

M Management Committee

Business Item

Item: 2008-198

Meeting date: July 23, 2008

ADVISORY INFORMATION

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| Date: | July 16, 2008 |
| Subject: | Revisions to Procurement Policy |
| District(s), Member(s): | All |
| Policy/Legal Reference: | Council Policy 3-4-3, Procurement |
| Staff Prepared/Presented: | Micky Gutzmann, 651-602-1741 |
| Division/Department: | MCES c/o Bill Moore, 651-602-1162 |

Proposed Action

That the Metropolitan Council authorize the revision of the 3-4-3 Procurement Policy as outlined adding the language entitled “Prohibited Interests in Contracts” as well as changes in the Small Purchases paragraph in the Methods of Procurement section, and other minor language changes, as noted.

Background

The Minnesota Municipal Contracting Law is changing effective August 1, 2008. This change prompted staff to review both the procurement procedures and policy. During this review, and in addition to the statute changes, Contracts and Procurement Unit staff discovered that the Council’s procurement policies and procedures should contain more explicit language pertaining to prohibited interests in contracts. Both issues are addressed in the proposed changes to 3-4-3 Procurement Policy. Corresponding changes will be made added to the procurement procedure, as well. The Office of General Counsel drafted the language relating to prohibited interests in contracts.

Rationale

Amend policy to reflect 8/1/08 change in Minnesota Statutes 471.345, the Uniform Municipal Contracting Law - formal, sealed bids will be solicited for contracts estimated to exceed \$100,000 (the new legislation increased the threshold from \$50,000 to \$100,000).

Prohibited interests in contracts is clarified for both Council employees and Council members – the language is modeled after state statutory provisions governing specific governmental entities or certain classes of public officials, as well as the general prohibition against interests in contracts contained in Minnesota Statutes section 471.87 that applies to “public officers.”

Funding

No funding is required.

Known Support / Opposition

This language has been reviewed by the Council’s Policies and Procedures Steering Team and they are in support.



POLICY - PROCUREMENT

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| Section/Number: 3-4-3 | Total Pages: 3 |
| Dept. Responsible: All Divisions and Departments | Effective Date: 9/11/98 |
| Special Note: Supersedes all previous procurement policies | Revision No. 1 (1/1/01) 2(8/1/08) |

I. Policy:

The Metropolitan Council will procure the goods and services required to meet its needs and fulfill its mission. The Council will procure goods and services as economically as feasible, in a manner that is efficient, straightforward, and equitable and which complies with all federal, state, and local laws and regulations and all other Council policies.

Methods of Procurement

The Council will use the following Methods of Procurement.

Micro Purchases Procurements valued at less than \$2,500 will be considered *Micro Purchases*, and can be made without obtaining competitive quotations or proposals. Council staff will ensure that the price is fair and reasonable. Procurements will not be split to avoid competition.

Small Purchases Procurements valued between \$2,500 and \$100,000 will be considered *Small Purchases*, and will be made after obtaining an adequate number of quotations, bids, or proposals from qualified sources, in accordance with Council procurement procedures.

Major Purchases Procurements valued at greater than \$100,000 will be considered *Major Purchases*, and will be made by publicly soliciting bids or proposals in accordance with Council procurement procedures.

Master Contracts *Master Contracts* will be created with vendors to allow the Council to make repetitive purchases of similar types of goods or services on an as-needed basis in an efficient and economical manor. Procurements made through *Master Contracts* will satisfy the Council's competitive procurement requirements.

Joint Purchasing Agreements The Council has the authority to enter into *Joint Purchasing Agreements* with other governmental units as provided for in Minnesota Statutes. Procurements made through *Joint Purchasing Agreements* will satisfy the Council's competitive procurement requirements.

Contract Amendments Contract amendments valued at greater than 10% of the original value of the contract will be considered separate procurements and will be supported by the appropriate competitive process.

Noncompetitive Purchases

Noncompetitive Purchases can be made under the following circumstances:

- For *Micro Purchases*, where the total value of the purchase is less than \$2,500
- Where the Regional Administrator or the Council has declared an emergency, in accordance with Council Policies and Procedures
- Where a Sole Source Justification has been approved, in accordance with Council Policies and Procedures
- Where the procurement is for goods or services not available competitively, such as utilities, subscriptions, professional dues and memberships, insurance, conference and seminar registration, permits and licenses, advertisements in publications, taxes, required federal, state, and local fees and charges, etc.

Disadvantaged Businesses

The Metropolitan Council will utilize businesses owned and controlled by socially and economically disadvantaged individuals in the procurement of goods and services, and the award of contracts.

The Council will, in accordance with authority granted by federal regulations, state statute, and local laws and ordinances, act affirmatively to create a "level playing field" for women-owned, minority-owned and disadvantaged business enterprises to achieve the goal of equal opportunity.

Deviations

Approval to deviate from this policy must be documented and authorized by the Regional Administrator, or by other Council staff as delegated by the Regional Administrator in accordance with Council policies and procedures.

Prohibited Interests in Contracts

The council shall not enter into any contract or purchase order for goods or services in which a Council Member or a Council employee has an indirect or direct personal financial interest or will personally benefit financially from the contract or purchase order. In exceptional cases and if permitted by applicable law or regulation, this policy may be waived by the Division Director or General Manager for good cause after consulting with the Office of General Counsel.

II. Purpose of policy:

The intent of this policy and its supporting Procurement Procedures is to ensure that the procurement process complies with all applicable legal requirements and federal and state regulations; is fair to all participants; is as efficient as possible without eliminating needed controls; is understandable to all users; is administratively consistent with other Council policies and procedures; and maximizes the use of disadvantaged business whenever possible.

III. Background and reasons for policy:

The Council adopted an overall procurement policy effective June 1, 1995. In September of 1996 and December of 1997, that policy was revised and reissued. The policy was again revised in September of 1998, incorporating additional changes developed through a procurement study project. This policy revision incorporates FTA best practices in accordance with a Procurement System Review conducted in August of 1999. The policy was revised again August 1, 2008 to reflect changes in Minnesota Statute 471.345.

Joint power procurements are authorized by Minnesota Statutes Section 471.59.

IV. Implementation/Accountability:

All employees are responsible for adhering to this policy when purchasing goods or services. Managers are responsible for monitoring performance within their areas of jurisdiction. The contracts and purchasing work units are responsible for reporting deviations to appropriate management. Implementing procedures, guidelines and rules are published on the Council's Intranet page.