal of the selected contractor;
- c) the final evaluation records;
- d) any committee memoranda or selection summaries supporting the selection decision;
- e) the rationale for procurement method and contract type (i.e. informal solicitation, formal advertising, or competitive negotiation; and cost plus fixed fee, firm fixed price, or time and materials); and
- f) the basis for contract price.

7. Contract Boilerplates

The Agency has adopted boilerplate documents for contracts, contract amendments and funding agreements including required clauses such as payment terms, insurance, indemnification, ownership of

work products, records/audits and termination. Any requests for changes, modifications or waivers of legal requirements must be cleared through the General Counsel's office.

Instructions for the use of certain provisions, and for federally funded contracts, are included in the contract boilerplate itself and in the Project Manager's Guide.

8. Contract Amendments

All contract modifications are effected by written amendments or change orders signed by all parties to the original contract. The Project Manager may not request or approve new work after the contract term has ended until a written amendment or change order has been executed.

Contracts that are closed cannot be amended. A completed deliverables-based contract may not be amended to add new work in a subsequent fiscal year following the fiscal year of its completion.

9. Pre-award and Interim Audits

Federally funded projects have requirements for pre-award and final audits, which are set forth in EDMM No. 347. It is the responsibility of the Project Manager to alert the Finance Section of the need to perform a pre-award audit, when it is required by EDMM No. 347 or federal funding sources, or is advisable based on the circumstances.

Contracts funded by Caltrans using federal or state highway funds may require certification of a pre-award audit and/or Caltrans review prior to execution. Project Managers should consult the Caltrans Local Assistance Procedures Manual and/or the Caltrans District 4 office to identify applicable pre-award review or audit requirements.

Attachment D, Review and Approval Guidelines

In accordance with the delegated authority of MTC Resolution No. 3619, Revised (and its other Agency counterparts), the review and approval process and the Executive Director delegations of signature authority for all written procurements, purchase order, contracts and amendments is set forth in Tables 4-7 below. ¹

Table 4a: Written Procurements and Solicitations							
Cumulative Total	Section Director	Finance	Contracts	Technology Services Section	Office of General Counsel	Deputy Executive Director	Executive Director or Designee
>\$3,000 - \$25,000	Review	Review	Review	As needed	As needed, including all federally-funded purchases	Final Approval & Execute Final Document	
>\$25,000-\$200,000	Review	Review	Review	As needed	Review	Final Approval & Execute Final Document	
>\$200,000	Review	Review	Review	As needed	Review	Review	Approve & Execute Final Document
Table 4b: Mini-Procurement							
Cumulative Total	Section Director	Finance	Contracts	Technology Services Section	Office of General Counsel	Deputy Executive Director	Executive Director or Designee
\$1 - \$1,000,000	Review, Approval & Execution of Final Document	Review	Review	As needed	As needed		
>\$1,000,000	Review, Approval & Execution of Final Document	Review	Review	As needed	As needed	Review	

¹ Any delegation of approval authority to a Section Director may also be approved by the Deputy Executive Director or Executive Director; any delegation of approval authority to a Deputy Executive Director may also be approved by the Executive Director.

Table 5: Sole Source Memoranda				
Type	Office of General Counsel	Section Director	Deputy Executive Director¹	Executive Director or Designee
Single Source	Review for Legal Sufficiency	Concur	Approve, up to \$100,000	Final Approval >\$100,000
Compelling Urgency	Review for Legal Sufficiency	Concur	Approve, up to \$100,000	Final Approval >\$100,000
Compelling Business	No review	Concur	Approve, up to \$100,000	Final Approval >\$100,000

¹ A Deputy Executive Director may not approve a sole source contract proposed by a Section Director under his/her supervision.

Table 6: Purchase Requisitions and Amendments							
Cumulative Total	Section Director	Technology Services Section	Contracts	Finance	Office of General Counsel¹	Deputy Executive Director	Executive Director
≤\$25,000	Review & Final Approval	As needed	Review	Review	As needed		
>\$25,000-\$200,000	Review	As needed	Review	Review	As needed	Final Approval	
>\$200,000	Review	As needed	Review	Review	As needed	Review	Final Approval after Committee approval

¹ The Office of General Counsel will also review third party agreements or other documents as needed.

Table 7: Contracts and Agreements (New and Amendments)							
Cumulative Total	Section Director	Finance	Contracts	Technology Services Section	Office of General Counsel	Deputy Executive Director	Executive Director or Designee
≤\$25,000	Review, Approve and Execute Final Document (except sole source)	Review for Fund type; Budget encumbrance	Review	As needed	If federal funds are involved and as needed.		
>\$25,000-\$200,000	Review	Review for Fund type; Budget encumbrance	Review	As needed	Review	Final Approval	
>\$200,000	Review	Review for Fund type; Budget encumbrance	Review	As needed	Review	Review	Final Approval after Committee approval

Attachment E,
Bench Contracts: Ranking and Selection Procedures

Federally Funded Architectural and Engineering (A&E)* Projects:

- Where a bench has been established but no ranking of firms was made at the time of selection for the specific type of project being procured, a mini-Request for Qualifications (RFQ) must be issued. A mini-RFQ is an RFQ that is sent to firms that have been “pre-qualified” by a previously issued RFQ for a specific service, for the purposes of ranking the “pre-qualified” firms for the specific project being procured. The mini-RFQ must be issued to all firms on the bench that were qualified for the type of work being awarded.
- Ranking must occur first, without consideration of price or budget, and then price may be considered for reasonableness. If a reasonable price cannot be agreed upon with the highest-ranking firm, the Project Manager may attempt to negotiate a reasonable price with the next highest-ranked firm, continuing negotiations with successively lower-ranked firms until a reasonable price and contract terms are agreed upon. The Project Manager must prepare a memorandum documenting the selection (including at a minimum, the internal governmental estimate for the work, evaluation factors and scores given to the firms, rankings of firms, and a record of any and all negotiations related to cost, staffing, scheduling, and other terms) prior to notice of award.
- If a ranking was established as part of the procurement for the original bench, that ranking applies to all contracts/task orders issued under the procurement and price negotiations must commence with the highest-ranked available firm. The Project Manager must prepare a memorandum documenting the selection which includes applicable documentation requirements as set out in the previous bullet.

Non-Federally Funded A&E* Projects:

- Where a bench has been established but no ranking of firms was made at the time of selection for the specific type of project being procured, a mini-RFQ may be issued to any or all firms on the bench. Any mini-RFQ sent to less than every firm on the bench must be supported by a memo to the project file, approved by Contracts staff, showing that the firms receiving the mini-RFQ were the most qualified of the firms on the bench for the work being awarded.
- In the alternative, a direct selection can be made, if permitted by the original procurement, after a memo to the project file from the Project Manager documenting that the selected firm is the most qualified has been reviewed and approved by Contracts staff.
- If a mini RFQ has been issued, the second bullet above under Federally Funded Architectural and Engineering (A&E) Projects applies.

- If a ranking was established as part of the procurement for the original bench, that ranking applies to all contracts/task orders issued under the procurement and price negotiations must commence with the highest ranked available firm. Applicable documentation requirements set out in the third bullet under Federally Funded Architectural and Engineering (A&E) Projects apply.

All Other Non A&E Bench Contracts Regardless of Funding:

- A mini-RFQ or RFP may be issued to any or all firms on the bench. Any mini-procurement sent to less than every firm on the bench must be supported by a memo to the project file, approved by Contracts staff, showing that the firms receiving the mini-procurement were the most qualified of the firms on the bench for the work being awarded.
- In the alternative, a direct selection can be made, if permitted by the original procurement, after a memo to the project file from the Project Manager documenting that the selected firm is the most advantageous based on the evaluation criteria has been reviewed and approved by Contracts staff. If referenced in the solicitation for the original procurement, most advantageous may include a consideration of whether all firms on the bench have received work.

General Notes:

- If the total budget for a bench procurement exceeds the Executive Director's signature authority, the bench procurement shall require the bench selection to be approved by an Authorizing Board at the conclusion of the bench selection.
- Contracts staff must review all mini-procurements (RFQs and RFPs) and any addenda prior to issuance.
- Contracts staff must review all selection documentation, regardless of fund type, prior to award.
- Deputy Executive Director review is required for all mini-procurements with budgets exceeding \$1M.
- If a contract and/or task order is issued based on a SOW that does not include a design or construction management component, that contract and/or task order cannot be amended to add those types of services, and the above procedures apply.
- Questions regarding whether or not a SOW constitutes A&E* should be reviewed with Legal staff.

**Regardless of fund source A&E includes services performed by members of the architectural and engineering professions, including architectural, landscape architectural, engineering, environmental, surveying, comprehensive planning, design, feasibility study, mapping, construction engineering, and project management services with respect to a construction project or other development, construction, alteration or repair of real property.*