



Program Evaluation and Audit

Metro Transit

Urban Partnership Agreement (UPA) Procurement and Project Review

September 1, 2009

INTRODUCTION

Background

Congestion costs the Nation an estimated \$200 billion a year. The problem of traffic congestion in our major metropolitan areas in particular is severe and worsening. In 2003, traffic jams in the Nation's largest 85 urban areas cost Americans 3.7 billion hours and 2.3 billion gallons of fuel. Congestion is also affecting the quality of life in America by robbing us of time that could be spent with families and friends and in participation in civic life.

In May 2006, The U.S. Department of Transportation (USDOT) announced a major initiative to reduce transportation system congestion. The *National Strategy to Reduce Congestion on America's Transportation Network* (Congestion Initiative), provides a blueprint for Federal, State, and local officials as they work together to reverse congestion trends. One major component of the Congestion Initiative is the Urban Partnership Agreement (UPA). Urban Partners would adopt the “Four Ts” of Tolling (congestion pricing), Transit, Telecommuting and Technology, strategies believed to be effective when used in combination to reduce traffic congestion.

The USDOT and its Twin Cities Urban Partner [Minnesota Department of Transportation (MnDOT) and the Metropolitan Council (Council)] entered into a UPA, agreeing to:

- Convert the existing high-occupancy vehicle (HOV) lanes along I-35W between I-494 and Burnsville Parkway into dynamically-priced high-occupancy toll (HOT) lanes;
- Extend these HOT lanes through the Crosstown Commons between I-494 and 46th Street;
- Operate priced dynamic shoulder lanes (PDSL) along the northbound portion of I-35W from 46th Street to downtown Minneapolis;
- Construct double-lane contra-flow bus lanes in Downtown Minneapolis on Marquette and 2nd Avenues and corresponding bus shelters and other amenities;
- Build new transit park-and-ride facilities to support expanded and new transit services;
- Construct a bus lane/ramp at the TH-62 and TH-77 interchange;
- Implement intelligent transportation systems (ITS) technology for transit to include bus arrival times, congestion conditions, parking availability, driver assist system, and transit signal priority;
- Install ITS technology to facilitate transit and arterial traffic management

In addition, MnDOT and the Council agreed that all roadway (tolling, technology, bottleneck removal) projects will be in operation no later than September 30, 2009, except for the HOV-to-HOT lane conversion in the Crosstown Commons section, and all transit projects no later than December 31, 2009, except for the driver assist system and the Cedar Grove park-and-ride which have until October 31, 2010 to be operational. The USDOT allocated \$133.3 million in Federal grant funding for the above projects which is supplemented by a 20% local match and other local grants. Metro Transit is directly responsible for completing projects totaling \$85.9 million, including \$37.5 in Sub-recipient grants. MnDOT has responsibility for the remaining \$47.4 million. MnDOT and the Council will also fund and implement an increase in the use of Results Only Work Environments (ROWE) throughout the region with a goal of increasing the number of teleworkers and/or workers on flexible work schedules in the I-35W corridor by 500 individuals and the construction of a southbound auxiliary lane on I-35W from 106th Street to Highway 13. A summary of project budgets, costs and sub-recipient agreements is at Exhibit I.

Assurances

This audit was conducted in accordance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing* and the U. S. Government Accountability Office's *Government Auditing Standards*.

Purpose

To ensure that the FTA funds awarded under the UPA grant to Metro Transit (i) are managed according to FTA and Council regulations and procedures, respectively, (ii) are allocated to projects according to the grant agreement, (iii) when spent, comply to FTA and Council contracting requirements when obtaining consultant, contactor and vendor services and products and (iv) that individual projects are efficiently managed within provided budgets.

Scope

The FTA share of the entire Twin Cities UPA agreement with the Metropolitan Council and MnDOT is \$133.3 million. The Council's share in transit projects is \$85.9 million. There is also a 20% local match required and other local grants that raise the total UPA grant money that the Council has responsibility for directly to \$106.975 million. This is spread over 11 transit projects. This review does not include an evaluation of the \$47.4 million in grant funds for which MnDOT has direct responsibility.

Methodology

To gain an understanding of the UPA program and Metro Transit's UPA project engineering and construction activities, the following methods of inquiry were used:

- Metro Transit engineering, procurement, contract administration and management personnel were interviewed.
- The UPA program was researched.
- Grant and sub-recipient documents were reviewed.
- UPA projects were identified and project files and documentation reviewed.
- Sub-recipient procurement practices were reviewed.
- FTA regulations and Council grant, procurement and project management policies and procedures were reviewed.

OBSERVATIONS

Program Evaluation and Audit (Audit) reviewed each of the 11 UPA transit projects listed at Exhibit I. Six of these projects are being completed by Metro Transit directly while five are being accomplished by other agencies through sub-recipient grant agreements with the Council. All 11 projects were reviewed for compliance with FTA regulations, as well as Council procurement and grant management policies and procedures. Those documents that fulfill these requirements and that Audit would expect to find in a well documented procurement file are identified in Exhibits II and III.

The projects were in various stages of completion. However, design and/or construction contracts were reviewed for each project where applicable. In addition, purchase orders (POs) for materials were judgmentally sampled based upon the number of POs written and their materiality to the project. Procurement and grant management files for each contract and PO selected were then reviewed for inclusion and completeness of required documentation and adherence to Council policies and procedures, as well as the sub-recipient's own policies and procedures, where applicable. Those projects under the direct auspices of Metro Transit are reported as a group under functional categories that follow. Results of sub-recipient project audits are reported individually by sub-recipient.

Proposal Evaluations

Each design engineering firm submits a proposal which is evaluated by an Evaluation Team (Team) to determine which firm is most qualified to accomplish the work. Engineering proposals were solicited on four of the six projects directly managed by Metro Transit. In addition, solicitations for two separate bus procurements were evaluated for the I-35W bus procurement project. Due to the complexity of one of the bus solicitations, a second evaluation and a best and final offer evaluation were conducted. The design contract for the sixth Metro Transit directly managed project was awarded under an existing Master Engineering Contract for which an evaluation was not necessary.

One additional project (Transit Technologies) includes three sub-projects for which separate design engineering proposals were requested. These proposals were evaluated and the results of those evaluations included herein; however, prior to award, the solicitation was cancelled due to the amount of materials included in the proposals and Invitations for Bid (IFB) were solicited. An IFB does not go through the evaluation process, it is a closed bid in which the lowest responsive, responsible bidder is awarded the contract.

Audit reviewed the documentation for the four design engineering, four bus procurement and three transit technology proposal evaluations conducted by Metro Transit. The required documentation and instances of compliance are summarized at Exhibit II. The Teams were comprised of from one to eight members with the 11 Teams totaling 52 members. The Teams used an evaluation sheet consisting of from four to eight criteria

specified in the Request for Proposal (RFP) on which to record strengths, weaknesses and deficiencies of the proposing firm, plus an overall rating.

Fourteen evaluators thoroughly documented the evaluation, including written comments under all criteria as well as a narrative description to support the overall rating, although 2 were not dated. The evaluation for one project that used eight evaluators could not be found. Among the 94 evaluations submitted by the remaining 29 evaluators, lack of a descriptive narrative in support of the overall rating was the most common deficiency, appearing in 79 of the 94 evaluations.

There were also the following deficiencies:

- Two instances in which three evaluators were not included on the Team Selection Memo.
- Ten instances in which the individual evaluation forms were not dated.
- Thirty-four instances in which some of the individual criteria narratives were not provided.
- Two instances in which forms were neither signed nor dated.
- One evaluation was conducted on a BAFO, the initial evaluation having already been conducted. Therefore, only a panel evaluation was conducted; however, the file contained two separate panel evaluations, each with a different date.
- Of the 10 successful bidder forms, one was not signed and one was not dated.

Although Evaluation Team Members signed Confidentiality Forms, these forms are not required. However, this commendable practice adds assurance that consultant information will be protected according to Minnesota Data Practices Act requirements by the Evaluation Team Members.

Contract Award

Engineering Design and Bus Purchase Contracts

Design engineering contracts were awarded on four projects, and two bus purchase contracts were awarded on one of the 11 projects. One project procured design engineering services using an existing Master Engineering Contract and the other five projects are being managed and constructed by sub-recipients (see *Sub-recipient Agreement Grant Audits*, below). See Exhibit II for a listing of documentation located when reviewing the Metro Transit engineering, contract and procurement files.

As noted previously three projects were also first solicited as RFPs but later cancelled prior to contract award and re-bid as IFBs due to the large amount of material included in the specifications. Except for one of these not having a dated ICE and another one not having an evaluation of RFP responsiveness, all applicable documentation was located. All six contract files contained a document log listing all the required documentation to be included in the file. This is an internal control previously recommended in an FTA review of Transit procurement.

Construction Contracts

Construction contracts were awarded based upon IFB solicitations; one each for each of the three park and ride structures (95th Ave North, County Road C and Kenrick Ave) and one each for each of the three transit technology projects that were initially solicited as RFPs. Five other construction projects awarded based upon IFB solicitations are being constructed and managed by the sub-recipients (see *Sub-recipient Agreement Grant Audits*, below). One additional sub-recipient project was not scheduled for solicitation until after this review was completed.

Audit reviewed the IFB solicitation and contact award files for those projects managed directly by Metro Transit. A listing of the documentation that was located in the contract and procurement files is at Exhibit II. In general, proposal/solicitation requirements were more thoroughly documented than those needed for contract award and continuing administration.

Master Engineering Contract Work Orders (WOs)

One design engineering contract was awarded from an existing Master Engineering Contract. In addition, 19 other WO's were written for various engineering services on four of the UPA projects. These WO's totaled \$299,389, an amount \$11,484 less than the ICE and \$3,100 less than the consultant's proposal. All of the WO files contained the appropriate WO Request Form, ICE, consultant's proposal and a NTP. However, five of the ICE were not dated. Of the remaining 15, 11 were calculated prior to receiving the consultant's proposal, as required, two were calculated on the same day the proposal was received and two were dated after receipt of the consultant's proposal.

Sub-recipient Grant Agreement Audits

Metro Transit contracted with the following Sub-recipients to accomplish the stated projects.

<u>Project</u>	<u>Sub-recipient</u>	<u>Authorized Budget</u>
MARQ2 Dual Contra Flow Bus Lanes	City of Minneapolis	25,762,502
MARQ2 Shelters	City of Minneapolis	1,520,000
Apple Valley Park & Ride	Minnesota Valley Transit Authority	5,407,265
Cedar Grove Park & Ride	Minnesota Valley Transit Authority	1,792,735
Driver Assist System	Minnesota Valley Transit Authority	806,647
Driver Assist System	University of Minnesota	3,433,331
Hwy 77 & 62 Transit Advantage	MN Department of Transportation	314,779

Each Sub-recipient attended Metro Transit training and was provided a copy of the Council's manual, *Managing Federally Funded Projects* (Manual) as a guide to complying with FTA procurement and project management requirements. In addition, Sub-recipients were required to pass all Design consultant and construction contractor procurements through Metro Transit's UPA Program Manager to assure that the

appropriate procedures had been followed throughout the procurement solicitation, evaluation, contract award and contract management processes. Audit reviewed each Sub-recipient in a similar manner as described for Metro Transit, above, with the following results (see Exhibit III for a summary):

City of Minneapolis

The City of Minneapolis (Minneapolis) began construction of double-lane contra-flow bus lanes in Downtown Minneapolis on Marquette and 2nd Avenues in the fall of 2008. Construction began again in the spring of 2009 and is scheduled to be completed by the end of 2009. Separate but related projects include purchasing and installing bus shelters and other transit amenities. The double-lane contra-flow bus lanes will enable Metro Transit and other area transit providers to move through downtown Minneapolis more quickly, especially during congested rush hour times.

Minneapolis hired a design engineering firm (Consultant) to provide design engineering and construction management services. Construction management services include preparing construction solicitation documents, overseeing construction of the project, evaluating change orders (COs) and preparing monthly payment requests subsequently submitted by the Contractor. The COs, pay requests and any other contract documents originated by or flowing through the third party construction manager were reviewed by the City of Minneapolis project manager prior to submission to the Council.

The construction contract is a unit priced contract in which payment is based upon actual units complete as measured in the field. The Contractor's monthly pay requests are generated by the engineering construction management firm and verified by the Contractor. The Consultant maintains in-field inspectors who record units completed daily in their Item Record Account logs.

When a CO is needed, the Contractor submits its estimate to the Consultant. Instead of preparing an independent cost estimate (ICE) prior to receiving the Contractor's quote, the Consultant forwards the Contractor's quote to a third party (MnDOT engineering personnel) who reviews the proposal, makes comments and returns it to the Consultant. Audit selected a judgmental sample of five COs from the 15 that had been executed. Those COs selected disclosed the following:

- MnDOT reviewed all five change orders. One CO initially proposed at \$55,942 was reduced to \$42,584, a 24% reduction.
- A review by a sub-consultant engineering firm on another CO showed surprise due to the amount of credit the Contractor had proposed.

The proposal evaluation process included a rated scale system for a set of evaluation criteria. Eight evaluation panel members agreed to participate and completed a form with ratings for each of the evaluation criteria. The evaluation form also included room for explanatory narrative comments. Six of the eight evaluation panel members provided written narrative support for the individual ratings criteria and the overall proposal rating. One evaluator provided written narrative for two of the six evaluation criteria. One evaluator did not provide any written narrative support for the overall proposal rating.

The ratings forms are used to facilitate discussion among the panel members and to provide written support for the ratings. The evaluation panel summary of the winning proposal did not include an overall rating and it was not signed, however, it did contain an explanatory narrative.

Minnesota Valley Transit Authority

Two new park-and-rides along the evolving Cedar Ave. Bus Rapid Transit (BRT) corridor, one in Apple Valley and one at Cedar Grove in Eagan will be designed and constructed by the Minnesota Valley Transit Authority (MVTA). In addition, MVTA is partnering with the University of Minnesota by purchasing the driver simulator for the development and implementation of a driver assist system for Cedar Ave. BRT buses. This system will enable drivers to rely on real time lane sensing information and live camera images in order to confidently navigate freeway shoulder lanes. Audit verified that the purchasing process required by the Council for MVTA to procure the simulator was appropriately followed. In addition, documentation required by the FTA was also identified and verified.

Design engineering contracts were solicited, proposals evaluated and contracts awarded for both the Apple Valley and the Cedar Grove transit stations. The results of Audit's review of those processes are included on Exhibit III.

A design engineering consultant was used by MVTA to develop the solicitation and prepare any addendums for the Cedar Grove Transit Station project. All payment requests from the consultant contained DBE progress reports. Cedar Grove Evaluation Team members included narrative support for individual criteria of the consultant proposals in 26 of 28 evaluations (four team members times seven proposals); however, only two contained written support of the overall proposal rating. In addition one evaluator did not sign or date the evaluations.

A design engineering consultant was also hired by MVTA to develop the solicitation and prepare any addendums for the Apple Valley Transit Station project. Progress payment requests by this consultant included properly filled out DBE progress reports. Apple Valley Evaluation Team members included narrative support for individual criteria of the consultant proposals in 23 of 24 evaluations (four team members times six proposals); however, only six contained written support of the overall proposal rating. Unlike other evaluation teams, an employee (the RFP Administrator/Procurement Official) who was not a Team Member numerically summarized the Cedar Grove and Apple Valley Transit Station evaluations and identified the top three proposals for each. From there, the evaluation team selected the winning proposals.

University of Minnesota

In partnership with the MVTA, the University of Minnesota (University) is developing and will implement the previously mentioned Driver Assist System for Cedar Ave. BRT buses. Unlike the other UPA projects in which third party engineering consultant and construction contractors were hired, the University is conducting its own system

engineering and component assembly for the Driver Assist System. Therefore, Audit reviewed the University's system for procuring component parts from outside sources. Audit reviewed the five purchase orders (POs) exceeding \$50,000 which totaled \$1,531,052 plus a judgmental sample of 20 items totaling \$118,982 from the remaining 63 POs valued at \$274,135 spent by the University for procuring component parts. The total Audit sample represented \$1,650,034 (91.41%) from a total universe of \$1,805,187.

Micro purchases under \$2,500 require a determination that the price is fair and reasonable. Eleven of the items sampled were micro purchases and although it is not necessary to obtain multiple bids, in each case the University obtained three bids and either chose the lowest bid or provided rationale that the item chosen was purchased at a fair and reasonable price.

Purchases between \$2,500 and \$25,000 require an ICE, determination if a certified DBE exists, three written or verbal quotes, a price analysis and attachment of Council FTA clauses to the purchase order. The remaining nine items fell within these limits and the required documentation was reviewed and verified for each item.

All items with an extended value between \$25,000 and \$50,000 were included on the five POs reviewed by Audit and therefore the item sample did not contain any of those items. Items purchased that exceed \$50,000 require an ICE, a SCIM, draft solicitation documents, solicitation responses, price analysis, DBE evaluation and the subsequent contract, all approved by the Council's Project Manager. Audit's review of these POs disclosed that, except for a SCIM and related DBE documentation due to an error on the part of Metro Transit, all such documentation and approvals were verified. Two of the ICE were not dated, however, not making it possible to determine if they were completed before receiving the bids.

In each of the three POs exceeding \$250,000, the University Board of Regents approval was obtained as required by University procedure. In addition, two POs were filled using foreign suppliers. In both cases a Buy America waiver from FTA has been received. Three purchases were single bid or sole source procurements. One was from the Minnesota State contract; the other two received single bids. Using the Minnesota State contract is acceptable to the FTA and the University appropriately documented the single bids as being fair and reasonable.

A SCIM was not prepared for the procurement from the State of Minnesota contract under the assumption that one was not needed when the contract had already been established. The Council's Procurement Procedure 3.4.3a, Section 1.3, *Signature Authority and Procurement Authorization* states that "Authorization of procurement is the process by which Council funds are authorized to be expended for a procurement. Procurement authorization is generally in the form of a purchase requisition or a Contract Initiation Memorandum (CIM)."

The CIM is also used by ODEO as the notice to assign a DBE goal to a procurement. Other Metro Transit personnel understand the CIM to be the document that is used to

initiate the competitive process for a procurement and to identify what agency regulations need to be observed in conducting the procurement.

Minnesota Department of Transportation – Transit Advantage Project

During the fall of 2008, the MnDOT constructed a short bus lane from north bound TH-77 across the median and south bound lane to connect with the west bound entrance ramp to TH-62. Landscaping and final project clean-up was accomplished in the spring of 2009. The purpose of this project is to improve bus transit time through the congested TH-77/TH-62 interchange (Transit Advantage).

Design engineering was conducted by MnDOT engineers. Construction services were solicited and obtained by awarding a contract to the lowest responsive, responsible bidder. Contract solicitation and award procedures and documentation were reviewed and found to comply with FTA procurement regulations.

MnDOT procured materials from outside vendors and from existing MnDOT inventory. Audit verified that the procurement process used to select the vendor for the highest cost item complied with FTA requirements. Audit also reviewed the internal process for costing inventory and verified that the cost invoiced Metro Transit on a judgmental sample of the highest priced items was appropriate.

Common Sub-recipient Procurement Strengths and Weaknesses

Sub-recipient Strengths

- All Sub-recipients were diligent in submitting contract solicitation and award documentation to the Metro Transit UPA Project Manager for approval.
- All procurement files contained copies of the executed contracts, Contract Initiation Memos approved by the Council and ICE, although the Minneapolis Consultant ICE was dated subsequent to the date proposals were due.
- All projects were evaluated by the Council for DBE goals and each RFP/IFB was evaluated for meeting those goals through actual DBE participation and/or Good Faith Efforts.
- All files included evidence of engaging the consultant/contractor community by advertising the project, conducting pre-proposal meetings and providing public responses to consultant/contractor questions.
- The Council approved all sub-recipient RFP/IFB solicitations and the respective proposal documentation submitted by the winning bidder was included in the procurement files.
- All files contained consultant/contractor certifications (including Buy America) and an analysis of the proposed price to the ICE.
- All but one file contained an evaluation of consultant/contractor responsiveness.
- All proposal team evaluation members had signed conflict of interest forms prior to conducting proposal evaluations.

Sub-recipient Weaknesses

- None of the three consultant or four construction procurement files contained documentation identifying the decision process used to choose the type of contract to award, although MnDOT based its decision on Minnesota statutes for trunk highway construction and Minneapolis stated that it was not told by the Council that such documentation was needed.
- Only two of the seven project files contained evidence that the Sub-recipient conducted an evaluation of responsibility. According to FTA Circular 4220.1F, *Third Party Contracting Guidance*, responsible contractors possess the “ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.”
- In general, proposal evaluation team members neglected to provide written narrative support for proposal evaluation ratings.
- Half of the contractor files were either missing insurance certificates or the ones included in the file were not current.

CONCLUSIONS

1. *The evaluation process for selecting engineering consultants and bus manufacturers to whom contracts would be awarded was not sufficiently documented to provide evidence that Council Procedures and FTA Regulations were consistently followed.*

Evaluation documentation was not located for the 40' bus procurement. In those instances when evaluation documentation was available, significant omissions were found within individual Evaluation Team member evaluation forms.

The Teams used an evaluation sheet consisting of from four to eight criteria specified in the Request for Proposal (FRP) on which to record strengths, weaknesses, deficiencies and an overall rating for each of the engineering firms submitting a proposal. Twenty-nine of the 43 Evaluation Team members that were reviewed omitted necessary information. A descriptive narrative to support the overall rating given the firm was missing from 81 percent of the evaluation forms that were completed. Other internal control omissions included evaluation forms not being signed or dated to verify when and by whom the evaluation was conducted, missing individual criteria explanatory narrative to provide rationale for the ratings, the absence of evaluation team members' names from the Team Selection Memo which provides management approval of Team members and the successful bidder form not being either signed or dated to authenticate the Team's selection..

2. *Procurement files contain most of the information required by the Contract Administration Manual during the proposal/bid phase of the procurement. However, several key documents of the contract award phase were missing.*

Eleven documents were identified as proposal phase documents for both the six engineering and the six construction contracts under direct Metro Transit management. Of the total 132 documents, only one could not be located. Regarding the 10 contract award phase documents for each of the 12 contracts (120 total documents), there were 15 instances of missing documentation. The documents missing most often were insurance certificates, evaluations of contractor responsibility, price analyses and Notices to Proceed. In addition, half of the insurance certificates that were located were out of date.

3. *Independent Cost Estimates were conducted and documented in the procurement files; however, a substantial number of them were not dated. Other procurement documents were also not dated or not signed, but less frequently than the ICE.*

FTA Circular 4220.1F, VI.6 states that “the recipient must make independent estimates before receiving bids or proposals. However, of the 39 ICE reviewed covering all phases of the procurement process for engineering and construction contracts, engineering master engineering contract WOs and bus procurements, 12 were not dated, three were dated the same day and three were dated after the solicitation response due date. In addition, some individual evaluation forms and successful bidder memoranda were found not signed or dated.

4. *Overall Metro Transit personnel appropriately reviewed and approved sub-recipient contract solicitation and award documentation. However, there was an instance in which greater care could have been taken.*

The University of Minnesota purchased components from a State of Minnesota contract. Believing that a CIM was not required for such procurements, Metro Transit personnel did not request one from the University. However, the CIM is an authorization to expend funds and is required regardless of the source of the procurement. The CIM is also used by ODEO as the notice to assign a DBE goal to a procurement. Other Metro Transit personnel also understand the CIM to be the document that is used to initiate the competitive process for a procurement and to identify what agency regulations need to be observed in conducting the procurement.

5. *The Sub-recipients conducted their UPA procurement activities in accordance with Metro Transit guidance with the exception of a few procedures, some of which were conducted in similar fashion as Metro Transit and some of which were not.*

Sub-recipients often neglected to document the decision process used to choose the type of contract to award or to conduct evaluations of contractor/consultant responsibility. These processes were more often documented by Metro Transit. However, both the sub-recipients and Metro Transit lacked sufficient documentation regarding obtaining current insurance certificates and including supporting narrative rationale on individual evaluation forms.

RECOMMENDATIONS

Program Evaluation and Audit recommendations are categorized according to the level of risk they pose for the Council. The categories are:

- **Essential** – Steps must be taken to avoid the emergence of critical risks to the Council or to add great value to the Council and its programs. Essential recommendations are tracked through the Audit Database and status is reported twice annually to the Council’s Audit Committee.
- **Significant** – Adds value to programs or initiatives of the Council, but is not necessary to avoid major control risks or other critical risk exposures. Significant recommendations are also tracked with status reports to the Council’s Audit Committee.
- **Considerations** – Recommendation would be beneficial, but may be subject to being set aside in favor of higher priority activities for the Council, or may require collaboration with another program area or division. Considerations are not tracked or reported. Their implementation is solely at the hands of management.
- **Verbal Recommendation** – An issue was found that bears mentioning, but is not sufficient to constitute a control risk or other repercussions to warrant inclusion in the written report. Verbal recommendations are documented in the file, but are not tracked or reported regularly.

1. **(Essential) Metro Transit should develop and implement a review process for assuring that proposal evaluation forms are completely filled out to include sufficient narrative detail to support both the individual criteria and the overall proposal rating.**

Metro Transit has provided training for evaluators. In addition, at the beginning of 2008 individual and group meetings were held with all evaluation team members in which new personnel actions were explained for evaluators who do not fill out their evaluation forms completely. Due to the continuing omission of narrative comments, signatures and dates on evaluation documentation, additional measures, including review and sign-off by the Evaluation Team Chairperson need to be implemented to better control full evaluation documentation.

Management Response: Agreed. Evaluation Panel Chair will be required to certify that each Individual Evaluator Worksheet and Evaluation Panel Worksheet have been fully completed with dated signatures and with narrative substantiating each rating. Additionally, a task force will be convened to develop a best practice approach on the evaluation of proposals for highly technical and complex projects. A subgroup of the review team often evaluates the technical responses and reports back to the review team. In such cases, it is impractical for each technical advisor to completely fill out the evaluation forms for the overall review. The task force will develop a revised process along with the documentation requirements.

Staff Responsible: Metro Transit Purchasing and Contract Services

Timetable: Implement Evaluation Panel Chair certification by July 31, 2009. Convene task force and Implement task force recommendations by December 31, 2009.

- 2. (Significant) Metro Transit should develop and institute a review process to assure that all required contract solicitation and award information is maintained in the procurement files, particularly documentation regarding the contract award phase of the procurement.**

Metro Transit's Procurement Department has instituted the practice of placing a document log in the procurement file. However, not all the required information could be found, particularly documentation that is executed at the end of the procurement cycle. A review of the file by a second party would help ensure that all the required documentation is available in the procurement file for ease of use and to verify that the procurement process complied with FTA regulations and Council procedures.

Management Response: Agreed. Metro Transit Purchasing and Contract Services has instituted a final administrative review of procurement files to ensure that all required elements are included in the file.

Staff Responsible: Metro Transit Purchasing and Contract Services

Timetable: Implemented April 1, 2009

- 3. (Significant) Metro Transit should develop and institute a procedure to assure that consultants and contractors awarded contracts provide proof of continuous insurance coverage.**

Metro Transit's Procurement Department usually obtains liability and, as needed, builder's risk certificates of insurance prior to awarding a contract. However, insurance firms will only provide a certificate covering a one year period. Unless Metro Transit requests an updated certificate as proof of continuous insurance coverage, it is unknown if the Council's interests are appropriately insured. If insurance coverage has not been maintained, the consultant or contractor may not have the funds to indemnify the Council in case of a claim and the Council could bear a financial loss.

Management Response: Agreed. Engineering and Facilities Department Work Instructions will be modified to include procedures and responsibilities for ensuring that proof of continuous insurance is submitted for each active contract.

Staff Responsible: Metro Transit Engineering and Facilities and Metro Transit Purchasing and Contract Services.

Timetable: December 31, 2009

4. (Significant) Metro Transit should reinforce through both periodic training and individual procurement file review that all documents, especially the ICE, are dated and signed.

FTA regulations require that an independent cost estimate be made prior to receiving consultant cost proposals or contractor bids so that a determination can be made regarding the reasonableness of the proposed/bid prices. Twenty-five percent of the master engineering contract work order ICEs were not dated, as were 50% of the Consultant contract ICEs. When the ICE is not dated, this essential element of the FTA requirement is not met. This is also an element in a 2008 FTA Procurement System Review that was identified as needing improvement.

***Management Response:** Agreed. The Contract Initiation Memo, used to initiate contract procurements, will be revised to require that the ICE is dated. In addition, the document checklist in the procurement files will be revised to require that the ICE be performed and dated prior to receipt of the offer. Metro Transit Engineering & Facilities Department Work Instructions will be changed to require the dating of an ICE.*

***Staff Responsible:** Metro Transit Engineering & Facilities and Metro Transit Purchasing and Contract Services.*

***Timetable:** Revision of the Contract Initiation Memo and the document checklist by July 31, 2009; Revision to E&F Work Instructions by July 31, 2009.*

5. (Significant) Metro Transit should develop a standardized check list to be used when reviewing Sub-recipient contract solicitation and award documentation to assure that all pertinent Council and FTA requirements are met.

Metro Transit Personnel did not adequately follow Council procurement procedure when a CIM was not requested from the University of Minnesota for the purchase of components appearing on a State of Minnesota contract. The CIM is an authorization to expend funds and is required by Council procedure regardless of the source of the procurement. It is also used by ODEO to initiate the process of preparing a DBE goal for a procurement.

***Management Response:** Agreed. A new standardized check list will be developed. In addition to the creation of a new check list, language in the Managing Federally Funded Projects manual and Engineering & Facilities Work Instruction E-19 will be reviewed and clarified, as necessary, to explicitly address the use of CIMs or SCIMs for purchases from existing state contracts.*

***Staff Responsible:** Engineering and Facilities, Purchasing and Contract Services*

***Timetable:** Implementation by August 31, 2009*

6. **(Essential) Metro Transit should revise the *Managing Federally Funded Projects* manual to include additional information regarding the type of documentation that is required by FTA regulations and Council procedures to be included in procurement files.**

Metro Transit used the *Managing Federally Funded Projects* manual as a basis for training sub-recipients regarding processes to follow and documentation to maintain to be compliant with FTA regulations and Council procedures. The manual is a higher level overview of the FTA procurement process, is silent on some documentation requirements and, as a result, sub-recipients were unaware of some of their responsibilities. In other cases, Metro Transit's own ineffective practices were also practiced by the sub-recipients.

Management Response: *Agreed. The current Managing Federally Funded Projects manual and all associated forms will be made available on the internet for access by sub-recipient project managers (Phase I). The current Managing Federally Funded Projects manual and all associated forms will be revised to ensure that sufficient detail is provided for adequate guidance to sub-recipients (Phase II).*

Staff responsible: *Grants, Information Services, Purchasing and Contract Services, Diversity and Equal Opportunity, and Engineering and Facilities*

Timetable: *Phase I implementation by August 31, 2009. Phase II implementation by December 31, 2009.*

**Metropolitan Council
Program Evaluation and Audit
UPA Procurement and Project Review**

Exhibit I: Project Funding

UPA Project Description	Project Lead	FTA Funds
Kenrick Ave (Lakeville) P&R	Facilities Engineering	9,824,724
95th Ave No. (Blaine) P&R	Facilities Engineering	7,669,574
Twin Lakes (Roseville) P&R	Facilities Engineering	7,386,348
180th ST Cedar P&R Station	Facilities Engineering	1,210,245
Transit Technology Projects	Technology Systems	9,621,922
Express Bus Purchase	Bus Maintenance	10,190,890
MARQ2 Dual Bus Lanes / Central Ave TSP	City of Minneapolis	25,762,502
MARQ2 Shelters	City of Minneapolis	1,520,000
Apple Valley Park-and-Ride	MVTA	5,407,265
Cedar Grove Park-and-Ride	MVTA	1,792,735
Driver Assist System	University of Minnesota	3,433,331
Driver Assist System	MVTA	806,647
Hwy 77 & Hwy 62 Transit Advantage	MnDOT	314,779
UPA Management	Facilities Planning	375,600
Unassigned/Contingency		583,438
	Subtotal Metro Transit	85,900,000
I-35W & 46 St to Mpls CBD Lane Mgmt	MnDOT	15,200,000
Arterial & Freeway Mgmt	MnDOT	4,200,000
I-35W HOV-to-HOT Con. 494-Burnsville	MnDOT	6,600,000
Extend HOT 494 to 46th St.	MnDOT	16,400,000
Priced Dynamic Shoulder Lanes (PDSL)	MnDOT	5,000,000
	Subtotal MnDOT	47,400,000
	Total UPA Grant	133,300,000

**Metropolitan Council
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Exhibit II: Contract Solicitation and Award Documentation

Document	Design Engineering			Construction			Phase	Responsible Department
	Number of Contracts	Document Found	Note	Number of Contracts	Document Found	Note		
Contract Initiation Memo (CIM)	6	6		6	6		P	PCS
DBE Goal	6	6		6	6		P	ODEO
Independent Cost Estimate (ICE)	6	6	A	6	6		P	E&F
Contract Type Selection Assessment	6	6		6	6		P	PCS
Advertising Notices	6	6		6	6		P	PCS
Pre-Proposal Meeting	6	6		6	5		P	PCS
Question & Answer Documentation	6	6		6	6		P	PCS
A copy of the RFP	6	6		6	6		P	PCS
Firms Requesting the RFP	6	6		6	6		P	PCS
Consultant Responsibility Evaluation	6	5		6	4		CA	PCS
Proposal Responsiveness Evaluation	6	5		6	6		CA	PCS
Certifications	6	5		6	6		CA	PCS
DBE Evaluation	6	6		6	6		CA	ODEO
Price Analysis	6	6		6	6		CA	E&F
Council Approval	6	6		6	5		CA	E&F
Notice of Award	5	5	B,C	6	5		CA	PCS
Insurance Certificates	5	5	B,D	6	5	E	CA	PCS
Notice To Proceed (NTP)	5	5	B	6	4		CA	PCS
Executed Contract	5	5	B	6	5		CA	PCS
Contract Log (Table of Contents)	6	6		6	6		P	PCS

Design Engineering Evaluation Process

Team Membership Memo	11	11						
Conflict of Interest Forms	52	48	F					
Team Member Evaluations	188	78	G					
Team Evaluation Summary	42	36	H					
Brooks Act, Form B	11	10						

P = Proposal Stage
CA = Contract Admin. Stage
PCS = Purchasing & Contract Services
E&F = Engineering & Facilities

Notes:

- A. Three of the six ICE were not dated, one was dated the same day and one was dated after the Consultant's proposal was received. Only one of the ICE was dated prior to receiving the Consultant's proposal as procedure states.
- B. One contract was not executed, therefore, the file would not contain the NTP, contract transmittal letter, contract or insurance certificates.
- C. The NTP includes a statement transmitting the contract; therefore, when a separate transmittal letter was not in the file, the NTP was given credit as being such.
- D. Two Insurance Certificates were not current; one did not include professional Liability.
- E. Two Insurance Certificates were not current although one was provided later at Auditor's request.
- F. The 11 evaluation teams included a total of 52 people.
- G. The 11 evaluations included teams ranging from one to six that reviewed a total of 42 proposals and totaling 188 individual evaluations. Only 78 (41%) included individual criteria narrative, summary evaluation narrative, were signed or dated. The other 110 evaluation forms were missing some of this information.
- H. A summary evaluation combining all team member evaluations is required for each of the 42 proposals.

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Exhibit III: Sub-Recipient Contract Solicitation and Award Documentation

Document	Design Engineering			Construction			Phase	Responsible Department
	Number of Contracts	Document Found	Note	Number of Contracts	Document Found	Note		
Contract Initiation Memo (CIM)	3	3		5	5		P	PCS
DBE Goal	3	3		4	4	B	P	ODEO
Independent Cost Estimate (ICE)	3	3		5	5	C	P	E&F
Contract Type Selection Assessment	3	0		4	0	D	P	PCS
Advertising Notices	3	3		4	4	B	P	PCS
Pre-Proposal Meeting	3	3		4	4	B	P	PCS
Questions & Answers Documentation	3	3		4	4		P	PCS
A copy of the RFP	3	3		4	4	B	P	PCS
Firms Requesting the RFP	3	3		4	4	B	P	PCS
Consultant Responsibility Evaluation	3	1		4	1		CA	PCS
Proposal Responsiveness Evaluation	3	2		4	4		CA	PCS
Certifications	3	3		4	4	B	CA	PCS
DBE Evaluation	3	3		4	4	B	CA	ODEO
Price Analysis	3	3		4	4	B	CA	E&F
Council Approval	3	3		4	4	B	CA	E&F
Notice of Award	3	2	A	4	3	A	CA	PCS
Insurance Certificates	3	3		4	2	E	CA	PCS
Notice To Proceed (NTP)	3	2	A	4	3	A	CA	PCS
Executed Contract	3	3		4	4		CA	PCS
Contract Log (Table of Contents)	3	1		5	1		P	PCS

Design Engineering Evaluation Process

Team Membership Memo	3	2	F	P = Proposal Stage CA = Contract Admin. Stage PCS = Purchasing & Contract Services E&F = Engineering & Facilities
Conflict of Interest Forms	16	16	G	
Team Member Evaluations	68	20	H	
Team Evaluation Summary	15	13	I	
Brooks Act, Form B	3	2	F	

Notes:

- A. Minneapolis goes from public notice of City Council approval to sending out the executed contract. There is no separate Notice of Award or NTP.
- B. Cedar Grove construction was not advertised until May 2009, for land still needed to be acquired, therefore most documentation was not available for review.
- C. All ICE were developed prior to the proposal due dates except for the Minneapolis Consultant ICE.
- D. MnDOT based its decision on Minnesota statutes for trunk highway construction and Minneapolis stated that it was not told by the Council that such documentation was needed.
- E. Two had both builders risk and general liability, one did not have builder's risk (may not be needed due to type of construction) and general liability was not current, and one only required liability due to the type of work.
- F. Team membership information was included in the Evaluation summary, not a separate memo, and the Brooks Act, Form B was not prepared.
- G. The three contracts included evaluation teams of four, four and eight members.
- H. The three projects drew seven, six and two proposals, respectively. Multiplying by the four, four and eight evaluation team members results in 68 total individual evaluations. Only two included individual criteria narrative, summary evaluation narrative, were signed and dated. The other 66 evaluation forms were missing some of this information.
- I. A summary evaluation combining all evaluation team member individual evaluations is necessary documentation, thus the total of 15 as indicated in note 8 (7, 6, and 2 proposals). MARQ2 only summarized the winning proposal and did not include an overall rating, nor was it signed by the facilitator.