

## **RESOLUTION NO. 702-13**

A RESOLUTION PROVIDING FOR THE PROCUREMENT OF MATERIALS, SUPPLIES, AND PERFORMANCE OF WORK AND SERVICES, REPEALING RESOLUTIONS 655-09 AND 685-11 AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

### **SPOKANE TRANSIT AUTHORITY Spokane County, Washington**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SPOKANE TRANSIT AUTHORITY:

WHEREAS, the Spokane Transit Authority (Spokane Transit) is a public transportation benefit area organized and operating pursuant to the laws of the State of Washington; and

WHEREAS, Resolution No. 655-09 was adopted by the Board of Directors in 2009 and amended by Resolution 685-11 in 2011 and authorizes the Chief Executive Officer (the "CEO") to procure materials, supplies, work, or services subject to certain restrictions; and

WHEREAS, the Board of Directors finds it prudent and necessary to revise the procurement policy of Spokane Transit so as to streamline its procurement policy and make minor grammatical corrections;

NOW, THEREFORE, be it resolved by the Board of Directors of Spokane Transit as follows:

#### **Section 1. AUTHORITY**

RCW 36.57A.080 grants authority to Spokane Transit to determine and prescribe requirements of notice, bidder qualification and bid conditions for all purchases of goods and services.

#### **Section 2. PURPOSE**

- (a) The objectives of Spokane Transit's procurement policy for the bidding of municipal contracts are to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to ensure that the municipality receives the best goods and services at the most reasonable price practicable.
- (b) Many procurement actions of Spokane Transit are in conjunction with Federal grants and assistance programs, and Federal law seeks to ensure that Federal funds are expended according to sound procurement principles.
- (c) It is necessary and desirable that Spokane Transit maintain procedures for the accomplishment of its transportation facilities, for the purchase of supplies and materials and for the performance of necessary work and services.

- (d) It is Spokane Transit's goal to provide fair and open participation in procurements by qualified and competent suppliers, contractors and consultants, including state certified disadvantaged business enterprises.

### **Section 3. REFERENCES TO LAWS AND REGULATIONS**

- (a) All references herein to the "FTA Circular" are to the FTA Circular C 4220.1F, dated November 1, 2008 or as it is hereafter amended or superseded.
- (b) All references herein to provisions of the United States Code, Revised Code of Washington and other regulations are to the current provisions and regulations, or as those are hereafter amended or superseded.

### **Section 4. ADMINISTRATIVE RESPONSIBILITY**

- (a) Spokane Transit has employed a CEO to implement the mission, goals, objectives and policy guidelines of the Board of Directors of Spokane Transit (the "Board of Directors") pursuant to the procedures established by the Board of Directors. The CEO derives authority from the Board of Directors acting as the governing body of Spokane Transit and as permitted by law. The following procedures are adopted by the Board for the purpose of establishing the administrative authority of the CEO.
- (b) The CEO shall be responsible for normal Spokane Transit operations. The phrase "normal Spokane Transit operations" as used herein means the regular day-to-day business transactions of the agency involving personnel, finances, payments of vouchers, facilities, management of real and personal property, and other assets, and the acquisition of equipment and services identified and approved by the Board through the annual Capital Improvement Program (CIP) budget. The CEO shall retain professional staff, which shall operate and manage according to directives and policy from the CEO subject to review by the Board. The CEO shall regularly inform and consult with the Chair of the Board, the Board's standing committees, and the Board as a whole regarding significant information, business transactions, contracts in excess of the CEO's authority, and administrative policies through methods mutually agreeable to the Board and the CEO. The CEO shall be responsible for the day-to-day direction and conduct of business transactions of Spokane Transit subject to the policies, limitations and procedures set forth in this Resolution.
- (c) As permitted by law, the CEO may delegate to appropriate Spokane Transit staff such of his or her administrative authority or reporting requirements herein established as, in his or her discretion, is necessary and advisable for the efficient exercise of such authority. To implement delegations to Spokane Transit staff, the CEO may issue such policies and procedures, monetary delegations, authority to execute contracts and other documents to guide agency administration which shall include such delegations as may be appropriate.

- (d) Directives or initiatives by the Board shall be implemented through the CEO unless otherwise provided in the Board's directive or initiative. Except in the event of emergencies, directives or initiatives shall be approved by the full Board of Spokane Transit acting as a body, or by a motion of a standing committee of the Board. The Board, acting as a body, may at any time rescind or suspend all or any portion of the delegated authority confirmed upon the CEO under this Resolution by further resolution or motion acted on in a public meeting.
- (e) The CEO shall ensure that equipment, materials, supplies and services are procured efficiently and economically by Spokane Transit with maximum practicable competition and in compliance with the procedures established by this Resolution, applicable state and federal laws and regulations and agency policies.
- (f) Contract Approvals Required

“Contract” shall mean the total cost of the contract, inclusive of options and exclusive of sales tax, and shall be governed by the required level of approval as provided below:

- a. Contracts for equipment, materials, supplies, leases, and non-professional and professional services purchased or work ordered for Spokane Transit, the estimated cost of which is not more than Two Hundred Thousand Dollars (\$200,000), may be awarded by the CEO pursuant to such procedures as the CEO deems reasonable and in the best interests of Spokane Transit.
  - b. Procurement specifications for contracts less than or equal to One Million Dollars (\$1,000,000), or for equipment and services identified in the Board-approved CIP budget, may be approved by the CEO pursuant to such procedures as the CEO deems reasonable and in the best interests of Spokane Transit. Such procurements shall be reported to the appropriate standing committee unless previously approved in the Board-approved CIP budget.
- (2) Contracts for equipment and services identified in the Board-approved CIP budget may be awarded by the CEO provided the Contract does not exceed the current approved CIP budget for the procurement by more than 10%. Price quotations for repetitively purchased items that are purchased within one year of the last procurement of that exact item(s) shall be unnecessary provided the prior competitively quoted purchase price has not changed.
- (g) Except as provided otherwise by the Board, for all contracts for which Board approval has been obtained (either through the CIP budget, a project basis or an individual contract basis) or for which the CEO is authorized to contract without

prior Board approval, the CEO is authorized to take all further steps necessary for completion of the work, including, but not limited to: development and approval of general specifications, publication of notice calling for bids or proposals; rejection of bids or proposals or awards of contract; canceling or delaying bid or proposal openings; administration of contracts (including execution of contract change orders); acceptance or rejection of work; termination of contract; contract close-out; and claims negotiations and settlements. Such actions shall be consistent with applicable legal requirements and Spokane Transit policies.

- (h) The CEO may issue or cause to be issued administrative policies and procedures implementing and/or enforcing the requirements of this resolution.

#### **Section 5. GENERAL SCOPE**

- (a) Solicited Proposals. All procurement transactions, regardless of whether by verbal or written quote, by sealed bid or by competitive negotiation, shall be conducted in a manner that provides, to the fullest extent possible, maximum full and open competition in accordance with this Resolution.
- (b) Competition Defined. Competition in procurement is defined as a condition where two or more sources are able to compete for a requirement in price and/or technical skills.
- (c) Unsolicited Proposals. Procurement transactions may also be based on an unsolicited proposal in accordance with Chapter I of the FTA Circular.
- (d) Prequalification. Prequalification lists may be used to prequalify people, firms and property for procurement purposes if:
  - (1) All prequalification lists that are used are current.
  - (2) All prequalification lists that are used include enough qualified sources to provide maximum full and open competition.
  - (3) Potential bidders or offerors are permitted to qualify during the solicitation period (from the issuance of the solicitation to its closing date). However, a particular solicitation does not need to be held open to accommodate a potential supplier that submits property for approval before or during that solicitation. Nor must prequalification evaluations of bidders, offerors, or property presented for review during the solicitation period be expedited or shortened.

Prequalification does not replace reviews of technical qualifications in the two-step procurements and qualifications-based procurements discussed in 16 and 17 of this resolution.

- (e) Professional Services, other than Architectural or Engineering (A&E) services, acquired with local funds, will typically be procured under the requirements outlined herein; provided, professional services acquired with local funds shall be exempt from this policy when:
  - (1) The total contract amount is within the limits of the CEO's procurement authority under Section 4(f)(1) of this policy; and
  - (2) The service is provided by a consultant to accomplish a specific study, task or other work statement whereby the provider is selected based on their unique approach or expertise; and
  - (3) The CEO has determined that the contract amount is fair and reasonable in light of the scope of services obtained.

**Section 6. PROCUREMENT RESTRICTIONS**

- (a) Procurement procedures should not restrict or eliminate competition or support an exclusionary or discriminatory specification, including:
- (b) Placing unreasonable requirements on prospective contractors in order for them to qualify to do business.
- (c) Supporting or allowing noncompetitive pricing practices between contractors or affiliated companies. Questionable practices include, but are not limited to, submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.
- (d) Requiring unnecessary or unreasonable experience and performance requirements.
- (e) Making noncompetitive awards to professionals and other consultants that are on retainer contracts if that award is not for the property or services specified for delivery under the retainer contract.
- (f) Specifying only a "brand name" product without allowing offers of "an equal" product, or allowing "an equal" product without listing the salient characteristics that the "equal" product must meet to be acceptable for award.
- (g) Using prequalification procedures that conflict with the prequalification standards described in Section 5(c) of this Resolution.
- (h) Requiring unreasonable, unduly restrictive or excessive bonding requirements.
- (i) Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographical preferences, even if those preferences are imposed by State or local laws or regulations, except that:

- (1) For Architectural Engineering (A&E) Services only, geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.
  - (2) The State may enforce its licensing requirements that do not conflict with Federal law.
  - (3) Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms and individuals residing or doing business primarily in the area affected by a major disaster or emergency.
- (j) Supporting or allowing organizational conflicts of interest.
- (1) An organizational conflict of interest occurs when any of the following circumstances arise:
    - a. The contractor is unable, or potentially unable, to provide impartial and objective assistance or advice due to other activities, relationships, contracts or circumstances.
    - b. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
    - c. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
  - (2) Each planned acquisition must be analyzed in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.
- (k) Any arbitrary and capricious action in the procurement process.

#### **Section 7. PROCUREMENT STANDARDS**

The following standards shall be applicable to all Spokane Transit procurements.

- (a) A review of all proposed procurements by authorized staff shall be mandatory.
- (b) When contracting for professional services, the contract shall limit the total of the base and option time periods to not more than five years, unless approved by

the Board. Prices for each base and option time period shall be firm and fixed wherever possible and shall be established in the initial contract bidding, negotiation and execution. If it is not possible to establish firm, fixed prices, changes in the option period prices shall be tied to a well-known, published pricing index, such as The Consumer Price Index.

- (c) Spokane Transit shall maintain a contract administration system that ensures contractors perform in accordance with the terms and conditions, and specifications of their contract.

**Section 8. ADDITIONAL PROCUREMENT REQUIREMENTS WHEN FEDERAL FUNDS ARE USED**

The following additional requirements shall be applicable to each Spokane Transit procurement for which Federal funds are used.

- (a) Description of Property or Services. The solicitation and the contract awarded thereunder must include a clear and accurate description of the technical requirements for the property or services to be acquired in a manner that provides for full and open competition.
  - (1) What to Include. The requirements should be described in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards, but use of detailed technical specifications are not prohibited when appropriate.
  - (2) Quantities Limited to Actual Needs. Procurements shall be limited to the amount necessary to support the quantity of property or extent of services actually needed. Quantities or options may not be added to contracts solely to allow these quantities or options to be assigned at a later date.
- (b) Evaluation Factors. The solicitation must identify all factors to be used in evaluating bids or proposals.
- (c) Contract Type Specified. The specifications should state the type of contract that will be awarded, such as a firm fixed price contract or cost reimbursement contract as defined in the FTA Circular.
- (d) Award to Other than the Low Bidder. If the right to award to other than the low bidder is to be reserved, that information should be stated in the solicitation document.
- (e) Rejection of All Bids or Offers. If the right to reject all bids or offers is to be reserved, that information should be stated in the solicitation document.
- (f) Products and Services. Products and services that conserve natural resources, protect the environment, and are energy efficient are to be preferred, and

products and services dimensioned in the metric system of measurement are to be accepted, to the extent practicable and economically feasible.

- (g) Additional Federal Requirements.
  - (1) The solicitation and resulting contract must identify those Federal requirements set forth in Chapter IV, subsection 2.b of the FTA Circular, and FTA's latest Master Agreement.
  - (2) The solicitation and resulting contract must identify those Federal requirements that a bidder or offeror must fulfill before and during contract performance as set forth in Chapter IV, subsection 2.a. of the FTA Circular and FTA's latest Master Agreement.
- (h) Procurements must otherwise comply with Federal laws and regulations, including those set forth in Chapter IV of the FTA Circular that impose cost rates and restrictions, civil rights and environmental protection requirements applicable to the procurement, and audit service and audit procurement requirements. Spokane Transit must implement those requirements as necessary through its third party contracts.

#### **Section 9. ETHICAL STANDARDS OF CONDUCT**

- (a) No employee, officer, or agent of Spokane Transit shall participate in the selection, or in the award or administration of a contract, if a conflict of interest, real or apparent, direct or indirect, would be involved.

Such a conflict would arise when:

- (1) The employee, officer, agent or board member,
  - (2) Any member of his/her immediate family,
  - (3) His/her partner, or
  - (4) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for contract award.
- (b) Spokane Transit's officers, employees, or agents shall neither solicit nor accept gratuities, gifts, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Only unsolicited items of nominal intrinsic value may be accepted from such parties, for example, an occasional business meal or advertising souvenirs.
  - (c) Spokane Transit, its employees and directors, shall also comply in all respects with applicable laws, rules and regulations governing ethical standards of conduct.

## **Section 10. METHODS OF PROCUREMENT**

Procurement shall be achieved by one of the following methods as currently defined in the FTA Circular:

- (a) micro-purchase (currently less than \$3,000 (Section 11))
- (b) small purchase (currently \$3,000 to \$100,000 (Section 12))
- (c) competitive sealed bid (Invitation for Bids, IFB) (currently greater than \$100,000 (Section 13))
- (d) competitive proposal (Request for Proposals, RFP) (currently greater than \$100,000 (Section 11))
- (e) two-step procurement, including review of technical qualifications and approach, and review of bids and proposals submitted by qualified prospective contractors (Section 15)
- (f) architectural engineering (A&E) services
- (g) design-bid-build
- (h) design-build
- (i) emergency procurement and other than full and open competition (including sole source)
- (j) For purposes of determining the appropriate procurement method, value of the procurement shall be determined without allowance for tax and/or freight.

## **Section 11. MICRO-PURCHASES (Less than \$3,000)**

- (a) Micro-purchase procedures shall be used for purchases of materials, equipment, supplies, work and/or services for Spokane Transit when the total price is valued at or less than the maximum micro-purchase amount set forth in Chapter VI, subsection 3.a of the FTA Circular (currently any price valued less than \$3,000 without obtaining price quotations). These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements will, however, apply in accordance with federal and state law, even though micro-purchase procurement procedures are used.

The following procedures apply to micro-purchases:

- (1) Micro-purchases should be distributed equitably among qualified suppliers.
- (2) The size of the procurement may not be divided or reduced merely to come within the micro-purchase limit.

- (3) The determination that the price is fair and reasonable and a description of how that determination was made is required and shall be documented.

**Section 12. SMALL PURCHASES** (currently \$3,000 to \$100,000)

- (a) Small purchase procedures shall be used for purchases of materials, equipment, supplies, work and/or services for Spokane Transit when the total value is more than the micro-purchase threshold but less than the Federal simplified acquisition threshold at 41 U.S.C. § 403(11) (currently \$100,000). These purchases are also exempt from FTA's Buy America requirements. The following procedures apply to small purchases:
  - (1) Price or rate quotations must be obtained from an adequate number of qualified sources. The CEO shall be responsible for determining the adequacy of quotations for small purchases. .
  - (2) The size of the procurement may not be divided or reduced merely to avoid additional procurement requirements applicable to larger acquisitions.

**Section 13. COMPETITIVE SEALED BID – INVITATION FOR BIDS**

- (a) All procurements not specifically outlined or excepted by another method of procurement contained in this resolution or authorized by law shall be made by competitive sealed bid.
- (b) An Invitation for Bids (IFB) shall be utilized in all cases where each of the following conditions is present:
  - (1) A complete, adequate, precise, and realistic specification or purchase description is available.
  - (2) Two or more responsible bidders are willing and able to compete effectively for the business.
  - (3) The procurement generally lends itself to a firm fixed price contract.
  - (4) The successful bidder can be selected on the basis of price and those price-related factors listed in the IFB including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken..
- (c) A pre-bid/proposal conference may be held in competitive sealed bid situations, for the purpose of answering questions and clarifying the requirements and specifications relevant to the Invitation for Bids or the Request for Proposals. Notice for such pre-bid/proposal conference shall be advertised and stated in the general requirements section of the IFB or the Request for Proposal.

- (d) Procurement Procedures. The following procedures apply to sealed bid procurements.
- (1) The CEO shall cause the IFB to be publicly advertised in an appropriate publication or web site posting(s) at least once, and at least 18 calendar days prior to the bid opening.
  - (2) Bids must be solicited from an adequate number of known suppliers.
  - (3) The IFB, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
  - (4) The IFB shall specify Spokane Transit's right to award the contract to other than the low bidder and its right to reject all bids or offers.

(e) Public Opening of Bids

- (1) All bids shall be opened and read publicly at the time and place designated in the IFB notice.
- (2) The name and address of each bidder, the price bid, and any other relevant information as may be specified in the IFB shall be read aloud and recorded in the minutes of the bid opening.
- (3) It shall be also announced that the bid review will be completed by Spokane Transit staff and the date the contract will be awarded.
- (4) All bidders will be notified of award postponement and of the contract award.
- (5) The purchase record, including each bid, shall be open to public inspection in accordance with ch. 42.56 RCW.
- (6) Any or all bids may be rejected if there is a sound, documented business reason.

**Section 14. COMPETITIVE PROPOSAL - REQUEST FOR PROPOSAL**

- (a) A Request for Proposal (RFP) shall be utilized when the procurement lacks definite specifications, when proposals are sought for the purpose of establishing a bid specification, when the goods or services being procured involve creative design or professional administration, and/or when subjective criteria is considered in the contract award, which is made in the best interests of Spokane Transit. Procurement Procedures. The following procedures apply to procurements by competitive proposals:
- (1) The CEO shall cause the request for proposal (RFP) to be publicly advertised in an appropriate publication or web site posting(s) at least once, and at least 18 calendar days prior to the proposal due date.
  - (2) The RFP shall identify all significant evaluation factors and their relative weighted importance.
  - (3) Proposals shall be solicited from an adequate number of qualified sources.

**Section 15. TWO-STEP PROCUREMENT**

- (a) Two-step procurement procedures in both sealed bid and competitively negotiated procurements may be used, provided the opportunity for full and open competition is retained.
- (b) Procurement Procedures. The applicable two-step procedures are as follows:

- (1) Review of Technical/Professional Qualifications and Approach. The first step involves a review of the prospective contractors' technical or professional approach to the IFB or RFP and technical qualifications to carry out that approach.
  - (2) Review of Bids and Proposals Submitted by Qualified Prospective Contractors. The second step is to solicit and review complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, bids or proposals should be solicited from at least three qualified prospective contractors. All bid or proposal prices submitted, as well as other factors, shall be considered, rather than limiting reviews to the most qualified bidder or offeror.
- (c) In the interests of efficiency Spokane Transit may elect to obtain submittals of both steps via a single solicitation.

**Section 16. ARCHITECTURAL ENGINEERING (A&E) SERVICES AND OTHER RELATED SERVICES**

- (a) The use of qualifications-based procurement procedures based on the "Brooks Act", 40 U.S.C. §§ 1101-1104, and RCW Chapter 39.80, shall be used when Spokane Transit seeks to acquire architectural and engineering services, such as program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and other related services set forth in 49 U.S.C. Section 5325(b) (collectively referred to in this Resolution as "A&E services").
- (b) Qualifications-Based Procurement Procedures. Currently, the applicable procedures are as follows:
  - (1) The CEO shall cause to be distributed in advance of Spokane Transit's requirement for professional services a concise announcement of the general scope and nature of the project or work for which the services are required and the address of a Spokane Transit representative who can provide further details.
  - (2) The most qualified offeror may be selected subject to negotiation of a fair and reasonable compensation. Price shall not be considered as an evaluation factor in determining the most qualified offeror.
  - (3) Negotiations shall first be conducted only with the most qualified offeror. Only after failing to agree on a fair and reasonable price shall negotiations be conducted with the next most qualified offeror until a contract award can be made to the offeror whose price is determined to be fair and reasonable.

**Section 17. DESIGN-BID-BUILD**

- (a) Design-bid-build procedures may be used for contracts for design services and for construction of transportation facilities. If this method is elected by Spokane Transit, relevant provisions of Ch. 39.04 RCW will be used to establish the minimum procedures.
- (b) For design services, qualifications-based procurement procedures must be used in compliance with the FTA Circular and applicable Federal, State and local law and regulations.
- (c) For services related to the actual construction, alteration or repair of real property, competitive procedures (including competitive sealed bid or competitive negotiation procurement methods) shall be used in compliance with the FTA Circular and applicable Federal, State and local law and regulations.

**Section 18. DESIGN-BUILD**

- (a) Design-build procedures may be used when Spokane Transit contracts for design and construction simultaneously with a contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project's design and construction.
- (b) The various contract activities to be undertaken shall be classified as design or construction and the estimated total value of each shall be calculated. The procurement method appropriate for the services having the greatest cost shall be used.
- (c) When construction costs are predominant, qualifications-based procurement procedures may not be used to acquire A&E and other services to which Section 15 of this Resolution is applicable, unless FTA determines otherwise in writing or unless required by State law.
- (d) When A&E services are predominant, qualifications-based procurement procedures based on the Brooks Act, and currently described in Section 15 of this Chapter, shall be used.

**Section 19. EMERGENCY PROCUREMENT AND OTHER THAN FULL AND OPEN COMPETITION**

- (a) Noncompetitive proposals may be used only when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances is present:
  - (1) Competition Adequacy. Spokane Transit determines that competition is adequate after soliciting from several sources, and after determining that its specifications are not unduly restrictive and changes cannot be made to

encourage greater competition. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

(2) Sole Source. A sole source award may be made where at least one of the following circumstances is present:

- a. the supplies or services are available only from a single source (as defined in Chapter VI, subsection 3.i of the FTA Circular) and no other supplies or services will satisfy Spokane Transit's requirement.
- b. upon receiving a single bid or proposal in response to a solicitation, Spokane Transit determines that competition was adequate.
- c. an unusual and urgent need for the property or services exists and Spokane Transit would be seriously injured unless it were permitted to limit the solicitation or a sufficient emergency exists for the requirement that will not permit the delay of competitive solicitation. The CEO may authorize an emergency procurement. Emergency procurements in excess of the CEO's signature authority shall be ratified by the Board at its next regular meeting.
- d. FTA has authorized noncompetitive proposals, including the authorizations set forth in Chapter VI, subsection 3.i.(1)(e) of the FTA Circular.
  1. FTA does not, however, authorize noncompetitive proposals that are justified on the basis of failure to plan.

(b) Procurement Procedures. The following procurement procedures apply when less than full and open competition is available:

- (1) Offers shall be solicited from as many potential sources as is practicable under the circumstances.
- (2) If an offer is solicited from only one source, that decision must be adequately justified in writing based on the standards of set forth in the Circular.
- (3) A cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits shall be prepared.
- (4) When applicable, and if FTA so requests, the proposed procurement shall be submitted to FTA for preaward review.

## Section 20. BID/PROPOSAL EVALUATION

- (a) General. Proposals or bids shall be unconditionally accepted without alteration or correction, except as authorized in this resolution. Submissions shall be evaluated based on the requirements set forth in the RFP or IFB, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, suitability for a particular purpose, and pre-award survey of the bidder s/proposer's facilities. Those criteria that will affect the price and will be considered in evaluation for award as determined by Spokane Transit shall be objectively measurable, including but not limited to discounts, sales tax, transportation costs, installation costs, and total project or life cycle costs. STA may not modify its evaluation factors after proposals are received.
- (1) RFP Opening
    - a. Except where prohibited by the Open Public Meetings Law, proposals shall be reviewed by an evaluation committee regarding all evaluative factors maintained throughout the review process. The evaluation committee will grade all factors, with their consensus recorded on the proposal tabulation worksheet.
  - (2) Verbal interviews with any offeror who has submitted a proposal may be made to determine such offeror's qualifications for further consideration.
  - (3) Pre-award negotiations may be conducted with offerors in the competitive range for submission of best and final offers. If negotiations are conducted, Spokane Transit must negotiate with all offerors in the competitive range.
  - (4) A committee may be selected to conduct the technical evaluation of the proposals received and shall make a recommendation for contract award based upon each of the evaluation elements in accordance with the weighted importance of each criteria and other elements having a bearing on the decision to award the contract as determined by the division director and purchasing manager prior to the solicitation. The relative positions and evaluation points are totaled for each evaluation criteria or element, and the proposer with the highest overall total of evaluation points shall be recommended for contract award.

If Spokane Transit contracts for evaluation services, the procurement standards of this Resolution will apply to those contractors and to those contractors selected to perform evaluation functions on behalf of Spokane Transit.
  - (5) Spokane Transit may reject any or all bids/proposals, including the bid or proposal of an offeror whose performance under a previous contract, even though finally accepted by Spokane Transit or another public agency,

imposed additional costs and burdens upon the public in obtaining satisfactory performance.

- (b) Options. In awarding any contract that will include options, the following standards apply:
- (1) Evaluation Required. Except as provided in subsection (2), bids or offers for any option quantities or periods contained in an RFP or IFB shall be evaluated if Spokane Transit intends to exercise those options after the contract is awarded.
  - (2) Evaluation Not Required. Spokane Transit need not evaluate bids or offers for any option quantities when Spokane Transit determines that evaluation would not be in its best interests, such as when Spokane Transit is reasonably certain that funds will not be available to permit it to exercise the option.

#### **Section 21. CONTRACT AWARD**

- (a) Except as provided in subsection (b) of this Section, the contract award shall be made to the lowest responsive bidder or offeror.
- (b) Award to Other than Lowest Bidder or Offeror. A contract may be awarded to other than the lowest bidder in either of the following circumstances:
- (1) the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs, or
  - (2) when Spokane Transit states in the evaluation factors of its RFP or IFB that it may award the contract to other than the offeror whose proposal is lowest.

In both cases, the right to award the contract to other than the low bidder or offeror must be stated in the RFP or IFB.

- (c) Award Only to a Responsible Contractor. Contract awards may only be made to "responsible" contractors under the standards of 49 U.S.C. § 5325, possessing the ability, willingness and integrity to perform successfully under the terms and conditions of the contract. The prospective contractor must at a minimum satisfy the following criteria to demonstrate its qualifications as a "responsible" contractor:
- (1) Integrity and Ethics. Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. § 5325(j)(2)(A).
  - (2) Debarment and Suspension. Is neither debarred nor suspended from Federal programs under DOT regulations, "Nonprocurement Suspension

and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4,

- (3) Affirmative Action and DBE. Is in compliance with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements,
- (4) Public Policy. Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. § 5325(j)(2)(B),
- (5) Administrative and Technical capacity. Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. § 5325(j)(2)(D),
- (6) Licensing and Taxes. Is in compliance with applicable licensing and tax laws and regulations,
- (7) Financial Resources. Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D),
- (8) Production and Capability. Has, or can obtain, the necessary production, construction and technical equipment and facilities,
- (9) Timeliness. Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments,
- (10) Performance Record. Is able to provide a:
  - a. Satisfactory current performance record, and
  - b. Satisfactory past performance record in view of its records of long-time performance or performance with a predecessor entity, including:
    1. Key personnel with adequate experience, a parent firm with adequate experience and past performance,
    2. Past experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient’s solicitation, and
    3. A prospective contractor that is or recently has been seriously deficient in contract performance is presumed to be nonresponsible, unless it is determined that the

circumstances were properly beyond the prospective contractor's control.

- (11) Such other information as may be secured having a bearing on the decision to award the contract.

Before entering into a full funding contract for a fixed guideway project, Spokane Transit must consider the prospective contractor's past performance in estimating costs and ridership as reported in the Contractor Performance Assessment Reports, as required by 49 U.S.C. § 5325(j)(2)(C).

- (d) The contract award will be made by the CEO or Board of Directors as applicable.

#### **Section 22. BID/PROPOSAL CORRECTION**

- (a) Except in the case of competitive negotiation, no changes in price or other provisions of proposals or bids after opening shall be permitted unless an error is obvious. An obvious error is one which can be clearly established from mathematical extension or tabulation shown in the bid documents submitted with the bid. An error in a mathematical extension, reported by a bidder but not shown in the bid documents, does not constitute an obvious error. Bidders are presumed to submit correct tabulations and specifications.
- (b) Minor informalities and irregularities in the bid/proposal may be waived by Spokane Transit.

#### **Section 23. BID/PROPOSAL PROTEST — PROCEDURE**

- (a) Bidders, offerors and/or taxpayers wishing to protest the legitimacy of any type of procurement action outlined in this resolution must submit their pre-award Notice of Protest in writing no less than eight (8) calendar days before the bid opening/proposal due date. Persons wishing to protest a contract award must submit their Notice of Protest in writing within seven (7) calendar days after STA has issued an Intent to Award notice.
- (b) When Federal funds are involved, the FTA must be notified when Spokane Transit receives a third party contract protest and Spokane Transit must keep FTA informed about the status of the protest pursuant to the requirements of Chapter VII, subsection 1.a(2) of the FTA Circular.
- (c) The Notice of Protest will be handled as follows:
  - (1) The Notice of Protest shall be mailed, sent electronically, sent via facsimile, or delivered to the Purchasing Manager and shall state all issues and facts applicable to the protest. Issues and facts not stated in the Notice of Protest will not be considered.

- (2) A meeting(s) may be called following receipt of the protest that will include representatives from Spokane Transit and the protestor to discuss the issue related to the protest. The meeting may be conducted by telephone conference.
  - (3) The CEO will make his/her decision according to the following time schedule and Spokane Transit will notify the protestor of the decision in writing by regular mail, electronically, or by facsimile transmission.
    - a. Pre-award protests will be decided at least five (5) calendar days before the bid opening/proposal due date.
    - b. Contract award protests will be decided within seven (7) calendar days following receipt of the protest.
  - (4) The CEO may, at his/her sole discretion, extend the limits of time outlined above.
  - (5) The decision of the CEO shall be final. Any appeal of the CEO's decision will be governed by FTA, if applicable.
  - (6) Failure of the protestor to specify their objections in writing and in accordance with the specified time deadlines shall constitute a waiver of all right to protest.
- (d) This protest procedure shall be made known to all prospective bidders or proposers by being included or referenced in the requirements section of all solicitation documents.
  - (e) All communications with the parties involved, including Spokane Transit staff or board members concerning a protest, shall be in writing, and will be open for public inspection. Spokane Transit shall be responsible for compiling and maintaining the written protest record.
  - (f) FTA may entertain a protest that alleges Spokane Transit has failed to have or follow written protest procedures, or a protest involving issues important to FTA's overall public transportation program. Such protest must be filed with FTA not later than five (5) working days after the CEO has rendered his/her final decision or five (5) working days after the protestor knows or has reason to know that the CEO has failed to render his/her final decision. Such protest to FTA must be filed in accordance with Chapter VII(1)(b) of the FTA Circular.
  - (g) When a protest has been timely filed with Spokane Transit before award, Spokane Transit shall not make an award prior to five (5) days after the resolution of the protest, or if a protest has been filed with FTA, during the pendency of that protest, unless Spokane Transit determines that:
    - (1) The goods or services to be procured are urgently required;

- (2) Delivery or performance will be unduly delayed by failure to make the award promptly; or
- (3) Failure to make prompt award will otherwise cause undue harm to Spokane Transit or the Federal Government.

In the event that Spokane Transit determines that the award is to be made during the five-day period following the local protest decision or the pendency of a protest, Spokane Transit shall notify FTA prior to making such award. FTA will not review the sufficiency of Spokane Transit's determination to award during the pendency of a protest prior to FTA's bid protest decision. FTA reserves the right not to participate in the funding of any contract awarded during the pendency of a protest.

#### **Section 24. CONTRACT CHANGES AND MODIFICATIONS**

- (a) Approval Requirements. Spokane Transit must have cost justifications supporting each change order it may issue and pursuant to Section 24.
- (b) Cost Restrictions. The cost of any change, modification, change order or constructive change to a current contract must be allowable, allocable, within the scope of any applicable FTA grant or cooperative agreement, and reasonable for the completion of the project scope.

#### **Section 25. FEDERAL ASSISTANCE IN CONTRACT DISPUTES**

- (a) If Spokane transit intends to request FTA's permission to use Federal assistance to support payments to a third party contractor to settle a dispute, or intends to request increased Federal assistance for that purpose, Spokane Transit must comply with the requirements pertaining to notification of FTA, documentation, audit and other requirements set forth in Chapter VII(3) of the FTA Circular.

#### **Section 26. CLAIMS AND LITIGATION INVOLVING FEDERALLY-FUNDED CONTRACTS**

- (a) Spokane Transit shall comply with the requirements set forth in Chapter VII(4) of the FTA Circular pertaining to claims and litigation involving Federally-funded third party contracts that:
  - (1) Have a value exceeding \$100,000
  - (2) Involve a controversial matter, irrespective of amount, or
  - (3) Involve a highly publicized matter, irrespective of amount.

**Section 27. FTA PARTICIPATION IN SETTLEMENTS, ARBITRATION AWARDS AND COURT AWARDS**

- (a) Where Spokane Transit incurs costs due to binding arbitration or court decision, Spokane Transit must secure FTA review and written concurrence in a proposed final settlement involving a dispute, claim, or litigation, and comply with the other requirements of Chapter VII(5) of the FTA Circular before using Federal assistance to support its costs if one of the following circumstances is present:
- (1) When the settlement exceeds \$100,000.
  - (2) When the approved project lacks sufficient funds to cover Spokane Transit's settlement costs.
  - (3) When a special Federal interest or Federal concern is declared due to program management concerns, possible mismanagement, impropriety, waste or fraud.

**Section 28. BONDING POLICY**

- (a) Unless FTA determines that other arrangements adequately protect the Federal interest, for all construction contracts exceeding the simplified acquisition threshold fixed at 41 U.S.C. Section 403(11) (currently \$100,000), the following minimum bonding requirements shall be met with each procurement.
- (1) Each bidder must provide a bid guarantee equivalent to 5 percent of its bid price and must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.
  - (2) A performance bond for 100 percent of the total contract price shall be received from the successful contractor prior to contract award.
  - (3) A payment bond on the part of the contractor for 100 percent of the total contract price shall be received from the successful contractor prior to contract award, except that
    - a. Payment bonds that meet the minimums established in Chapter IV, subsection 2.h(1) of the FTA Circular are acceptable. Currently, the following minimums are acceptable:
      1. Fifty percent (50%) of the contract price if the contract price is not more than \$1 million.
      2. Forty percent (40%) of the contract price if the contract price is more than \$1 million but not more than \$5 million, or

3. Two and one half million dollars if the contract price is more than \$5 million.
- (b) For non-federally funded projects, Spokane Transit may consider an irrevocable letter of credit as an acceptable form of security in lieu of performance and payment bonds only if it is issued by a federally insured financial institution holding an investment grade or higher commercial rating. [Not in FTA Circular]

**Section 29. RECYCLED PRODUCTS GOALS AND STRATEGIES**

- (a) The following strategy for increasing recycled product purchases and achieving the procurement goals shall be followed by the purchasing staff:
- (1) Work with the State of Washington Department of General Services Administration and the Department of Trade and Economic Development to access their database and receive technical assistance concerning available recycled content products and vendors supplying such products.
  - (2) For contracts of \$10,000 or more, provide up to a 5% purchase preference to firms offering products meeting specifications with a recycled content of at least 50% and a minimum of at least 15% post consumer waste.
  - (3) Attend periodic training sessions and workshops on purchasing recycled products to learn of new developments in this field.
  - (4) Communicate with vendors representing products with a recycled content to become better aware of available products.
  - (5) Utilize the State of Washington Office of State Procurement Contracting Program to purchase products with recycled contents.

**Section 30. DISPOSITION OF SURPLUS EQUIPMENT AND MATERIALS**

- (a) The purchasing department will be responsible for the disposition of all surplus equipment and shall make recommendations to the CEO as to which method of disposal will yield the highest net return. Methods of disposal may include Spokane Transit public auction, public auction with another governmental agency, Spokane Transit-contracted public auction, Internet-based auction, or sealed bid sale on the open market, with award of the equipment made to the highest responsible bidder in all cases.
- (b) The purchasing department shall be responsible for causing a public notice of the Spokane Transit auction or the sealed bid sale, containing necessary bidding information, to be published in an appropriate publication(s) at least once, and at least ten (10) days prior to the auction or bid opening. When equipment is placed in another governmental agency - conducted public auction or Spokane Transit-contracted public auction, the published Notice of Sale shall be

completed by the agency or contractor conducting the auction or by Spokane Transit.

- (c) Items of equipment with an estimated current per-unit fair market value of less than or equal to \$25,000 may be disposed of within the authority of the CEO. Disposal of items estimated to exceed \$25,000 current fair market value shall require the Board of Director's approval prior to disposition. Appropriate reimbursement to FTA will be made when required under applicable federal regulations for federally funded equipment.
- (d) The CEO shall be authorized to sell, transfer, exchange, lease or otherwise dispose of any Spokane Transit personal property to the state, any municipality or political sub-division thereof, or the federal government, on such terms and conditions as may be mutually agreed upon by the proper authorities of said governmental agencies or divisions, and as provided by law.

### **Section 31. OPEN RECORDS**

In accordance with ch. 42.56 RCW all procurement information generated and acquired through any of the procurement processes shall be open to public inspection through the Public Records Officer. Spokane Transit shall not be responsible for the protection of information marked "proprietary" submitted by proposers.

### **Section 32. DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

- (a) It is the policy of Spokane Transit to allow disadvantaged business enterprises (small, minority, and woman-owned) the maximum practicable opportunity to participate in the procurement process for all purchases.
- (b) Spokane Transit will take all necessary affirmative steps to assure that DBE's are contracted with when possible. Affirmative steps shall include:
  - (1) Placing qualified DBE's on solicitation lists;
  - (2) Assuring that DBE's are solicited whenever they are potential sources.
  - (3) Dividing total requirements (within the limits of this resolution), when economically feasible, into smaller tasks or quantities to permit maximum DBE participation.
  - (4) Establishing delivery schedules, where the requirement permits, that encourage DBE participation;
  - (5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs (1) through (5) above.
- (c) In construction contracts, contractors shall provide a list of DBE subcontractors to be included in the project along with respective dollar amounts of participation. The contractor shall submit with each monthly invoice a billing specification which clearly outlines the dollar amount of DBE participation for that billing period.

**Section 33. SELF-CERTIFICATION OF PROCUREMENT SYSTEM**

The CEO is authorized to file with the appropriate FTA Regional Office a self certification that its procurement system and procedures comply with the Federal requirements and standards set forth in the FTA Circular. The effect of such certification serves to limit mandatory FTA review of the procurements listed in Chapter III of the FTA Circular. The CEO shall self-certify Spokane Transit's procurement system in the FTA Annual Certification/Assurance Process or as otherwise required by FTA.

**Section 34. PURCHASE RECORD MAINTENANCE**

- (a) The purchasing department shall maintain records sufficient to detail project performance and financial records in accordance with required retention schedules. Spokane Transit must also maintain records sufficient to detail the significant history of a procurement, including but not limited to the following:
  - (1) The rationale for the method of procurement.
  - (2) The selection of contract type and evaluation criteria.
  - (3) Contractor selection or rejection, and rationale.
  - (4) The basis for the contract price.
  - (5) The bid tabulation or proposal evaluation worksheet.

**Section 35. STATE, FEDERAL AND INTERGOVERNMENTAL AGREEMENTS**

- (a) The CEO is authorized to enter into intergovernmental purchase agreements between Spokane Transit and state and other political subdivisions. Such purchase agreements shall comprise a valid method of transacting procurements only if all aforementioned procurement standards and requirements are adhered to. Public notice advertising requirements shall be deemed met by the advertising of the state or other political subdivision.
- (b) Spokane Transit may enlist in the State Contract Participation Program through the Office of State Procurement to take advantage of the volume purchasing inherent in this program. All purchase transactions conducted through the state

program will be considered completely valid and shall be used whenever practicable.

- (c) Spokane Transit may utilize "existing contract" rights, which are the post award use of contract rights that allows someone who was not contemplated in the original contract to purchase the same supplies/equipment through that contract (otherwise known as "piggybacking"). Such purchases shall meet FTA requirements set forth in Chapter V, subsection 7 of the FTA Circular.
- (d) In order to facilitate cooperative purchasing, Spokane Transit may include in its procurement actions, the consolidated requirements of other public entities.

**Section 36. CONTRACT PROVISIONS**

- (a) Third-party contracts shall contain provisions required by the FTA Circular and applicable State, Federal and local law. Each third-party contractor must extend those provisions to its subcontractors to the extent required by applicable laws and regulations.

**Section 37. WAIVER**

The Board may waive these requirements by motion or resolution except when prohibited by federal or state law or regulation.

**Section 38. REPEAL**


Resolution No. 655-09, adopted December 16, 2009, and Resolution No. 685-11, adopted December 15, 2011, are hereby repealed in their entirety.

**Section 39. EFFECTIVE DATE**

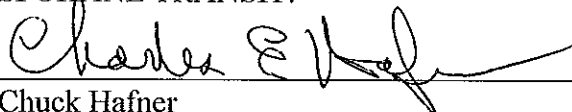
This Resolution shall be effective upon adoption.


Adopted by the Spokane Transit Board of Directors at a regular meeting thereof held on the 16 day of May 2013.

ATTEST:

  
\_\_\_\_\_  
Janet Watson  
Clerk of the Authority

SPOKANE TRANSIT:

  
\_\_\_\_\_  
Chuck Hafner  
Spokane Transit Board Chairman

Approved as to Form:  
  
\_\_\_\_\_  
Laura McAloon  
Attorney for Spokane Transit