



SUBJECT: PROCUREMENT MANUAL

ACTION: APPROVE RECOMMENDATIONS

**19**

RECOMMENDATION

- A. Receive and file report of Procurement's comparative analysis of procurement manuals from other agencies and Sandia National Laboratories.
- B. Rewrite the Procurement manual.

ISSUE

As part of a recent review of Procurement operations, Steve Polan a consultant from Manatt Phelps & Phillips, LLP (Manatt), found that from a user perspective, the Procurement Manual remains "overly detailed and quite cumbersome". At the August 2004 Board meeting, Director Burke requested staff obtain procurement manuals from other jurisdictions and report back with an analysis of how they differ from our manual.

DISCUSSION

Staff obtained seven procurement manuals from various agencies and Sandia National Laboratories (Sandia) including three of the four transit properties surveyed in the Manatt report. The three include Massachusetts Bay Transportation Authority ("MBTA"), New Jersey Transit ("NJTransit"), and the Washington Metropolitan Transit Authority ("WMATA"). New York City Transit is currently rewriting its manual and was only able to send the Table of Contents, Index and a few chapters. New York is planning on following Federal Transit Administration Best Practices Manual when they rewrite their manual.

In addition, staff obtained the Dallas Area Rapid Transit ("DART") and the Bay Area Rapid Transit District ("BART") procurement manuals to get an additional perspective from other transit agencies with rail construction projects. We also received a copy of Los Angeles County's manuals. LA City is currently rewriting their manual and was only able to send some procurement procedures. Staff also reviewed Sandia's procurement manual based on the advice of Professor Ralph Nash, founder of Government Contracts Program at George Washington University School of Law.

Several of the manuals (WMATA, DART, and BART) are similar to our manual format and to the old Federal Acquisition Regulation (FAR). However, they do not incorporate many of the lessons of procurement reform adopted by the Federal government in 1994 and 1995 and subsequently by several state agencies.

These manuals were developed during the time when rules, objectification, and hierarchy in the system, were the standard. For example, each manual contains detailed procedures for handling the extremely rare occurrence of tie bids.

The NJTransit and MBTA manuals have been developed in the past two years, are more streamlined, and are written in a straightforward format and style. The NJTransit and MBTA manuals do a good job of providing a logical framework for the procurement process and the requirements are clearly and concisely covered.

Los Angeles County operates under different procurement rules and processes than LACMTA; it is subject to different state procurement laws and does not have to comply with Federal Transit Administration regulations. There was some good information in LA County's manuals including informal bidding caps (LACMTA's small purchases threshold) at \$100,000 and a performance monitoring system, which should be incorporated into our procurement manual contingent upon change to state law requirements.

Sandia's procurement manual is a much larger document in comparison with all the other manuals reviewed. The subjects are ordered in a chronological sequence mirroring the procurement process. Their procurement manual intermixes policy with procedure. The advantage of doing this is all procurement guidance is in one place, which precludes the need for separate desk instructions. Staff is recommending incorporating some of the best practices identified in Sandia's manual.

Some of the best practices identified in the other manuals include a responsibilities matrix for each procurement topic, and the way the sections in each chapter are organized. In addition, the way certain topics were covered such as evaluation factors, commercial competition techniques and property administration were considered a best practice during our review of the manuals.

Attachment A provides more details of the review of each agency's procurement manuals. The major topics of procurement were used to compare each manual against our manual. Staff identified best practices with the designation "BP" in the matrix.

Staff has made efforts over the years to improve its procurement manual and make this document user friendly. However, the outcome was a procurement manual that continued to cover and regulate the universe of policies, protocols, issues and questions that might arise in any given purchase. In addition, based upon the review of the above manuals and the impacts of the proposed State legislative changes, it would be too difficult to edit ours in its current format. Therefore staff is proposing to replace the manual with a new set of Board adopted policy. To do this, it is staff's intention to separate policy from guidelines and procedures in the new manual. The Board would still be responsible for approving changes to procurement policy, but authority to make changes to the guidelines, responsibilities and

process flowcharts that implement those policies would rest with the Executive Officer, Procurement and Material Management.

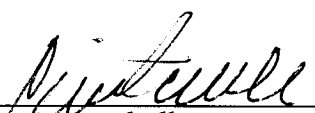
### NEXT STEPS

Procurement staff along with County Counsel will draft the new Procurement Manual for Board approval.

### ATTACHMENTS

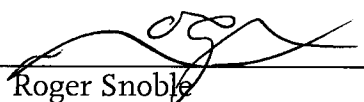
A. Matrix Comparing Procurement Manual

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Lonnie Mitchell  
Executive Officer, Procurement & Material  
Management



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ATTACHMENT A  
COMPARISON OF PROCUREMENT MANUALS

NJTransit	MBTA	DART	WMATA	BART	LA County	Sandia
<p>139; 21; 7/03 Best Practice (BP): Most chapters contain policy, and then provide guidelines for implementing policy then responsibilities by dept. Organized on a chronological sequence of a normal procurement process.</p>	<p>164; 18; 11/02; have received only Material Mgt. Manual and professional services to date; contains solicitation and contract clauses; size of procurement manual not comparable to other agencies because not all procurement processes are covered.</p>	<p>328; 11; 6/96; 112 pages in the Manual are FAR based contract clauses; many similarities to FAR based documents <u>BP:</u> separate chapter on Organizational Conflicts of Interest</p>	<p>348; 26; 4/93, 3 editions; Authority compact (multi-government MOU) rewritten in 1996 due to changes in FAR; seems to be the model for other manuals (BART, MTA)</p>	<p>325, but 87 pages are blank and reserved; 10; 12/98; 5 revisions; <u>BP:</u> chronological listing of actions in major processes with responsible parties identified</p>	<p>60 pgs for purchasing, 249 pgs for construction; 48 pgs for purchasing, 28 pgs for construction; includes unique requirements based on Board adopted policy such as vendor paid jury duty.</p>	<p>458; 58; not bound by FTA requirements, operates under prime contract from DOE; clearly written; model for federal based procurements after acquisition reform <u>BP:</u> chronological listing of actions in major processes with responsible parties identified.</p>
<p>Succinct, 2 pages, 4 policy objectives, iterates some FTA requirements</p>	<p>Description of function of material mgt.</p>	<p>Describe goals of system such as integrity, fairness, and accountability.</p>	<p><u>BP:</u> Board approves Policy Statement (Chapter One); procedures issued by Director of Procurement</p>	<p>Brief statement of procurement policy</p>	<p>Brief statement of applicable regulations and purpose of procurement.</p>	<p>From Procurement Web Page: "Our mission is to partner with Sandians, stakeholders and suppliers to provide goods and services at the right time, for the</p>

	NJTransit	MBTA	DART	WMATA	BART	LA County	Sandia
							right price, following the right rules. This enables Sandia to strengthen its competitive advantage. We commit to do this in an atmosphere of trust and respect.”
ized rred	Discusses state law in 2 pages	NA	Reference to applicable sections of Texas Transportation Code	References Section 73 of the Authority Compact.	Laws briefly referenced	For purchasing, brief reference to PCC and County Code; construction references law throughout manual.	NA
cy ness	Concise, lists only policy - NJ also has special set aside program discussed in manual	High level statement of program goals	No separate chapter; encourages Joint Ventures to increase participation of minority and women owned business	Chapter mixes policy and procedure; specifies documents to be completed in bids; identifies how to request waivers	No separate chapter; identifies policy for program; references separate DBE Program on file in Office of Civil Rights	Separate chapters; describes Community Based Enterprise Program, Small Business Program, and Local Small Business Enterprise Preference Program	Operates under Prime Contract Subcontracting Plan

ion oject s AR res	<p><u>BP:</u> details on contracting officer and project manager responsibilities</p> <p>Describes planning process &amp; identifies responsibilities</p>	Describes coordination requirements with user dept. in planning only	No discussion of procurement planning	Numerous topics including options, publicizing; and specifications; describes detailed planning method	Mixes BART process with FAR based procedures; <u>BP:</u> chronological listing of actions in major processes with responsible party identified	No discussion of procurement planning	5 chapters on acquisition planning;  <u>BP:</u> stresses cooperative nature of planning process
for m;  for	<p>General policy on P-card with reference to detailed procedure; responsibilities in small purchase process, file contents</p>	Special "Hotline" process for urgent requirements; does not cover P-card or small purchase policy	2 page simple process for contracts under \$25,000	No P-card procedures; FAR based description of Blanket Purchase Agreements and Imprest Funds; small purchase threshold set at \$100,000	Discusses small purchase requirements; FAR based description of Blanket Purchase Orders	Informal bidding up to \$100,000	Not covered in manual, Procurement Card may be used to perform procurements up to \$25,000.
1 2;  led  g	<p>Thorough, yet concise; contains all FTA required elements; includes separate chapter on special bidding processes, i.e. single bid, award to other than low bidder, Buy America;</p> <p><u>BP:</u> publicly verify that all necessary</p>	Fairly standard, straightforward process; subject is approx. 25% of manual;	FAR based, heavy on process; similar to MTA manual in topics covered;	FAR based, heavy on process; very similar to MTA manual;	FAR based, heavy on process; very similar to MTA manual;	Standard public agency bidding process;	Mentioned only briefly in construction chapter Very little coverage of sealed bidding because of type of work done by Sandia;
	<p>major topics include</p> <ul style="list-style-type: none"> <li>- IFB form,</li> <li>- bidders list,</li> <li>- general terms, conditions</li> <li>- bid prices,</li> <li>- price escalation - bid</li> </ul>	major topics include:	major topics include	major topics include	major topics include	major topics include	
	<ul style="list-style-type: none"> <li>- general requirements,</li> <li>- bidding time,</li> <li>- bidder submissions,</li> <li>- public notice,</li> <li>- bidders lists,</li> <li>- pre-bid</li> </ul>	major topics include	major topics include	major topics include	major topics include	major topics include	
	<ul style="list-style-type: none"> <li>- scope</li> <li>- IFB preparation</li> <li>- bid requirements,</li> <li>- submission of bids,</li> <li>- telegraphic bids, - bid samples,</li> </ul>	major topics include	major topics include	major topics include	major topics include	major topics include	
	<ul style="list-style-type: none"> <li>- IFB preparation</li> <li>- bid requirements, IFB preparation, advertising and solicitation of bids, bid receipt</li> </ul>	major topics include	major topics include	major topics include	major topics include	major topics include	
	<ul style="list-style-type: none"> <li>- preparation and processing,</li> <li>- notification to vendors,</li> <li>- maintaining bid system integrity, -bid list</li> </ul>	major topics include	major topics include	major topics include	major topics include	major topics include	

<p>affidavits and bonds have been filed with the bid.</p> <p>major topics include</p> <ul style="list-style-type: none"> <li>- IFB prep.</li> <li>-IFB review/approval, - advertising</li> <li>- modification or withdrawal of bids</li> <li>- pre-bid conference,</li> <li>- amendment of IFB,</li> <li>- cancellation of IFB</li> <li>- pre-qualification of firms for capital projects,</li> <li>- bid opening,</li> <li>- bid evaluation, - filing.</li> </ul>	<p>security/performance bond,</p> <ul style="list-style-type: none"> <li>- anti boycott covenant,</li> <li>- f.o.b. point,</li> <li>-maximum delivery period,</li> <li>- work in harmony,</li> <li>- equal opportunity,</li> <li>- DBE,</li> <li>- collusion,</li> <li>- single bid,</li> <li>- buyer responsibility,</li> <li>- purchasing limits,</li> <li>- bid opening, bidders list,</li> <li>- advertisements,</li> <li>- corrected bids,</li> <li>-options,</li> <li>- liquidated damages</li> </ul>	<p>conferences,</p> <ul style="list-style-type: none"> <li>- pre-opening bid modification/withdrawal,</li> <li>- late bids, withdrawals</li> <li>- opening bids, bid mistakes</li> <li>- bid evaluation, - low tie bids,</li> <li>- award,</li> <li>-- advertising</li> </ul>	<ul style="list-style-type: none"> <li>- facsimile bids,</li> <li>- pre-bid conferences,</li> <li>- amendment/cancellation of IFB,</li> <li>- modification/withdrawal of bids,</li> <li>- late bids, modifications, and withdrawals,</li> <li>- receipt and safeguarding of bids,</li> <li>- bid opening, cancellation of IFB,</li> <li>- rejection of bids, mistakes in bids</li> <li>- bid evaluation,</li> <li>- economic price adjustment,</li> <li>- resolving tie bids</li> </ul>	<p>and opening, evaluation of bids, award process, sealed bid</p> <p>procurement files, disposition of scrap and other disposable items, and two-step sealed bidding</p>	<ul style="list-style-type: none"> <li>- advertising,</li> <li>- bidding time,</li> <li>- pre-bid conference,</li> <li>- site visits, responses to questions,</li> <li>- amendments to contract documents</li> <li>-late bids,</li> <li>- opening bids,</li> <li>- bid errors,</li> <li>- bid withdrawals,</li> <li>- rejection of low bid,</li> <li>- tie bids, - responsiveness of bids,</li> <li>- responsible bidder ,</li> <li>- bid rejections</li> <li>- recom. for award,</li> <li>- award notification</li> <li>- notice to proceed</li> </ul>	
<p>R IA</p> <p>Similar to IFB chapter, includes A-E; includes guidelines for each step in RFP process; defines responsibilities for each step;</p> <p>major topics</p>	<p>Basic process for acquiring material through negotiation.</p> <p>major topics include</p> <ul style="list-style-type: none"> <li>- competitive negotiation process,</li> </ul>	<p>Mixture of FAR based with DART specific requirements; describes procedures/processes for most steps of RFP; separate A-E chapter; special statutory</p>	<p>Mixture of FAR based with WMATA specific requirements; detailed discussion on different evaluation methods for RFPs; describes</p>	<p>FAR based with BART specific requirements; describes procedures/processes for most steps of RFP; includes A-E section that covers CA specific requirements;</p>	<p>Brief discussion in purchasing manual and in consultant service contract section of construction manual; no discussion of selection of evaluation factors,</p>	<p>15 chapters on solicitation and evaluation/award, BP: Sections on Best Value Procurement, Commercial Competition Techniques,</p>



<p>processes of A-E ; CA</p> <p>include:</p> <ul style="list-style-type: none"> <li>- use of negotiated procurements,</li> <li>- types of negotiated procurements,</li> <li>- RFP preparation, - advertising,</li> <li>- review and approval,</li> <li>- advertisement,</li> <li>- pre-proposal conference,</li> <li>- amendment of RFP,</li> <li>- cancellation of RFP,</li> <li>- receipt and safeguarding of proposals,</li> <li>- evaluation - files,</li> <li>- conducting negotiations</li> <li>- separate discussion of A-E contracts</li> </ul>	<ul style="list-style-type: none"> <li>- evaluation committee member certification,</li> <li>- procedure to determine award/negotiation</li> </ul>	<p>provision for acquisition of professional services for accountant, physician, and professional engineer;</p> <ul style="list-style-type: none"> <li>- major topics include</li> <li>- authority for use, - conditions for use,</li> <li>- determinations, - content of RFP,</li> <li>- proposal preparation time,</li> <li>- form of proposal, - advertising,</li> <li>- use of bidders list,</li> <li>- pre-proposal conferences,</li> <li>- amendments to RFPs,</li> <li>- modification or withdrawal of proposals,</li> <li>- late proposals, - evaluation of proposals,</li> <li>- proposal discussions</li> <li>- mistakes in proposals,</li> <li>- award,</li> </ul>	<p>procedures/processes for most steps of RFP; separate A-E chapter; profit policy different from FTA guidelines; BP:</p> <ul style="list-style-type: none"> <li>- good section on evaluation factor language;</li> <li>- major topics include</li> <li>- authority to negotiate,</li> <li>- cancellation of RFP,</li> <li>- solicitation of proposals,</li> <li>- pre-solicitation notices and conferences,</li> <li>- pre-proposal conferences,</li> <li>- amendment of solicitations,</li> <li>- receipt of proposals,</li> <li>- late proposals, modifications, and withdrawals,</li> <li>- disclosure and use of information before award,</li> </ul>	<p>major topics include</p> <ul style="list-style-type: none"> <li>- solicitation procedure,</li> <li>- evaluation criteria and weighting,</li> <li>- changes in District requirements,</li> <li>- RFP development</li> <li>- advertising, - format,</li> <li>- pre-proposal conference,</li> <li>- addenda,</li> <li>- source selection plan,</li> <li>- review of proposals,</li> <li>- composition of selection committee,</li> <li>- evaluation of proposals,</li> <li>- opening negotiations with firms in competitive range,</li> <li>- interviews with firms,</li> <li>- price and cost analysis,</li> <li>- negotiation strategy,</li> </ul>	<p>best value procurements, proposal evaluation process or preparation for negotiations. Construction manual presents list of actions. Major topics include standard form contract, preparing the RFP, competitive negotiation process, RFP process and contract award.</p>	<p>Reverse Auctions, Just-in-Time Contracting and Oral Presentations. Major topics include solicitation document contents, best-value evaluation factors, oral presentations in lieu of written technical proposals, solicitation communications, documentation, communication with offerors, commercial competition techniques, proposal evaluation, special situations in the evaluation of proposals, pre-negotiation planning, negotiations, postaward procedures, and documentation.</p>
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	5 pages covers policy, guidelines to implement & responsibilities only	NA	Unique definition of sole source exceptions	<ul style="list-style-type: none"> <li>- unsolicited proposals,</li> <li>- source selection,</li> <li>- responsibilities,</li> <li>- evaluation factors,</li> <li>- changes in authority requirements,</li> <li>- competitive range,</li> <li>- discussion with offerors,</li> <li>- best and final offers,</li> <li>- price negotiation,</li> <li>- pre-negotiation objectives,</li> <li>- summary negotiation memorandum,</li> <li>- profit analysis factors,</li> <li>- notifications and debriefing.</li> </ul>	<ul style="list-style-type: none"> <li>- negotiation process,</li> <li>- best and final offers,</li> <li>- contract review</li> </ul>		
: to al & n-			Identifies exceptions to bidding, federal requirements & FAR based process for non-competitives	Identifies state law exceptions to bidding, federal requirements & FAR based process for non-competitive. Major topics include: <ul style="list-style-type: none"> <li>- competitive</li> </ul>	Discussion in construction manual includes circumstances permitting non-competitive procurement and process for approval depending upon dollar amount.	Based on Department of Energy requirements. Major topics include noncompetitive procurements and sole-source documentation requirements.	

y nt iled s & v rent f	Chapter includes contract formation, changes, payments, disputes and closeout	NA	Includes many FAR based requirements; covered under several different chapters; <u>BP:</u> section on property administration	Includes many FAR based requirements; covered under several different chapters including Quality Assurance & Warranties, and Patents, Copyrights	Identified Project Manager & Contract Administrator responsibilities; delineates contract change, task order, termination, and close out processes	Five chapters in construction manual that cover change orders and contract modifications; contract disputes and claims; contract terminations; contractor performance	Six chapters based on current best practices in government procurement; <u>BP:</u> separate chapters on Organizational Conflicts of Interest, Assignment and
					bidding requirements under the California law, - exceptions to competitive bidding requirements under California law, - services agreements, - form of agreement -contract provisions, - non-competitive emergency procurement procedures, - responsibilities for the non-competitive procurement of services		

						monitoring; and contract files and file integrity. BP: Formal performance monitoring system.	Change of Name agreements, and on Acquisition Conflict Resolution
act	Covers 6 different contract types; provides guidelines on when to use	Only firm fixed price	Covers 12 different contract types; detailed discussion & procedures	Covers 12 different contract types; detailed discussion & procedures for applying	Covers 6 different types; firm fixed price, fixed price with escalation, cost plus fixed fee, time and materials/labor hour, and letter of intent.	Covers 6 different types in construction manual; fixed price/lump sum, fixed price indefinite quantity (based on unit prices), job order contract, cost plus fixed fee, time and materials, and design/build.	Covers 10 difference contract types
	12 pages	NA	4 pages	17 pages	11 pages	25 pages in construction manual	Included in front of each chapter