



Massachusetts Bay Transportation Authority

Procurement Policies and Procedures Manual

Effective Date: *December 30, 2025*

Chapter 3

Goods & Services Procurement

Chapter 3

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3.1. INTRODUCTION

Chapter 3 addresses the procedures and process used for Goods and Services procurement. It is supplemented by:

- the Procurement Desk Reference, which includes more detailed procedures and other reference material for Procurement staff
- the Procurement Resources Site (on the MBTA's "O Drive" and/or the Procurement Sharepoint page) which contains the electronic copies of templates, checklists, and other tools used by the Procurement team and stakeholders
- the reference material provided on the MBTA's Intranet site (TSTOP) which is directed primarily for requesting departments and other stakeholders

3.1.1. THIS CHAPTER DOES NOT ATTEMPT TO ADDRESS EVERY CONCEIVABLE SITUATION THAT MAY ARISE IN CONTRACTING FOR GOODS AND SERVICES. RATHER, ITS AIM IS TO PROVIDE GUIDELINES WHEREBY THE MOST COMMON TYPES OF GOODS AND SERVICES PROCUREMENTS CAN BE OBTAINED ON A COMPETITIVE BASIS AND IN ACCORDANCE WITH ESTABLISHED MBTA POLICIES AND APPLICABLE STATE AND FEDERAL REGULATIONS. HOW TO USE THIS CHAPTER

This Chapter provides instructions about the steps to be taken by MBTA staff, specifically individuals requesting purchase of Goods & Services (Stakeholders), and members of the Procurement team in conducting procurement transactions for the Authority. The content of this Chapter supplements and further clarifies the policies in Chapter 1 of this Procurement Manual.

In the event of any contradiction between this Chapter and the applicable State and Federal regulations, the State and Federal regulations govern.

This Chapter and its contents apply only to Goods and Services procurements.

3.1.2. CENTRALIZED PROCUREMENT

Authority procurement is centralized. This means that departments may define requirements, recommend suppliers, and review and approve bid results; however, the procurement process is conducted by the Buyers, Strategic Sourcing Managers, and leadership of the Procurement & Logistics team.

Departments should not initiate or conduct contract negotiations without the engagement or approval of the Chief Procurement Officer, the Chief of Capital Programs Support, or their designees.

Signature authority for contracts and purchase orders for Goods & Services procurements is defined in the MBTA's Delegation of Authority, which presupposes that the procurement process defined in this Procurement Manual has been followed prior to execution of any contract or purchase order.

3.1.3. AVAILABILITY OF FUNDS

For most goods and services, the Authority's procurement process requires that funds be available or be reasonably expected to be available. The most common way to document funds availability is through an approved Requisition transaction in the Authority's financial system, FMIS. This serves as a pre-encumbrance for funds, and is typically required prior to solicitation for micro-purchases and small purchases.

The Procurement & Logistics team may also solicit goods or services with other reasonable confirmation of funding availability. Examples of such confirmation include off-line communication with a member of the finance or budget team, or direction from senior leadership. In these situations, bid documents indicate that funding is expected but not yet confirmed. When this takes place, the bid solicitation must indicate that funding is expected but not yet confirmed.

3.1.4. PLANNING AND ADVANCE KNOWLEDGE OF REQUIREMENTS

The Authority's financial system tracks existing contracts and provides reporting of upcoming contract expiration. Departments are able – and expected to—use this reporting to anticipate expiration for goods and services contracts and plan the work necessary to procure successor contract(s) when applicable.

3.1.5. ORGANIZATION OF THIS CHAPTER

This chapter is organized so that the major actions and responsibilities of each type of procurement action are described in Section 3.2, additional information is provided for common concepts in Section 3.3, and Section 3.4 deals with exception situations. Section 3.5 addresses document retention and Section 3.6 covers Contract Administration.

3.2. MBTA PROCUREMENT METHODS & PROCESSES

In this Section, each procurement method is described in more detail, including when it is applicable. Specific requirements for the requesting department and Procurement & Logistics are explained. In some cases, requirements will vary based on the funding source used and that is noted when applicable. More detailed procedures are found in the Procurement Desk Reference. Forms, templates, checklists, and other reference material is found in the Procurement Resources site.

3.2.1. MICRO-PURCHASE

Approval/Initiation

Purchases below the Authority's micro-purchase threshold (see Chapter 1, Section 1.2.3) are requested through an approved Requisition in FMIS. The requisition should indicate the item(s) to be procured and the expected cost for each. It is permissible, but not required, for the requesting department to provide a quotation with a suggested supplier as part of the requisition.

Execution

The Buyer will evaluate the quotation if provided or obtain one if not provided. Upon receipt of one or more quotations, the Buyer will evaluate if the proposed price is fair and reasonable, and, if so, will create a Purchase Order and required documentation and route it for approval in FMIS. If the Buyer does not find the price to be fair and reasonable, they will obtain another quotation and repeat the process. If multiple quotations are obtained, the Buyer will select the responsible vendor that meets the requirements with the lowest price.

Documentation

For Micro-purchases, procurement documentation at minimum consists of a statement from the Buyer confirming cost reasonableness and a copy of the selected vendor's quotation. Occasionally, the nature of the good or service is such that it is appropriate to create a contract record in FMIS. See the Procurement Desk Reference for more detailed procedures for Micro-purchases and Section 3.3.26 for information on contract records.

3.2.2. BLANKET PURCHASE ORDERS

Definition

"Blanket Purchase Orders" are a type of Micro-Purchase which requesting departments are permitted to utilize for emergent operational needs, essential goods required outside of normal business hours, and limited services. Blanket Purchase Orders reduce administrative costs associated with small purchases by eliminating the need for issuing individual Purchase Orders.

Execution

Buyers are permitted to issue Blanket Purchase Orders only:

- to established MBTA vendors
- if non-federal funds are utilized
- if the exact items, quantities, and delivery requirements are not known in advance and may vary considerably

Departments are accountable for ensuring that purchases made with Blanket Purchase Orders are an appropriate use of MBTA funds. Procurement & Logistics

provides reporting to requesting departments that identifies active Blanket Purchase Orders and related financial information to assist with tracking and management.

Other Considerations

To the degree possible, Micro Purchase Orders for awards that are awarded without a competitive bid should be distributed evenly among qualified vendors.

3.2.3. SMALL PURCHASE – REQUEST FOR QUOTATION

Approval/Initiation

As with micro-purchases, Small Purchases (those above the Authority's micro-purchase limit but below the Authority's simplified acquisition threshold; see Chapter 1, Section 1.2.3), are typically requested through an approved Requisition in FMIS.

With the requisition, requesting departments should:

- Include a thorough description of the good or service to be procured
- Provide a list of possible suppliers, if known
- Though not required, one or more vendor quotations may be submitted
- If the funding source is federal and it is anticipated that there will only be a single bidder, departments should also include an independent cost estimate (see Section 3.3.13)

Execution

Upon receipt of the requisition, the Buyer will evaluate the most effective way to conduct the procurement which might include:

- State funds only:
 - Purchase through an approved consortium
 - Purchase through a Commonwealth of Massachusetts Operational Services Department (OSD) contract (State Contract)
- State or Federal funds:
 - Purchase from a previously awarded MBTA contract
 - Request for Quotation or Competitive RFP

If a Request for Quotation is appropriate, the buyer will conduct the solicitation, evaluate the responses received, and make an award to the lowest priced responsible bidder. The buyer may request assistance from the requesting department in the evaluation process.

Documentation

For Small purchases, procurement documentation is derived from the appropriate, then-current, PO Documentation Checklist for the funding source. Typical documentation includes:

- A description of the procurement, including any safety considerations that were related to the procurement decisions
- Information about the nature of the procurement and how it was conducted
- The method used to solicit bids
- Copies of all bids received
- How the price was determined to be fair & reasonable
- If only one bid was received, an explanation of why that was the case
- Confirmation of presence and retention of additional documentation (e.g. the bid document, proof of bids, etc.)
- Confirmation that the vendor is not debarred

If the procurement uses federal funds, the documentation must also include:

- A Price Analysis or, if only one bid is received, a Cost Analysis (See Sections 3.3.24 and 3.3.25)

See Section 3.2.5 for more detailed guidance regarding documentation and the Procurement Resources site for the current PO Documentation Checklists and other templates and forms.

3.2.4. LARGE PURCHASES -SEALED BID

Applicability

A Sealed Bid procurement is typically appropriate for Large Purchases if:

- It is not possible to purchase the items through a State Contract, an approved consortium, or an existing MBTA Contract
- A complete, adequate, and realistic specification exists
- Two or more responsible bidders are willing and able to compete effectively for the business
- The procurement lends itself to a firm fixed price contract
- The selection of the successful bidder can be made primarily on price
- No discussion with bidders is needed for the procurement

Approval/Initiation

Most large Sealed Bid purchases will be requested through an approved FMIS Requisition; however, Procurement leadership may choose to begin a Sealed Bid process in advance of an approved requisition. In these cases, additional “manual” approvals may be required.

With the requisition, requesting departments should provide:

- A thorough description of the good or service to be procured
- A list of possible suppliers, if known
- One or more vendor quotations may be submitted if available
- An independent cost estimate (see Section 3.3.13) (required if federal-funded and recommended but not required if state-funded)

The Buyer will evaluate the materials provided and identify the necessary actions and information to conduct the Sealed Bid.

Execution

Most large Sealed Bid procurements will utilize the Authority's then-current Invitation for Bids (IFB) template, which outlines the process to be followed and identifies the information that must be included in the Sealed Bid. Typical elements of a Sealed Bid include:

- A complete, clear, and accurate description of the requirements or specifications such that bidders may properly respond. These requirements must not restrict open competition; however, it is permissible to require that bidders meet identified, non-arbitrary delivery timelines
- All documents needed to prepare and submit a complete, correct bid
- A clearly stated basis of award which may include options, escalators, currency issues, unit prices, and other cost considerations
- Applicable terms and conditions

Occasionally, the Buyer may decide to conduct a Sealed Bid procurement without using the IFB template. This is only appropriate for state-funded procurements of standard goods (e.g. stocked items purchased through distributors or non-branded building materials) that can be provided by multiple bidders.

Bids must be advertised, which includes posting on a bidding website as long as the bid is visible to all interested, registered bidders using that website. Other means of advertising (such as newspaper ads, communication in trade journals, and notifications to business groups) may be used when applicable. Individual statutes governing procurement activities may dictate specific additional requirements.

Bidders must have sufficient time to respond. For federal-funded procurements, this is defined as a minimum of two (2) weeks. For state-funded procurements, shorter timeframes are permissible with approval of Procurement leadership provided that a longer bid time presents hardship or risk to the Authority and it is confirmed in advance that at least two (2) bidders will have adequate time to respond.

At the conclusion of the bid period, the Buyer will open bids. Federal-funded procurements are opened publicly via a virtual meeting.

Working with the requesting department, the Buyer will identify the lowest responsible bidder, conduct a Price Analysis or Cost Analysis, and award a firm fixed-price contract. The Buyer will also create a contract record in FMIS (if appropriate, see Section 3.3.26) and issue a Purchase Order.

Documentation

The Purchase Order record will include the appropriate, then-current PO Documentation Checklist for the funding source. Typical documentation includes:

- A description of the procurement, including any safety considerations that were related to the procurement decisions
- Information about the nature of the procurement and how it was conducted
- The method used to solicit bids
- Copies of all bids received
- How the price was determined to be fair & reasonable
- Single Bid Justification (if only 1 bid received)
- Confirmation of presence and retention of additional documentation (e.g. the bid document, proof of bids, etc.)
- Confirmation that the vendor is not debarred
- Independent Cost Estimate
- Price Analysis or Cost Analysis

If the procurement uses federal funds, the documentation must also include:

- Responsiveness determination for the selected bidder
- Rationale for the procurement method
- Bidder and Subcontractor Information Form(s) for all bidders and subcontractors

See Section 3.2.5 for more detailed guidance regarding documentation and the Procurement Resources site for the current PO Documentation Checklists and other templates and forms.

3.2.5. LARGE PURCHASES -COMPETITIVE PROPOSALS (RFP)

Applicability

An RFP is appropriate for Large Purchases when award will be made to the bidder(s) whose proposal(s) offer the greatest business value to the Authority based upon an analysis of a tradeoff of qualitative technical factors and price/cost.

Description

An RFP is also described as a “Best Value Procurement.” Proposals are evaluated based on both price and qualitative components, and award is based upon a combination of these. Some examples of qualitative considerations include technical design, technical approach, quality of proposed personnel, experience

with similar work, and management plan. The selection process evaluates both the qualitative (technical) and price factors to identify the offer deemed most advantageous and of the greatest value to the MBTA, which may not be the lowest price.

Approval/Initiation

RFPs may be initiated without an approved FMIS Requisition; however, there must be management support for the RFP and an intent to fund the effort.

Requesting departments will work with the Strategic Sourcing Manager to develop:

- A Scope of Work (SOW) or other thorough description of the good or service to be procured. The SOW must not restrict open competition.
- Technical evaluation criteria
- A Technical Response form
- A Price Response form
- Insurance requirements
- A list of possible suppliers, if known
- An independent cost estimate

Depending on the good(s) or service(s) to be procured and the expected cost, Procurement may require review and approval from the finance, safety, information security, or other departments before an RFP is released.

Execution

RFPs utilize the Authority's current Request for Proposal (RFP) template, which outlines the process to be followed during the procurement, identifies the information that must be included in the RFP, and how the Authority will select the successful bidder(s). Additional information and/or attachments may be required to create the RFP document depending on the nature of the SOW. For federal-funded procurements, the Requesting Department will need to provide the relative importance of the technical evaluation criteria or, if preferred, the exact weighting to be used.

Bids must be advertised, which at minimum consists of posting on a public bidding website provided the bid is visible to all interested, registered bidders using that website. Depending on the good(s) or service(s) to be procured, it may be advantageous to utilize other advertising, including publication in trade journals or other specialty publications.

Bidders must have sufficient time to respond. For federal-funded procurements, this is defined as a minimum of two (2) weeks. For state-funded procurements, shorter timeframes are permissible with approval of Procurement leadership if a longer bid time presents hardship or risk to the Authority and it is confirmed in advance that at least two (2) bidders will have adequate time to respond.

At the conclusion of the bid period, the Sourcing Manager will open bids and facilitate the evaluation process. Federal-funded procurements are opened publicly via a virtual meeting.

The evaluation process will utilize a technical evaluation committee comprised of MBTA employees. Contractors and consultants may serve in an advisory capacity only – they are not permitted to vote or score proposals. Evaluation committee members will be briefed on the process to be used and required to execute a conflict of interest and confidentiality document.

Most evaluation processes will include the following actions:

- Responses will be evaluated to ensure that they are “responsive”
- Bidders will be evaluated on a pass/fail basis to ensure that they are “responsible” which may include contractor integrity, compliance with public policy, record of past performance, and financial and technical resources or any other attributes identified in the RFP document
- The technical evaluation committee will individually review each technical proposal and assign scoring to each bidder
- The technical evaluation committee will meet as a group to review individual scoring, develop any clarification questions, and establish consensus on the relative strengths, weaknesses, and overall scoring of each proposal
- If appropriate, a subset of the proposals will advance to further evaluation. These proposals should be those most likely to result in a successful contract. This process is sometimes referred to as determining a “Competitive Range”
- Bidder responses to clarifications will be evaluated. Bidders may be asked to present to the evaluation committee.
- One or more bidders will be asked to present a “Best and Final Offer” or “BAFO” which may include technical/scope changes as well as adjustments to pricing
- The technical evaluation committee will conduct a tradeoff analysis to determine the best overall value for the MBTA. The committee should consider the technical merits of the proposals and the price differentials and determine whether a higher price proposal warrants the award based on the benefits it offers as compared to a lower price proposal.
- The Strategic Sourcing Manager will work with the technical evaluation committee to prepare appropriate documentation confirming the selection, which may be in the form of documented evaluation worksheets or a signed memo recommending the selected bidder. This is particularly important when choosing a more expensive proposal and the documentation must clearly represent why the selected bidder provides the best value to the MBTA.

In some cases, management or other additional approval may be required prior to contract award. Along with securing any such approval, the Strategic Sourcing Manager will conduct a Price Analysis or Cost Analysis, and award a contract. The Sourcing Manager will also create a contract record in FMIS and issue a Purchase Order.

Documentation

The Purchase Order record should include the appropriate, then-current PO Documentation Checklist for the funding source. Typical documentation includes:

- A description of the procurement, including any safety considerations that were related to the procurement decisions
- Information about the nature of the procurement and how it was conducted
- The method used to solicit bids
- Copies of all bids received
- How the price was determined to be fair & reasonable
- If only one bid was received, an explanation of why that was the case
- Confirmation of presence and retention of additional documentation (e.g. the bid document, proof of bids, documentation related to the selection process, etc.)
- Confirmation that the vendor is not debarred
- Independent Cost Estimate
- Price Analysis or Cost Analysis

If the procurement uses federal funds, the documentation must also include:

- Responsiveness determination for the selected bidder
- Rationale for the procurement method
- Bidder and Subcontractor Information Form(s) for all bidders and subcontractors

See Section 3.2.5 for more detailed guidance regarding documentation and the Procurement Resources site for the current PO Documentation Checklists and other templates and forms.

Other Considerations

The Authority is responsible for many complex procurements and transportation projects and may, on a case-by-case basis, adjust requirements for a specific procurement or group of procurements, provided that such adjustment is permitted by applicable law or regulation. This may entail multi-step procurement processes, for example, to establish financially and/or technically qualified bidders or the use of a multi-step process for highly complex procurements. Examples of these include, but are not limited to:

- Adjusting the requirements for competitive proposals, for example, by including a process of short-listing respondents before issuing a request for proposals
- Adjusting any requirement that is restrictive, has the potential to reduce competition, or is not appropriate for the specific procurement(s)
- Permit less prescriptive specifications and/or performance specifications
- Develop a bespoke evaluation protocol incorporating modified process steps, sequencing, and/or team members.
- Modify the RFP process to include additional steps, for example confidential bidder meetings, preliminary contract terms, and additional information sharing and clarification processes
- Incorporating a “pilot” phase into the evaluation process, such that one or more solutions are evaluated through a structured pilot program before a final selection is made
- Adjusting the requirements for independent cost estimates, taking into account the scope of the contract and delivery method of the contract
- Adjusting the requirement that if a contract includes options, the price of such options must be provided and evaluated

3.2.6. OTHER PROCUREMENT METHODS

3.2.6.1. PIGGYBACKING

Piggybacking is an assignment of existing contract rights to another party for purchase of supplies, equipment, or services. The original solicitation must include an express assignability clause for the MBTA to “piggyback” the contract.

This concept also applies to contracts awarded by the MBTA. Notably, most MBTA IFBs and RFPs include such an assignability clause for MassDOT.

For any Piggyback procurement, it is a best practice to evaluate the terms and conditions of the agreement and the specific opportunity to ensure that it is appropriate given the current market conditions and any specific requirements the MBTA may have. It is acceptable, and often necessary, to execute the MBTA’s terms and conditions with the supplier.

If federal funds are to be used for the purchase, Piggybacking typically takes the form of utilizing contract options that the contracting party does not intend to use. Additional requirements apply due to federal funding, and the MBTA must affirmatively determine that:

- the contract to be “piggybacked” meets all federal requirements, including but not limited to Build America, Buy America, inclusion of

- applicable federal clauses, submission of all required certifications, and that the timeframe is consistent with federal rolling stock requirements
- the terms and conditions the MBTA intends to exercise are substantially similar to the terms and conditions of the original contract
 - the proposed pricing is fair and reasonable, typically through development of an Independent Cost Estimate
 - the quantities already procured under the contract, combined with the quantity the MBTA intends to procure, do not exceed the amount allowed under the contract

3.2.6.2. STATE CONTRACTS

The Commonwealth of Massachusetts Operational Services Division (OSD) competitively sources contracts for goods and services that offer state-negotiated pricing. Typically use of these agreements allows for faster, more efficient purchases.

State contracts have specific guidelines for use – some require that quotations be sought while others allow direct purchase. Contract-specific “User Guides” are available on the OSD website.

State contracts may be used for procurements with state funds only.

The Buyer working on a specific procurement will evaluate whether a State Contract is appropriate for a specific procurement and determine the specific requirements and documentation for use. More detailed procedures are found in the applicable State Contract User Guide and the Procurement Desk Reference.

3.2.6.3. CONSORTIA

Procurement consortia (also known as Group Purchasing Organizations or GPOs) contract with suppliers for provision of goods and services to member organizations at negotiated pricing. Many of these organizations are affiliated with state or local governments or organizations that support state or local governments.

The Authority’s Procurement leadership team periodically evaluates procurement consortia, identifies those specific consortia or agreements that it considers provide value to the MBTA, and fulfills any specific membership requirements. A list of approved consortia is maintained in the Procurement Resources site.

Consortium agreements may be used for procurements with state funds only.

The Buyer working on a specific procurement will evaluate whether a consortium agreement is appropriate for a specific procurement. More detailed procedures are found in the Procurement Desk Reference.

3.2.6.4. GENERAL SERVICES ADMINISTRATION (GSA)

The MBTA is permitted to make “limited use” of Federal Supply Schedules through the U.S. General Services Administration (GSA). Specifically, this allows the MBTA to utilize the Cooperative Purchasing Program, Disaster Purchasing Program, and Public Health Emergency Program. See FTA Circular 4220.1G, Chapter V, Section 7.

GSA programs have specific quotation and ordering procedures which must be followed. In addition, the following apply to MBTA use of GSA programs:

- When using federal funds, appropriate clauses and certifications (e.g. Buy America) must be included in the procurement
- When possible, Buyers should request improved pricing from GSA vendors when soliciting quotations
- For large purchases, a cost or price analysis is required

3.2.6.5. JOB ORDER CONTRACTING

Job Order Contracting is only permitted with non-federal funds pursuant to MGL c. 6C s. 77, which permits the Authority to utilize the Job Order Contracting procurement method for state-funded construction projects with a total value per project of not more than \$1,000,000.

Job Order Contracting requires a solution provider and coordination company which the Authority chooses through a Competitive RFP process. Contractors are selected for participation in the Job Order Contracting program using the Construction Services procurement method.

3.2.6.6. EXERCISE OF CONTRACT OPTIONS

An option is a unilateral right in a contract by which the Authority may elect to:

- purchase additional equipment, supplies, or services
- extend the term of the contract

If the existing contract was procured with federal funds, then subsequent actions may be federal- or state-funded. If the existing contract is state-funded, then options exercised must also be state-funded.

It must be confirmed that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract award. In

addition, an option may not be exercised unless it is determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

In addition, prior to executing contract options the Buyer should confirm that the option pricing was evaluated during the initial procurement. If the options were not previously evaluated, the reasonableness of pricing must be validated by a cost analysis as a sole source procurement to ensure that at the time the options are exercised.

If the exercise of the option will increase the contract value, then an approved FMIS requisition is required. The Buyer will draft a contract amendment which will be routed and approved based on the MBTA's Delegation of Authority. Contract amendments are routed and approved based on the monetary amount of the amendment, not the total contract value. Routing Slips for amendments are found in the Procurement Reference site.

Non-material changes may be incorporated into the exercise of a contract option, including additional or modified performance requirements and changes to quantity or cost. It is a best practice to improve contracts and clarify performance expectations when options are exercised.

Once a contract option is executed, the Buyer will update the contract record in FMIS and modify the existing Purchase Order or create a new Purchase Order. A Sole Source Justification is only required if the costs will increase beyond the contracted cost of the option period or if the work to be performed is outside the original or amended scope of the agreement.

3.2.6.7. PURCHASES ALLOWED BY EXISTING CONTRACTS

In addition to contract options, certain other procurement actions may be permitted by an existing MBTA contract. Examples include addition of sites to services agreements and purchase of additional items. This might be because the original contract was structured with an indefinite quantity, or because the existing contract and any amendments were not created for the entire value of the original contract award.

If the existing contract was procured with federal funds, then subsequent actions may be federal- or state-funded. If the existing contract is state-funded, then any subsequent actions or purchases must also be state-funded.

An approved FMIS requisition is required. Often the contract document will have a statement that allows changes to locations or procurement of additional services with an approve Purchase Order. In other cases, the contract value will exceed the value of the existing Purchase Order(s). In these situations, a

contract amendment is not required as long as there is no change to the scope of services or goods to be provided.

Since the executed contract allows the additional work, the purchase is allowed by contract and a Sole Source Justification is not required. The Buyer creates a new Purchase Order or modifies an existing Purchase Order.

3.2.6.8. ENERGY CONSERVATION PROCUREMENTS (M.G.L. 25A SECTION 14C)

Energy Conservation Procurements are only permitted with non-federal funds pursuant to M.G.L Chapter 25A Section 14C, which permits the Authority to contract directly with electric and gas utilities, their subcontractors, and other authorized providers of energy conservation projects as long as the project cost is under \$300,000.

The Authority identifies interested and capable suppliers for these projects through a periodic Request for Qualifications (RFQ) process. When specific Energy Conservation Projects are identified, typically all suppliers that have successfully completed the RFQ process are provided an opportunity to propose on the work. The requesting department selects from the proposals, considering availability, vendor experience, and (if applicable) past performance. To the degree practicable, the Authority will “spread” opportunities to work on Energy Conservation Projects among all qualified, responsible, and responsive suppliers. Specific projects are authorized by an approved MBTA Purchase Order.

See the Procurement Desk Reference for more detailed procedures and the Procurement Resources site for the current Documentation Checklists and other templates and forms.

3.2.6.9. PROCUREMENTS INCLUDING CONSTRUCTION SERVICES

Definition

A limited number of small dollar value Procurement and Logistics procurements will be governed by M.G.L Chapter 30 Section 39M, which addresses contracts for “...the construction, reconstruction, alteration, remodeling or repair of any public work...”

Examples of this include, but are not limited to:

- Facilities maintenance contracts that include repair when necessary (e.g. fire alarm maintenance & repair, elevator maintenance & repair, etc.)
- Small facility improvement projects that include a construction element (e.g. overhead door installation & maintenance, painting)

Approval/Initiation

Most Construction procurements will be requested through an approved FMIS Requisition; however, Procurement leadership may choose to begin these procurements in advance of an approved requisition, particularly when there is an urgent need or when an existing service contract is due to expire. In these cases, additional “manual” approvals may be required.

With the requisition, requesting departments should provide:

- A thorough description of the service to be procured including drawings, Key Performance Indicators, and relevant standards if applicable
- A list of possible suppliers, if known
- An independent cost estimate (see Section 3.3.13) (required if federal-funded and recommended but not required if state-funded)

The Buyer or Strategic Sourcing Manager will evaluate the materials provided and identify the necessary actions and information to conduct the procurement.

In some cases, Procurement leadership will determine that the scope of the procurement is such that the Engineering & Capital Division should conduct the procurement. In these situations the guidance provided in Chapter 4 of this Procurement Manual will apply.

In a limited number of cases, the Buyer may be able to conduct the Construction Procurement using a Massachusetts state contract, as authorized by statute. This is only appropriate for state-funded procurements and must be done in accordance with the requirements of the specific state contract, which may differ from this Section.

Execution

Most construction procurements will utilize the Authority’s then-current “construction” Request for Proposal (RFP) template, which outlines the process to be followed and identifies the information that must be included in the Construction Procurement. Typical elements of a Construction Procurement include:

- A complete, clear, and accurate description of the requirements or specifications such that bidders may properly respond. These requirements must not restrict open competition; however, it is permissible to require that bidders meet identified, non-arbitrary delivery timelines
- All documents needed to prepare and submit a complete, correct bid
- A clearly stated basis of award which may include options, escalators, currency issues, unit prices, and other cost considerations
- Applicable terms and conditions

- Prevailing wage schedules

Bids must be advertised, which includes at minimum:

- posting a notice on the Massachusetts Central Register
- advertising in a local newspaper
- posting a notice on the MBTA's Business Center or other MBTA physical or electronic notification system
- posting the bid to COMMBUYS

Bidders must have at least two (2) weeks to respond following the publication in the Central Register.

At the conclusion of the bid period, the Buyer will conduct a public bid opening via a virtual meeting.

Working with the requesting department, the Buyer will identify the lowest responsible bidder, conduct a Price Analysis or Cost Analysis, and award a firm fixed-price contract. The Buyer will also create a contract record in FMIS and issue a Purchase Order.

Documentation

The Purchase Order record will include the appropriate, then-current PO Documentation Checklist for the funding source. Typical documentation includes:

- A description of the procurement, including any safety considerations that were related to the procurement decisions
- Information about the nature of the procurement and how it was conducted
- The method used to solicit bids
- Copies of all bids received
- How the price was determined to be fair & reasonable
- If only one bid was received, an explanation of why that was the case
- Confirmation of presence and retention of additional documentation (e.g. the bid document, proof of bids, etc.)
- Confirmation that the vendor is not debarred
- Independent Cost Estimate
- Price Analysis or Cost Analysis

If the procurement uses federal funds, the documentation must also include:

- Responsiveness determination for the selected bidder
- Rationale for the procurement method

See Section 3.2.5 for more detailed guidance regarding documentation and the Procurement Resources site for the current PO Documentation Checklists and other templates and forms.

3.2.6.10. SOLE SOURCE PROCUREMENTS

Definition

A Sole Source procurement is an award without competition, including a contract amendment or change order that is not within the scope of the original contract. These are only authorized under limited conditions and subject to written justification documenting the conditions that preclude competition. The need for noncompetitive procurements is recognized when the MBTA's interest is best served. However, continuation of noncompetitive contracts is discouraged. See Chapter 1 Section 1.5.4.6 for additional information.

Approval

Departments requesting a Sole Source Procurement must complete the Sole Source Justification form (SSJ) found on TSTOP.

The SSJ and companion reference material found on TSTOP guide the requesting department through the process of adequately justifying the procurement. Some of the more common justifications are:

- The goods or services are only available from one source due to:
 - Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential, or are patented or copyrighted, and is available to the recipient only from one source and has not in the past been available to the recipient from another source.
 - Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
 - Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.

- Unusual or compelling urgency or emergency. Note that in these circumstances, it is recommended that the purchase amount or duration should be only as long as necessary to address the requirements needed to mitigate the urgent or emergency situation.
- Multiple sources were approached to provide the good or service but were not able to meet the requirements.
- The procurement is in the public interest, maximizes effectiveness, or promotes the general economic and social well-being of the MBTA service area and the Commonwealth (applicable only when non-federal funds are utilized).

The SSJ also includes a Cost Analysis section in which the Requester explains how the price to be paid is fair and reasonable.

The SSJ reflects the required approvals from requesting departments and Procurement. It is permissible to omit one or more of the Procurement Approvers as long as the most senior required Procurement Approver executes the SSJ.

Execution

It is recommended that Sole Source procurements be negotiated whenever possible. The lack of competition does not prevent the MBTA from negotiating improved pricing, service, or other commercial considerations.

A Sole Source procurement requires all of the contractual actions (e.g. federal terms and conditions, various certifications, etc.) required by a competitive procurement of a similar amount and funding source. A sound contract including a Statement of Work is recommended for services agreements.

Documentation

In addition to the Sole Source Justification Form, a Sole Source procurement requires all of the documentation required by a competitive procurement of a similar amount and funding source. See the appropriate PO Documentation Checklist for this information.

Exceptions

The following situations do not require Sole Source Justification Forms to be completed when state funds are utilized:

- purchases of utilities where there are no alternative sources (e.g. water, electricity distribution, natural gas)
- real estate leases and lease extensions, provided such leases and leases were executed in accordance with the MBTA's Delegation of Authority

- insurance premiums
- interagency agreements
- independent contractors

At the discretion of the CPO alternate documentation may be substituted for the SSJ so long as such documentation meets or exceeds the required contents of the SSJ.

See the Procurement Desk Reference for more detailed procedures and TSTOP or the Procurement Resources site for the current templates and forms.

3.2.6.11. INTERGOVERNMENTAL AGREEMENTS

Intergovernmental agreements are procurements where multiple entities collaborate to procure goods or services under a single contract. If federal funds are to be used, all FTA procurement standards must be followed.

The MBTA may choose to lead or participate in an Intergovernmental agreement depending on the specific opportunity.

3.2.6.12. INNOVATION PROPOSALS

Definition

The Authority's Innovation Proposal Policy is designed to encourage ideas for service improvement from businesses and other groups. The policy is posted at www.mbta.com.

Execution

The evaluation process for Innovation Proposals is detailed in the policy. As proposals advance, a due diligence posting is typically required.

Documentation

If an Innovation Proposal will result in a commercial agreement, the documentation required is similar to that which is required of a Sole Source procurement.

3.2.6.13. ROLLING STOCK

Procurements for Rolling Stock will follow the process described in Section 3.2.5 Competitive Proposals. In addition, the following considerations apply to procurement of Rolling Stock when federal funds are used:

- To the extent practicable, the MBTA should seek to utilize the procurement tools authorized by Section 3019 of the FAST Act [[FTA C 4220.1G, IV,1.e.\(3\)](#)] [[FTA C 4220.1G, V,3.b](#)] [[FTA C 4220.1G, V,5](#)]

- Under Section 3019(c) of the FAST Act
 - FTA funds may be used to lease rolling stock or related equipment under certain conditions. This can include the cost of the rolling stock or related equipment necessary for the operation of the vehicle, such as power sources or charging equipment. [\[FTA C 4220.1G, IV, 1.e.\(1\)\]](#)
 - removable power sources of zero emission vehicles may be leased separately from the purchase of the rest of the vehicle. [\[FTA C 4220.1G, IV, 1.e.\(2\)\]](#)
 - within three (3) years of entering a lease using this section, provide an evaluation of the overall costs and benefits of the lease and a comparison of the expected short-term and long-term maintenance costs [\[FTA C 4220.1G, IV, 1.e.\(4\)\]](#)
- Purchase of Rolling Stock is restricted to Transit Vehicle Manufacturers (TVMs) and the MBTA must report the award to the FTA within thirty (30) days
- The contract term for rolling stock and replacement parts is limited as described in Chapter 1, Section 1.6.6
- Pre-Award and Post-Delivery audit requirements must be included in contracts [\[FTA C 4220.1G, IV, 2.e.\(5\)\]](#)
- Vehicles must comply with accessibility, minimum useful life, and bus testing requirements [\[FTA C 4220.1G, IV, 2.e.\(1\)\(3\)\(6\)\]](#)
- Purchase quantities must not result in an excessive number of spare vehicles [\[FTA C 4220.1G, IV, 2.e.\(4\)\]](#)

For any Rolling Stock procurement, regardless of funding source, the following considerations are particularly relevant:

- Liquidated damages – where both delivery timing and weight of the vehicle may be important considerations
- Opportunities to form or participate in an intergovernmental agreement (or procurement-specific consortium)
- Piggyback opportunities related to available options from another entity's assignable contract
- The conditions of the performance guarantee, in terms of both amount and duration
- Establishment of milestone payments

3.2.6.14. PROCUREMENT-SPECIFIC PROCESSES AND GUIDANCE

As described in Section 3.2.5 Competitive Proposals, the Authority may modify the evaluation process or any other part of a particular procurement provided that such modification is permitted by applicable law or regulation. When these changes affect the actions or steps of a particular procurement, they will be communicated to bidders through the applicable bidding document(s).

When these changes will take the form of a specific, detailed evaluation process, such additional guidance, process steps, and/or changes will be documented as a “procurement-specific evaluation manual” or similar document and published prior to the receipt of bids. Any such evaluation manual or guidance document will serve as a reference during the evaluation process and, upon completion of the procurement, become part of the procurement file for the applicable procurement.

3.3. PROCUREMENT COMPONENTS AND DOCUMENTATION

This section lists and describes the major components or elements of the procurement process, starting with the requisition and including all documentation produced and retained by the Buyer or Sourcing Manager. Some of these items are referenced elsewhere in Chapter 3 and in those cases the intent of this Section 3.3 is to provide additional information about each.

This is not intended to be a comprehensive list of the major elements of the procurement process nor is it intended to provide guidance about every potential situation. Rather, this Section 3.3 is designed to provide guidance about common tasks, documents, processes, and situations.

3.3.1. FMIS REQUISITION

Purchase requisitions must be entered and approved in FMIS before a Purchase Order can be created. Often, requisitions are required before the procurement process can begin.

Requisitions serve as a pre-encumbrance in the Authority’s financial system and so cannot be approved unless funds are available.

Requisitions have a specific workflow for each department, typically with additional approvers required at higher dollar values. When necessary to meet urgent circumstances or address an emergency requirement, requesting departments may bypass approvals by using the FMIS Origin Code EMR on the requisition; however, funds must be available for the requisition to be approved.

More than one (1) requisition shall not be entered for an identical item or items when a single requisition could address the requirement of the requesting department.

Entering two or more requisitions so as to avoid approval levels or procurement processes associated with higher dollar amounts is prohibited.

3.3.2. SPECIFICATION OR STATEMENT OF WORK

Competitive procurements must contain a specification or Statement of Work for the good or service to be procured. These describe the product or service required in enough detail to enable potential bidders to submit a well-considered price or proposal.

The Specification or Statement of Work provides a clear and accurate description of the technical requirements of the material, product or services to be procured. Such description must not contain any feature that can be deemed unduly restricting competition. The description may, however, include statements regarding the qualitative nature of the material, product or service to be procured, and, when necessary, shall set forth the minimum essential characteristics and standard to which it must conform to satisfy its intended use. When possible, performance-based specifications are preferred.

3.3.2.1. SPECIFICATIONS FOR PURCHASE OF GOODS

Typical components of a specification or statement of work for goods will set forth the essential physical and functional characteristics of the goods. Some examples include:

- The function and planned use of the item or items to be procured
- Physical attributes such as size, weight, capacity, and materials of construction
- Performance attributes including reliability, ease of use, environmental requirements, durability and installation requirements
- Production and manufacturing process requirements
- Specific quality requirements
- Testing and inspection requirements including quality assurance documents and certifications, if applicable
- Acceptance criteria
- Quantity to be procured
- Marking or packaging requirements
- Delivery requirements including delivery methods, delivery location, and required or desired timing

3.3.2.2. SPECIFICATIONS FOR PURCHASE OF SERVICES

For services, the Statement of Work may vary in the degree to which it prescribes what is required. Highly prescriptive specifications give the bidder

direction and detail on how to achieve what is required. Although appropriate in certain circumstances, these prescriptive specifications can limit the ability of the vendor to offer more cost-effective solutions. When highly prescriptive specifications are used, MBTA bears the risk if the service does not perform as intended. Alternately, less prescriptive specifications might describe only the essential performance requirements then allow the bidder to propose the best way to achieve them. In this case, the vendor is measured on and responsible for specific performance outcomes.

3.3.2.3. RISK OF OVER-SPECIFYING

Specifying something to a point that it will restrict competition is not permitted.

3.3.2.4. STANDARD PRODUCTS AND SERVICES

When possible, procurements should strive to identify standard products, parts, and services. There is rarely a reason to develop bespoke product or service specifications when standard products, parts or services are available to meet the requirements.

3.3.2.5. BRAND NAME OR EQUAL

When it is impractical or uneconomical to develop a clear and accurate description of the technical requirements, a “brand name or equal description” may be used. All known brand name items meeting the requirement should be included. Brand name or equal descriptions must also set forth those salient physical, functional, or other characteristics of the brand name product that are essential to the MBTA's needs. If applicable, specific characteristics that are important to the MBTA such as reparability, finish, color, material, maintainability, access, etc., must be specified.

When a “brand name or equal” description is used to describe the requirement, the clause, “Brand Name or Equal” must be included in the procurement. Any bidder who submits a quotation on an “equal product” is required to clearly identify the item by brand name, if any, make or model number, and provide literature (e.g., catalog description, cut sheet, etc.) which shows that the offered product meets the salient physical, functional, and essential characteristics required. This data is then evaluated by the MBTA. If the product is not equal, the reviewer shall submit a written determination explaining why the “or equal” product is not acceptable.

The MBTA, in its sole discretion, has the final say in determining whether a product is an acceptable substitute.

3.3.3. INTERNAL APPROVALS

Procurement will pursue internal approvals for certain procurements. In some cases, approval of the specification is necessary and in other cases, approval of the entire procurement is required. Some of the approvals that may be necessary depending upon the procurement are listed below; however, this list is not intended to address all possible scenarios and additional approvals may be appropriate or required depending on the specific goods or services to be procured.

Approving Department	Approval required to confirm that:
Finance	<ul style="list-style-type: none">• Project is budgeted throughout its entire anticipated life• Specification does not introduce excessive or unfunded cost changes when compared to current agreement
Safety	<ul style="list-style-type: none">• Appropriate safety considerations are included in the specification or scope of work• Evaluation processes appropriately consider bidders' ability to maintain or enhance MBTA safety
Information Technology	<ul style="list-style-type: none">• Requirements cannot be met by an existing solution• Possible solutions can be effectively integrated into the MBTA's technology stack
Information Security	<ul style="list-style-type: none">• Requirements include appropriate information security considerations
Systemwide Accessibility	<ul style="list-style-type: none">• Appropriate accessibility standards are maintained or enhanced• For software, confirmation that the proposed solution meets requirements
Procurement	<ul style="list-style-type: none">• Specification is not overly restrictive

3.3.4. INSURANCE REQUIREMENTS

All solicitations above the large purchase threshold should require that bidders demonstrate proof of insurance. The specific requirements will vary based on the good(s) or service(s) to be provided. If necessary, MBTA Risk Management should be consulted to identify appropriate requirements.

Upon contract award for select procurements, insurance requirements and insurance certificates should be provided to Risk Management for on-going tracking purposes.

3.3.5. DISADVANTAGED BUSINESS ENTERPRISES (DBE)

In accordance with and as of the effective date of the Interim Final Rule regarding 49 CFR Parts 23 and 26 (IFR) released on October 3, 2025, the Authority is currently not setting DBE goals on new or ongoing procurements.

For federal-funded contracts, vendors, consultants and contractors shall promote affirmative action and equal employment opportunities.

3.3.6. SUPPLIER DIVERSITY

For state-funded contracts, the Authority shall encourage the use of Minority, Women and Disadvantaged Business Enterprises as prime consultants, subconsultants and suppliers in all contracting opportunities.

State-funded RFPs with an expected contract value over \$250,000 must include Supplier Diversity as one of the evaluation criteria with a weighting of at least 25% of the technical score. This is further described in the RFP template.

3.3.7. ADVERTISING

Advertising is broadly defined as any process utilized to obtain sufficient bidder participation in a particular procurement.

Construction procurements subject to M.G.L. Chapter 30 Section 39M have specific advertising requirements (see Section 3.2.6.7).

For non-construction procurements, the Buyer or Sourcing Manager should evaluate the bidder pool and take appropriate actions to promote competition. Options for advertising include, but are not limited to:

- Electronic communications to registered bidders for bids posted on Fairmarkit or COMMBUYS
- Posted announcements on the MBTA's Business Center
- Email and/or telephone outreach to possible bidders (including prior bidders for similar goods and services, those known to stakeholders, and any who may have expressed interest in working with the MBTA)
- Posting on LinkedIn or other professional social media sites
- Paid advertisements in local Boston-area newspapers
- Paid advertisements in trade journals such as Railway Age, Mass Transit Magazine, or Progressive Railroading
- Outreach to local business groups, perhaps with assistance from the MBTA's Supplier Diversity team or the Office of Diversity and Civil Rights

Before placing advertisements with a cost to the MBTA, Buyers and Sourcing Managers should evaluate whether or not there will be adequate competition without such for-fee advertising, perhaps in consultation with the requesting department. The

MBTA should not incur costs for additional advertising unless it is expected to promote interest in the procurement and lead to increased competition.

3.3.8. BID DOCUMENT

MBTA Procurement maintains multiple bid templates to support the processes and requirements associated with all possible combinations of funding type (state or federal), procurement method (sealed bid/IFB or competitive proposal/RFP), and the presence or absence of construction-related elements.

Each bid document incorporates the appropriate elements, including:

- Required state and, when applicable, federal terms and conditions
- Certifications and attestations including but not limited to Build America, Buy America, Lobbying Certification, Bidders List data collection, etc.
- Bid, performance, and/or payment bond requirements
- Software accessibility and information security requirements

Bid documents are updated upon changes to regulation or policy. Most recent bid documents are maintained at the Procurement Resources Site.

3.3.9. PERFORMANCE, PAYMENT, AND BID GUARANTEES

Guarantees are intended to protect the MBTA from loss should the contractor fail to perform. There are typically three (3) types of guarantees:

- Bid: the purpose of the bid guarantee is to protect the MBTA should the successful bidder fail to execute a contract or fail to furnish appropriate additional bonding or insurance. Typically 5% of the value of the bid, these are primarily used for construction procurements. Bidders may elect to provide a cashier's check or a bid bond. If a check is provided, the MBTA must return the checks to unsuccessful bidders and to the successful bidder upon contract execution.
- Payment Bond: the purpose of a payment bond is to ensure that the successful contractor pays its labor costs, subcontractor expenses, and suppliers of materials. These are typically used only with construction procurements. Massachusetts law requires payment bonds of 50% and 2 CFR 200.326 requires payment bonds of 100% of project value. Upon completion of the project, payment bonds are terminated.
- Performance Guarantees: A performance guarantee refers to either a bond or a letter of credit intended to ensure the contractor successfully fulfills all performance requirements of the contract. These may be applied to construction and non-construction procurements. For construction procurements, these are typically 100% of the project value and the contractor usually obtains a bond from a surety. For goods and services procurements

(including rolling stock), the amount may vary but is generally a smaller percentage of the contract value or a lump sum amount. Often for services or software agreements, a contractor will obtain a letter of credit rather than a bond. Either is acceptable to the MBTA. Upon completion of the contract, performance guarantees are terminated.

The amount of a performance guarantee must be reasonable. Excessive requirements increase the cost of a procurement and can reduce the number of bidders.

Bonds and letters of credit are stored in the MBTA's safe. Performance and payment guarantees are tracked in the contract module in FMIS. See the Procurement Desk Reference for additional information.

3.3.10. PRE-BID MEETINGS & SITE VISITS

Pre-bid meetings

Pre-bid meetings are recommended for all RFPs and any IFBs with complex performance or bid submittal requirements. Most of these meetings can be held virtually. They provide a means of briefing prospective offerors soon after the solicitation has been issued so that the likelihood of multiple responsive bids is maximized. Notice of the conference is included in the solicitation at the time of issuance.

Pre-bid meetings also provide a way for potential bidders to identify other interested bidders and potentially form a team that can respond with a joint proposal. It is a best practice to require bidders to identify themselves during the pre-bid meeting and to post the names and contact details of the people who attended the meeting with the bid.

Questions asked during a pre-bid meeting should not be addressed directly during the meeting unless a similar communication is posted to the bid for potential bidders who were not able to attend the meeting. In practice, these questions can be answered by referring potential bidders to the IFB or RFP document or requesting that they pose the question through the Q&A process for the bid.

A standard agenda and presentation template for these meetings is available at the Procurement Resources site.

Site visits

For construction procurements or procurements where services will be performed at an MBTA facility, it may be necessary to host a site visit either as part of a pre-bid meeting or as a separate event.

Potential bidders should be required to register their interest in attending and should be advised of any requirements and logistics (e.g. personal protective equipment,

parking, identification, etc.). When necessary, IFB and RFP documents can designate a site visit as “mandatory” or “strongly recommended.”

Guidelines regarding communication, bidder questions, and posting the names and contact information of participants are similar to those for pre-bid meetings.

3.3.11. BID AMENDMENTS

The MBTA may amend bids at any time prior to receipt of offers. For purchases below the simplified acquisition threshold (small purchases) it may be easiest to cancel the bid, revise the solicitation, and post again. For Procurements including Construction Services (Section 3.2.6.7), Large Purchases - Sealed Bid (Section 3.2.4), and Large Purchases - Competitive Proposals (RFP) (Section 3.2.5), a structured process addresses Bid Amendments.

Amendments typically address one or more of the following:

- Extension of time to submit bids
- Correction, revision, or clarification of information provided in the RFP or IFB document
- Information added to an IFB or RFP, such as additional site drawings or other details not provided when the bid was first posted

Amendments should be posted on the bid platform(s) used for the bid.

3.3.12. BIDDER QUESTIONS AND ANSWERS

Bid platforms allow bidders to submit questions. The IFB or RFP document may indicate question due date and clarify if and when the MBTA will respond to questions.

The Buyer will monitor questions received and coordinate review and responses with MBTA stakeholders.

Questions and answers become part of the contract document. If a particular question is material to the procurement, it may be appropriate to publish a bid amendment instead of or addition to the response.

3.3.13. INDEPENDENT COST ESTIMATE

The Independent Cost Estimate (“ICE”) is an estimate of expected costs for the procurement. The ICE is completed before proposals are received. It does not impose any limits on the final price to be paid by the MBTA for the goods or services.

The ICE establishes a baseline for the cost of the product or service and provides:

- an initial reference point for procurement and financial planning

- a basis for a cost and price analysis

Depending on the complexity of the procurement, the ICE can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of items like drawings, specifications and prior procurement data. The word "independent" refers to an estimate independent from bidder proposals – it does not require that the ICE is developed by someone other than the MBTA.

Typically a requesting department will prepare the Independent Cost Estimate, often with help or oversight from the Buyer or Sourcing Manager. Commonly, an Independent Cost Estimate may be derived from:

- Published competitive prices, such as those found in catalogs;
- Results of previous procurements of the same items, with inflation factored (if purchased more than 6 months from present date)
- Estimates by in-house or external estimators
- General Services Administration (GSA) prices

An Independent Cost Estimate is required for new federal procurements and for change orders to federal procurements that are at or above the large procurement threshold. An Independent Cost Estimate is a best practice for non-federal procurements.

3.3.14. PUBLIC BID OPENING

Public Bid Openings are required for Procurements including Construction Services (Section 3.2.6.7), Large Purchases - Sealed Bid (Section 3.2.4), and Large Purchases - Competitive Proposals (RFP) (Section 3.2.5). These are conducted virtually.

There is a weekly public bid opening process on Wednesdays at 2:00 p.m. through a standing Microsoft TEAMS meeting that is included in the relevant bid templates.

During the public bid opening, the Buyer or Sourcing Manager:

- Requests that those in attendance identify themselves and their company or other affiliation, if any
- Explains the purpose and process of the public opening
- Reviews the list of procurements to be opened that day, if more than one
- Logs into the applicable bid site (currently Fairmarkit or COMMBUYS) for each procurement and electronically “opens” the bid(s) received. It is not necessary to review the pricing or other details of the bid
- Explains next steps for the procurement(s) and ends the meeting

3.3.15. BID TABULATION

A Bid Tabulation should be posted to the procurement in accordance with the instructions in the RFP or IFB document in the following situations:

- Bid was opened publicly in accordance with Section 3.3.14
- A Sealed Bid was conducted (Section 3.2.4) but a public bid opening was not required

A template for these postings is available in the Procurement Reference Site.

3.3.16. RESPONSIVENESS DETERMINATION

The Responsiveness Determination evaluates whether the bids received conform in all material respects to the requirements of the bid as stated in the IFB or RFP document. If a bid is determined to be non-responsive it is not evaluated.

The Buyer reviews bids received and determines whether or not they are responsive. In the case of procurements awarded to the lowest bidder, it is only necessary to complete a responsiveness determination of the lowest bid.

Typically, the following items should be included with a bid response in order for it to be deemed responsive:

- Correct and fully complete forms and submittals, including pricing worksheets, financial information, bidder information forms, and technical evaluation forms, Build America Buy America certification, and others as applicable
- Bonding or proof of bonding, if/as required by the IFB or RFP
- Acknowledgement of bid addenda, as applicable
- Compliance with material requirements of the good or service to be provided, including delivery schedule and technical specifications
- Agreement to bid terms and conditions (typically reflected as a lack of exception to the MBTA's terms and the conditions of the procurement)

In its bid documents, the MBTA reserves the right to waive or request clarification of minor informalities, irregularities, and apparent clerical mistakes that are not related to the substance of the bid. This permits the Buyer or Sourcing Manager to request confirmation or clarification as needed. When the Buyer or Sourcing Manager takes this step, the bidder(s) should be given a strict time requirement for re-submittal and the opportunity to correct or revise should be applied uniformly to all bidders.

3.3.17. RESPONSIBILITY DETERMINATION

The MBTA shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed agreement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance including financial and technical resources.

In the MBTA's RFP documents, these factors are typically among those listed in any "Pass/Fail" requirements.

Evaluation of the responsibility of prospective contractors may be made based upon the following sources, as appropriate based on the amount and complexity of the procurement:

- A review of the list of debarred, suspended, or ineligible firms or individuals. Lists to review include:
 - the federal [System for Award Management](#)
 - the [Massachusetts Attorney General's Fair Labor Division Debarment list](#)
 - the Division of Capital Asset Management and Maintenance ([DCAMM Debarment list](#))
 - the [MassDOT Debarment list](#)
 - the [Massachusetts Department of Industrial Accidents Debarment list](#)
- From the prospective contractors' bids and proposals, replies to questionnaires, financial data, current and past performance records and sub-contracting arrangements
- Publications, including credit ratings, trade and financial journals, business directories and registers
- Documented past performance with the MBTA or MassDOT

3.3.18. RFP EVALUATION PROCESS & DOCUMENTATION

Each RFP contains one or more sections that describe the bid evaluation process. In general, evaluation criteria are listed in the bid document and the intended timeline and actions are presented to bidders.

The number and background of evaluation committee members will vary depending on the procurement. It is common to have evaluation team members from Safety, Information Technology, Information Security, Customer & Employee Experience, Systemwide Accessibility, and Finance be part of an evaluation committee for a complex good or service.

Evaluation committee members are briefed on the RFP evaluation process and the requirements of their participation. They also complete a confidentiality and conflict of interest agreement.

A Strategic Sourcing Manager leads the evaluation process and ensures that appropriate documentation is retained.

3.3.19. VENDOR SELECTION, APPROVAL, AND AWARD

As the value of the award increases, the process for approval increases.

- Micro-purchases: Buyers typically determine the vendor selection and communicate to the requesting department
- Small purchases: Buyers may determine the vendor selection independently or in consultation with the requesting department
- Large purchases – Sealed Bid: Buyers will review the lowest bid to confirm vendor responsiveness then request approval from the requesting department
- Large purchases – Competitive Procurement: Evaluation team will reach consensus on the best value proposal
- Large purchases – Construction: Procurement will review the lowest bid to confirm vendor responsiveness then request confirmation from stakeholders that the low bidder is responsibility

For large purchases determined by lowest bidder, Procurement leadership must concur with a recommendation to award to other than the lowest bidder. For large purchases determined by best value, the Sourcing Manager should review the vendor selection with procurement leadership for concurrence.

At the discretion of the CPO, additional justification for the selected vendor may be required.

Contract approval and signature thresholds are noted in the MBTA's Delegation of Authority. At levels over \$15 million, the MBTA Board of Directors must approve the vendor selection and contract before it can be awarded.

3.3.20. SOLE SOURCE JUSTIFICATION

It is the responsibility of the requesting department to prepare the Sole Source Justification. Chapter 1 Section 1.5.4.6 and Chapter 3 Section 9 describe the circumstances in which a Sole Source procurement is acceptable and outlines the documentation requirements. The current Sole Source Justification form and related guidance is found on TSTOP.

3.3.21. SINGLE BID JUSTIFICATION

When only one bid is received in response to a solicitation, it is necessary to confirm there was adequate competition. For small procurements, the PO Documentation Checklist includes a process to document this. For large procurements, a Single Bid Justification Form is completed. The current form is found in the Procurement Reference site.

3.3.22. NOTICE OF AWARD

In some cases, it may be appropriate to issue a "Notice of Award" to the successful bidder in advance of issuance of a purchase order or execution of a contract. This may be communicated by the Buyer or Sourcing Manager in the form of an email or

letter on MBTA letterhead if either (i) there is an approved MBTA requisition with a value at or greater than the amount of the contract value or (ii) the MBTA Board of Directors has voted to authorize the procurement.

3.3.23. NOTICE TO PROCEED

In some cases, it may be appropriate to issue a “Notice to Proceed” to the successful bidder in advance of issuance of a purchase order or execution of a contract. This may be communicated by the Buyer or Sourcing Manager in the form of an email or letter on MBTA letterhead if all of the following conditions are met:

- there is an approved MBTA requisition with a value at or greater than the amount of the contract value
- the CPO approves the issuance of the Notice to Proceed
- the MBTA Board of Directors has voted in favor of the contract (only if such approval is required to execute the contract)

3.3.24. PRICE ANALYSIS

A Price Analysis is completed for small and large federal-funded procurements and large state-funded procurements where competition is deemed to be adequate. The purpose of the Price Analysis is to demonstrate that the price is fair and reasonable.

A Price Analysis is an evaluation of the offeror’s price relative to the prices being offered by other vendors and being paid by the general public for the same or similar items. The preferred method for Price Analysis is to have adequate price competition, which is accomplished when there are two or more responsive and responsible proposals/bids.

If adequate competition is not present, the [FTA Pricing Guide for FTA Grantees](#) describes other methods of conducting a Price Analysis including (in order of preference):

- Prices set by law or regulation
- Established catalog prices and market prices
- Comparison to previous purchases
- Comparison to a valid independent cost estimate
- Value analysis

3.3.25. COST ANALYSIS

A Cost Analysis is required when a Price Analysis cannot be completed. The method and degree of the analysis will depend on the circumstances of the specific procurement. As with a Price Analysis, the purpose of the Cost Analysis is to ensure that the MBTA receives a fair price for the goods or services to be procured.

To conduct a Cost Analysis, the Bidder can provide a breakdown of proposed costs by major category (direct and indirect costs) along with supporting data. The cost elements provided should add to the total contract price and all cost elements should be appropriate and necessary.

For some agreements, a technical evaluation of the major functions of the work to be procured can support a cost analysis. This identifies the quantitative and qualitative factors that will influence the cost of the good or service and could include necessary labor hours, material costs, capital equipment investments, and directly-related operating costs such as travel.

3.3.26. CONTRACT AND FMIS CONTRACT RECORD

MBTA contracts typically include:

- a Memorandum of Agreement describing the procurement and the elements of the contract document
- the IFB or RFP document including all addenda, and all amendments
- a statement of work or scope of services (if not part of the IFB or RFP document)
- the contractor's technical response and pricing for the goods or services

Additional items may be part of a contract record, such as insurance, a technical specification, or another element of the contractor's proposal.

Contract approval is determined by the MBTA's Delegation of Authority using the value of the specific action, not the combined or cumulative contract value.

For example, a new, multi-year contract is routed at its total value. If it is subsequently amended (perhaps to add an option year, or modify the scope), the amendment is routed at the incremental value of just the amendment.

FMIS Contract Records are created for the following types of agreements:

- New services agreement (of any value)
- New software agreement (of any value)
- Agreement that multiple departments might use (of any value)
- New agreements for supply of goods with indefinite quantities (whether or not there is a maximum value or "cap")
- One-time construction projects with a value of over \$1 million
- One-time purchase of specialized materials with a value of over \$500K
- Agreements where it is necessary to track the total spend or commitment on multiple purchase orders

3.3.27. PURCHASE ORDER

MBTA Purchase Orders are issued in FMIS. An approved requisition is required prior to issuance of a Purchase Order.

Purchase Order approval is documented in the MBTA's Delegation of Authority. Specific individuals and routing is based on the department and the dollar amount.

From time to time there are changes to existing Purchase Orders, for example when a contract option is exercised or when a change order is approved. At the discretion of the Buyer or Sourcing Executive, these may be processed as additional lines on an existing Purchase Order or as a new, unique Purchase Order. When they are processed as additional lines, the documentation requirements are based on the incremental value of the change, not the total value.

More than one (1) Purchase Order shall not be issued for an identical item or items when a single Purchase Order could address the requirement of the requesting department. Creating multiple Purchase Orders to purposely avoid a level of approval or a required procurement process is prohibited.

3.3.28. PUBLIC NOTICE

Following the execution of a contract and issuance of a Purchase Order, the Buyer or Sourcing Manager should update the bid posting to indicate the awarded vendor in accordance with the requirements of the Bid Document.

3.3.29. BID ISSUES

Infrequently there may be issues with bids. Some of the more common situations are listed below.

Late Bids

Late bids are not accepted.

Requests to withdraw a bid

If a written request (including email) is received from a bidder prior to the time and date set for receipt of bids that it wishes to withdraw a bid it has previously submitted, that request is honored.

Bid Mistakes

Some bid mistakes are identified during a Responsiveness Review (see Section 3.3.16) including:

- Minor informalities or irregularities in bids prior to award of the contract
- Obvious or apparent clerical mistakes discovered prior to award

In bid documents the MBTA reserves the right to waive or request clarification of minor informalities, irregularities, and apparent clerical mistakes that are not related to the substance of the bid. This approach is preferred when possible.

Other, more significant mistakes can be discovered prior to award. Examples might include failure to include a significant cost element in a pricing response or omitting a significant portion of a technical response. In these situations, the CPO may choose to allow the bidder to correct the mistake, to withdraw the bid, or may require that the bid stand as received depending on the specific circumstances.

3.4. OTHER PROCUREMENT ACTIONS

3.4.1. INVOICE EXCEPTIONS

Infrequently circumstances may arise where a supplier has provided goods or services without a proper Purchase Order and it is necessary for a department to process an invoice. These should be exceptions and are not permitted with federal funds.

The current Invoice Exception Form is available on TSTOP. Departments should enter a requisition in FMIS and include a completed Invoice Exception Form. Repeated use of these forms is not acceptable.

3.4.2. REAL ESTATE LEASES

When an approved requisition is created, Procurement will create a Purchase Order and contract record for leases of real estate. The requisition should reflect the entire lease term and the lease should be provided so that it can be added to the contract record.

A special designation is used in the FMIS Contract Module to identify the contract as a lease.

3.4.3. REVENUE CONTRACTS

A revenue contract is any contract whose primary purpose is to either generate revenues in connection with a transit-related activity or to create business opportunities utilizing an MBTA asset. Advertising, concessions (food and news-stands), use of right-of-ways, licenses, and land leasing are some examples of revenue contracts.

Revenue generation for the Authority is also a business opportunity for the business community. As such, the opportunities should be competitively awarded and so the requirement for competitive selection procedures applies to business opportunities including revenue-generating contracts.

Typically, the competitive process consists of a formal bid or proposal process which mirrors the process that would be followed for a procurement action of the same value. However, at the discretion of the CPO, the MBTA may choose a different means of obtaining competition so long as it demonstrates and documents the record to show how competition requirements were met.

Occasionally, revenue producing opportunities will be presented to the MBTA and may appear to be unique to the entity or organization that presents the opportunity. When this happens, it may be appropriate to utilize the MBTA's Innovation Proposal process (see Section 3.2.6.12).

3.4.4. TIME AND MATERIALS CONTRACTS

When using federal funds, Time and Materials Contracts are permitted only:

- after a determination that no other type of contract is suitable and
- if the contract specifies a ceiling price that the contractor shall not exceed except at its own risk

Time-and-materials (T&M) contracts may be used for acquiring supplies or services with payment of labor costs at fixed hourly billing rates specified in the contract. These hourly billing rates include wages, indirect costs, general and administrative expense, and profit resulting in fixed hourly billing rates.

Materials are billed at cost, perhaps allowing for reimbursement of material handling costs such as procurement, inspection, payment, etc. as a nominal percentage of actual material costs incurred. When a reimbursement for material handling costs is permitted, these same costs must not be included in the indirect costs that are part of the fixed labor rate.

Alternatively, if the contractor sells the necessary materials in the normal course of business, payment can be based on the established catalog or list prices in place at the time of purchase.

T&M contracts can create a disincentive for the contractor to complete the contract in a timely manner. As a result, with federal funds it is required (and with other funds it is a good practice) to establish a ceiling price or maximum obligation to limit the Authority's financial obligation. The contractor may not exceed this funding limitation without a written authorization in the form of a contract modification adding more funds.

T&M contracts require oversight during performance in order to provide reasonable assurance that efficient methods and cost controls are used by the contractor.

3.4.5. COST PLUS PERCENTAGE OF COST CONTRACTS (CPPC)

When using federal funds, CPPC contracts are prohibited (see Chapter 1, Section 1.6.13). Federal-funded procurements must avoid an agreement whereby the contractor's fee increases automatically with increases in a particular cost element since this allows profits to increase in proportion to dollars spent, thus providing a financial incentive to inefficiency.

This can be avoided by fixed-fee contracts where overhead and profit is included in the contracted labor rates. This is done in time-and-materials and labor hour contracts where contractors are paid one rate for each hour of labor performed. See Section 3.4.4.

3.4.6. INDEPENDENT CONTRACTORS AND OTHER CONTRACTORS

Most MBTA contractors will fall into one of the following categories:

- Independent Contractors (or "1099 Contractors"): These are self-employed individuals who provide services to the MBTA. They are not covered by this policy. Departments are encouraged but not required to use an MBTA Purchase Order to pay these individuals.
- State Contract Contractors: These individuals provide services to the MBTA through a Massachusetts Operational Services Division (OSD) state contract vendor using state contract ITS77 or a successor agreement. The state contract vendor is issued an MBTA Purchase Order and employs the contractor. Departments using these contractors should enter a Requisition in FMIS and follow the then-current process on TSTOP. The terms associated with the state contract apply to the use of these resources and the documentation required for a Purchase Order. These contracts may not be used with federal funds.
- LLC Contractors: In these cases, the contractor is employed by or otherwise owns an LLC, the LLC is the vendor paid by the MBTA, and the LLC separately compensates the contractor. In these cases, there is a vendor relationship between the LLC and the MBTA which, if not selected through a competitive procurement, is a Sole Source procurement.

3.5. RECORDS RETENTION AND DOCUMENTATION

A record of the "Procurement History" must be retained for all procurements. To assist with this, the Buyer completes the appropriate PO Documentation Checklist for small and large procurements and includes it with the Purchase Order in FMIS. The PO Documentation Checklist serves as a record of the purpose of the procurement, the procurement history, bidder responsiveness, and other required information and prompts the Buyer to ensure other required documentation is retained for each Purchase Order. General documentation requirements including the nature of the documentation and where it is retained are listed below.

Procurement Type	Documentation	Where Retained
Micro-Purchase	<ul style="list-style-type: none"> • Vendor Quotation • Statement of Cost Reasonableness 	FMIS PO Record
Small Purchase (state-funded)	<ul style="list-style-type: none"> • PO Documentation Checklist 	FMIS PO Record
	<ul style="list-style-type: none"> • Copies of bids received • Additional documentation if any 	FMIS PO Record or procurement file
Small Purchase (federal-funded)	<ul style="list-style-type: none"> • PO Documentation Checklist 	FMIS PO Record
	<ul style="list-style-type: none"> • Copies of bids received including Bidder and Subcontractor Information Forms, if any • Cost or Price Analysis • Additional documentation if any 	FMIS PO Record or procurement file
Large Purchase – Sealed Bid (state-funded)	<ul style="list-style-type: none"> • PO Documentation Checklist 	FMIS PO Record
	<ul style="list-style-type: none"> • IFB Document and any attachments • Independent Cost Estimate (if completed) • Documentation of advertising and outreach • Copies of bids received • Cost or Price Analysis • Additional bid or bid evaluation documentation if any 	FMIS PO Record or procurement file
	<ul style="list-style-type: none"> • Executed Contract and any amendments 	FMIS Contract Record or procurement file
	<ul style="list-style-type: none"> • PO Documentation Checklist 	FMIS PO Record

Large Purchase – Sealed Bid (federal-funded)	<ul style="list-style-type: none"> • IFB Document and any attachments • Independent Cost Estimate (if completed) • Documentation of advertising and outreach • Copies of bids received including Bidder and Subcontractor Information Forms, if any • Cost or Price Analysis • Additional bid or bid evaluation documentation if any 	FMIS PO Record or procurement file
	<ul style="list-style-type: none"> • Executed Contract and any amendments 	FMIS Contract Record or procurement file
Competitive Procurement (RFP) (state-funded)	<ul style="list-style-type: none"> • PO Documentation Checklist 	FMIS PO Record
	<ul style="list-style-type: none"> • RFP Document including attachments, Q&A, and/or addenda • Independent Cost Estimate (if completed) • Documentation of advertising and outreach • Pre-Bid meeting presentation • Evaluation team kickoff presentation • Evaluation team member certifications • Copies of bids received including Best and Final Offers, if any • Evaluation team documentation including evaluation metrics and scoring • Cost or Price Analysis • Recommendations for approval of award and record of approval 	FMIS PO Record or procurement file
	<ul style="list-style-type: none"> • Executed Contract and any amendments 	FMIS Contract Record or procurement file

	<ul style="list-style-type: none"> • Bonds or LOCs 	Procurement & Logistics safe
Competitive Procurement (RFP) (federal-funded)	<ul style="list-style-type: none"> • PO Documentation Checklist 	FMIS PO Record
	<ul style="list-style-type: none"> • RFP Document including attachments, Q&A, and/or addenda • Independent Cost Estimate • Documentation of advertising and outreach • Pre-Bid meeting presentation • Evaluation team kickoff presentation • Evaluation team member certifications • Copies of bids received including Bidder and Subcontractor Information Forms and Best and Final Offers, if any • Evaluation team documentation including evaluation metrics and scoring • Cost or Price Analysis • Recommendations for approval of award and record of approval 	
	<ul style="list-style-type: none"> • Executed Contract and any amendments 	FMIS Contract Record or procurement file
	<ul style="list-style-type: none"> • Bonds or LOCs 	Procurement & Logistics safe

In addition, certain procurements may have additional documentation related to the planning, evaluation, selection, approval, or any other part of the process. Some examples of this documentation include the items listed below. If these items exist, they should be retained in the procurement file.

- Acquisition planning information, approval requests, project charters, and other pre-solicitation documents

- Procurement-specific evaluation process documentation
- Copies of advertisements placed
- Attendance at site visits
- Additional documentation of evaluation committee recommendations or other aspects of the source selection process
- Financial analysis of bidders' financial health
- Financial analysis of bids received
- Notice of award
- Notice to unsuccessful bidders or offerors and record of any debriefing
- Record of any protest
- Notice to proceed

3.6. CONTRACT ADMINISTRATION

3.6.1. CONTRACT ADMINISTRATOR AND CONTRACT ADMINISTRATION PLAN

For contracts with a value at or above \$250,000 a Contract Administrator is designated. This individual is responsible for overseeing and managing all deliverables and financial components pertaining to the agreement and they are identified and confirm this responsibility when the contract is routed for approval.

Contract Administrators are required to complete assigned e-Learning training and expected to develop and implement a Contract Administration Plan with the successful bidder.

3.6.2. CONTRACT TERMINATION

It is sometimes necessary to end a contractual relationship prior to the completion of the work called for in the contract.

Most MBTA contracts can be terminated for convenience. Sometimes a notice period is required and typically the MBTA is responsible for goods and services delivered and costs incurred.

Contracts may also be terminated for default, such as a contractor's failure to deliver the supplies or perform the services within the time specified in the contract, failure to make progress so as to endanger performance of the contract, and refusal or failure in a construction contract to prosecute the work or any separable part within the time specified in the contract. Typically contractors are permitted a minimum period of time to "cure" the default situation.

The MBTA's liability in the case of contractor default will vary based on the specific contract and the circumstances of the default.

3.6.3. PERFORMANCE GUARANTEES AND CONTRACT TERMINATION

In the case of termination for convenience, any and all performance guarantees should be returned to the vendor.

In the case of termination for default, the MBTA has the right to collect on the Performance Guarantee. In the case of a performance bond, the surety who issued the bond may wish to step in to complete or manage the completion of the contract. In the case of a Letter of Credit, the amount of the Letter of Credit may be collected by the MBTA.