

# REGIONAL TRANSIT AUTHORITY

## RESOLUTION NO. 19

A RESOLUTION of the board of the Regional Transit Authority for the Pierce, King, and Snohomish Counties region establishing procedures for the procurement of materials and the performance of work and services for the Authority.

WHEREAS, pursuant to Chapter 81.112 RCW, the Board of the Authority has broad powers to contract for materials, work and services necessary for the benefit and operations of the Authority; and

WHEREAS, it is in the public interest to establish procedures for such procurements and contracting; and

WHEREAS, such procedures should be designed to achieve savings in cost and time and to improve procurements to meet public needs consistent with other requirements of state law and applicable federal laws and regulations;

NOW, THEREFORE, BE IT RESOLVED by the Board of the Regional Transit Authority as follows:

### Section 1. Procurement and Contracting Procedures.

A. The Executive Director shall ensure that equipment, materials, supplies and services are procured efficiently and economically by the RTA with maximum practicable competition and in compliance with the procedures established by this resolution and applicable state and federal laws and regulations.

B. Equipment, materials, supplies and non-professional and professional services purchased or work ordered for the RTA, the estimated cost of which is not more than \$25,000, may be acquired or ordered by the Executive Director pursuant to such procedures as the Executive Director deems reasonable and in the best interests of the RTA; provided, that such purchases or orders must be made within any budget appropriations or other Board authorizations applicable thereto.

Section 2. Competitive Bidding.

The competitive bidding procedures of the RTA shall be as follows:

A. Contracts for equipment, materials, supplies, and non-professional services or work, the estimated cost of which is in excess of \$25,000, shall be awarded pursuant to competitive sealed bidding as provided in this section and under the following conditions:

1. Time permits the solicitation, submission and evaluation of sealed bids; and
2. Award will be made on the basis of price and other price-related factors; and
3. It is not necessary to conduct discussions with the responding bidders about their bids; and
4. There is reasonable expectation of receiving more than one sealed bid.

B. The Executive Director shall cause a notice inviting sealed bids to be published in separate newspapers of general circulation within Pierce, King, and Snohomish Counties at least once a week for two consecutive weeks, the first publication of which shall be not less than ten days before accepting bids for such contract. The plans and specification for such work or equipment, materials, supplies or non-professional services or work must be on file with the Executive Director and open to public inspection at the time of publication of such notice. The notice shall state generally the equipment, materials, supplies or non-professional services or work to be purchased or work to be done and shall call for bids for doing the same to be sealed and filed with the RTA on or before the day and hour specified. The notice may be published in such additional newspapers or magazines and for such additional period of time as the Executive Director shall deem to be in the best interest of the RTA.

C. Each bid shall be accompanied by a bid guarantee payable to the RTA for a sum not less than five percent of the amount of the bid in such form as may be established or

approved by the Executive Director. The guarantee requirement may be waived by the Executive Director if he/she deems such action necessary to promote participation in the bidding and such action is consistent with applicable federal or state laws and regulations. The Executive Director may further require a performance/payment bond or bonds for the accomplishment of its public works, or for the purchase of supplies and materials and for the performance of necessary work or services. The bond shall be payable to the order of the RTA, shall be in such form as may be established or approved by the Executive Director, and shall be in an amount not less than one hundred percent of the public works portion of the contract price.

D. Any bids received shall be considered as offers to contract with the RTA. At the time and place named, bids received by the RTA shall be publicly opened and read. The Executive Director shall require the bids to be retained and analyzed and make his/her recommendation as to the best bid. The Executive Director may reject any or all bids or cancel or modify bid solicitations if the Executive Director deems such actions to be in the best interests of the RTA. Minor irregularities in bid form may be waived.

E. Contracts shall be awarded on the basis of the best bid. Any bid or any portion of any bid or all bids may be rejected by the Executive Director. In determining "best bid," in addition to price, the following elements shall be given consideration:

1. The ability, capacity and skill of the bidder to perform the contract or provide the service or work required;
2. The character, integrity, reputation, judgment, and efficiency of the bidder;
3. The quality and timeliness of performance by the bidder of previous contracts with the RTA, other local governments and state and federal agencies, including but not limited to, the relative costs, burdens, time and effort necessarily expended by the RTA or such governments and agencies in securing satisfactory performance and resolving claims;

4. The previous and existing compliance by the bidder with laws relating to public contracts including, but not limited to, minority and women business enterprise and equal employment opportunity requirements;

5. The history of the bidder in filing claims and litigation on prior projects involving the RTA or other governments and agencies; and

6. Such other information as may be secured having a bearing on whether the bidder is responsible and has submitted a responsive bid.

Section 3. Competitive Proposals.

If soliciting competitive sealed bids is not appropriate under the conditions described in Section 2., then equipment, materials, supplies and non-professional services or work purchased and ordered, the estimated cost of which is in excess of \$25,000, may be let by contract under the following competitive sealed proposals procedures:

A. The Executive Director shall cause a notice inviting statements of qualifications and/or proposals to be published in newspapers of general circulation throughout Pierce, King, and Snohomish Counties at least once a week for two consecutive weeks, the first publication of which shall be not less than ten days before accepting proposals for such contract. The notice shall state generally the work to be done or equipment, materials, supplies or non-professional services or work to be purchased and shall call for statements of qualifications and/or proposals to be submitted to the RTA on or before the day and hour named therein. The notice may be published in such additional newspapers or magazines and for such additional period of time as the Executive Director shall deem to be in the best interest of the RTA. The request for statements of qualifications and/or proposals shall state the relative importance of price and other evaluation factors, including but not limited to, the elements listed in Section 2. for evaluating competitive sealed bids.

B. Discussions may be conducted with responsible offerors to determine which proposals should be evaluated in more detail and/or which offerors should be requested to

submit best and final offers for evaluation. The RTA may request clarifications and consider minor adjustments in the proposals in order to better understand the proposals and to qualify them for further consideration; provided, that information discussed or obtained from one offeror shall not be disclosed to competing offerors during the discussions and negotiations. Except to the extent protected by state and federal laws, proposals shall be considered public documents and available for review and copying by the public after an award of contract recommendation is made.

C. If the RTA determines to award a contract, the award shall be made to a responsible offeror whose proposal is determined to be the most advantageous to the RTA, taking into consideration price and the other established evaluation factors.

Section 4. Prequalification.

The Executive Director is hereby authorized to establish procedures for qualifying equipment, materials, supplies and firms to perform or provide non-professional services and work prior to procurement of such items, services or work when special qualifications, experience, capability or performance characteristics are important to the success of a project. Under such procedures, only equipment, materials, supplies and contractors or consultants providing non-professional services and work that are determined to meet the qualifying criteria of the RTA will be acceptable to bid or to propose in the subsequent procurement.

Section 5. Sole Source Procurements. Notwithstanding any other provisions of this resolution, upon determination in writing by the Executive Director that there is only one source practicably available for that which is to be procured, a contract exceeding \$25,000 may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The Executive Director shall document the basis for this determination in writing by notice in a meeting agenda of the RTA Board which explains why only a sole source was determined to be practicably available, identifies that which is being procured and the contractor

selected, and indicates the date on which the contract will be awarded. The resolution approving the contract shall also indicate the reasons for the sole source procurement.

Section 6. Proprietary and Nondiscretionary Items.

A. Spare parts, replacement parts and maintenance contracts for existing equipment and systems where only proprietary items and services are compatible with the existing equipment and systems and where such items and services can be acquired only from the manufacturer or from a single distributor may be acquired, ordered or paid in the best interests of the RTA by the Executive Director within budget appropriations or other Board authorization therefor.

B. Routine expenses of government, such as utilities charges, governmental taxes, publication and meeting expenses, and governmental fees for licenses and permits may be acquired, ordered or paid in the best interests of the RTA by the Executive Director within budget appropriations or other Board authorization therefor.

C. The Executive Director, is hereby authorized to approve payments of claims, settlements and judgments, and to acquire, order and pay for professional and expert services in support of claims, settlements and litigation, as may be in the best interests of the RTA within budget appropriations or other Board authorization therefor.

Section 7. Professional Services.

Professional services to be performed for the RTA by other than employees, including but not limited to engineering, financial, marketing, appraisal and other specialized or professional services, the estimated cost of which exceeds \$25,000, shall be procured consistent with the following procedures.

A. The Executive Director may initiate the procurement of professional services in the following circumstances:

1. When the services cannot be performed on a timely basis by employees of the RTA; or

2. The services are not part of the routine assignment for such employees; or

3. The services require specialized professional or technical expertise not available from such employees.

B. The Executive Director shall cause a notice inviting statements of qualifications and/or proposals to be published in newspapers of general circulation throughout Pierce, King, and Snohomish Counties at least ten days before the date for submitting such statements of qualifications and/or proposals. The request for statements of qualifications and/or proposals published or provided to interested parties shall describe the services required, list the types of information and data required of each proposal, identify applicable minority/women/disadvantaged business enterprise and equal employment opportunity requirements, describe the evaluation criteria and state the relative importance of the criteria.

C. The Executive Director shall establish a selection board to review and evaluate statements of qualifications and/or proposals and, if appropriate, hear oral presentations by proposers. If the contract for professional services is likely to exceed \$100,000, the Executive Director shall ensure that at least one RTA Board member serves on the selection board. The selection board shall select and rank the most qualified proposers. In selecting and ranking such proposers, the selection board shall consider the evaluation criteria and may consider such other information as may be secured during the evaluation process related to a proposer's qualifications and experience. The ranking of proposers shall be subject to approval by the Executive Director. If the Executive Director approves the ranking, the Executive Director may authorize contract negotiations with the top ranked proposer or proposers. Negotiations may be conducted concurrently or sequentially. When negotiations are complete, the proposed contract will be presented to the RTA Board for approval.

D. Contracts for architectural and engineering services shall be procured in accordance with Chapter 39.80 RCW.

Section 8. Miscellaneous Provisions.

A. Any public work performed by employees of the RTA, the estimated cost of which exceeds the amount set forth in RCW 39.04.020 shall be performed consistent with the provisions of Chapter 39.04 RCW.

B. Notwithstanding any other provisions of this resolution, the Executive Director may make or authorize others to make emergency purchases of equipment, materials, supplies, services or construction items, subject to ratification by the RTA Board if the cost thereof exceeds \$25,000.

C. The Executive Director may designate employees of the RTA to act as the purchasing agents of the RTA for the purpose of carrying out the policies and provisions of this resolution.

D. The Executive Director is authorized to enter into cooperative and/or joint agreements on behalf of the RTA with federal, state and local governments for the purchase of supplies, materials, and equipment whenever in the judgment of the Executive Director, purchases may thereby be more advantageously made. Whenever supplies, materials and equipment are purchased for the RTA by such federal, state or local governments, such purchases may be accomplished in the manner prescribed by the provisions of applicable law, charter or regulation of such federal, state or local governments, rather than the provisions of this section. The federal, state or local governmental units shall be reimbursed for necessary costs of performing purchasing services for the RTA.

E. When a procurement involves the expenditure of federal or state grant or contract funds, and the method of procurement required by such agency differs from the requirements of this resolution, the Executive Director shall conduct the procurement in accordance with any mandatory applicable federal or state laws and regulations.



F. The Executive Director shall ensure the RTA complies with state law where specifically applicable to the award by the RTA of public contracts including, without limitation, Title 39 RCW. and Chapter 60.28 RCW.

G. The Executive Director is authorized to accept work performed under construction contracts by the RTA upon completion or partial completion, as appropriate, and to take all actions necessary to implement such acceptance pursuant to applicable laws and within the terms of the contracts.

H. The Executive Director is authorized to include provisions in contracts awarded by the RTA which promote cooperation and motivate contractors or vendors to improve the project quality or function, to reduce the cost or to save time in construction or delivery by using such methods as shared savings for value engineering, incentive payments, reimbursement for proposal or bid preparation expenses and preconstruction planning, and partnering.

I. In the case of a tie bid, preference shall be given to goods, equipment and construction produced in Washington or provided by Washington persons, firms or corporations, if such a choice is available; otherwise, the tie shall be decided by lot. Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder or proposer who is a resident of Washington if so provided in the bidding documents and allowed by applicable state and federal laws and regulations.

Section 9. Special Circumstances.

Whenever in the judgment of the Board special circumstances require a procedure different from that set forth herein, the Board may authorize the making of purchases, the ordering of work or the performance of services in such other manner as may be deemed to be appropriate to the circumstances.

Section 10. Protests.

The Executive Director shall establish procedures for considering and determining prequalification, bid and proposal protests and appeals. The Executive Director, or his or her designee, shall render the final administrative determination on all such protests and appeals.

Section 11. Debarments and Suspensions.

The Executive Director shall comply with the following procedures in contract debarment and suspension actions:

A. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Executive Director shall have authority to debar a person, firm or other legal entity for cause from consideration for award of contracts with the RTA. An individual debarment action shall be for a period of not more than two years.

B. The Executive Director shall have the authority to suspend a person, firm or other legal entity from consideration for award of contracts if there is probable cause for debarment. An individual suspension action shall be for a period of not more than six months.

C. The authority to debar or suspend shall be exercised in accordance with procedures established by the Executive Director.

D. The causes for debarment or suspension include the following:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor to the RTA;

3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

4. Violation of provisions of contracts with the RTA of a character which is regarded by the Executive Director to be so serious as to justify debarment action, including but not limited to:

(a) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(b) substantial failure to comply with commitments to and contractual requirements for participation by women and minority business enterprises and equal opportunity; or

(c) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; or

5. Violation of ethical standards set forth in contracts with the RTA;  
or

6. Any other cause the Executive Director determines so serious and compelling as to affect responsibility as a contractor to the RTA, including debarment by another governmental entity for any cause similar to those set forth herein.

E. The Executive Director's decision of debarment or suspension shall constitute the final and conclusive decision on behalf of the RTA.

Section 12. Privatized Contracts.

The following provisions shall apply to privatization contracts entered into by the RTA:

A. The specifications for each privatization contract which involves construction, reconstruction, maintenance, or repair of a facility shall contain a provision stating the specified hourly minimum rate of wage, not less than the prevailing rate of wage, shall be paid to laborers, workers, or mechanics in each trade or occupation employed in the performance of such contract, either by the contractor, subcontractor, or other person doing or contracting to do

the whole or any part of the work contemplated in the construction, reconstruction, maintenance, or repair of the facility.

B. The Executive Director is authorized and directed to establish a process under which the payment of prevailing wage by such contractor or its subcontractors may be monitored and enforced.

Section 13. Implementation.

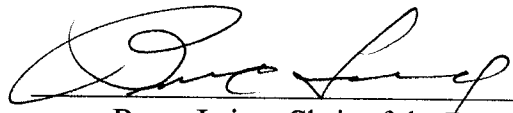
The Executive Director is hereby authorized to establish additional regulations, requirements, certifications and procedures as the Executive Director deems necessary to carry out the policies and provisions of this resolution. The Executive Director is authorized to propose innovative contracting techniques for securing necessary work and services including, but not limited to, design/build and general contractor/construction manager projects.

Section 14. Affirmative Action

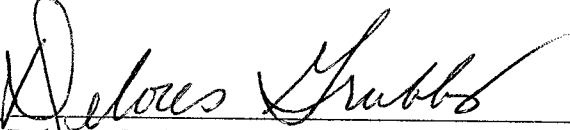
The Authority is committed to a policy of providing fair and representative employment and business opportunities for minorities and women in the procurement of equipment, materials, supplies and non-professional and professional services purchased or work ordered for the Authority. The Executive Director shall take such steps as may be necessary to ensure that parties contracting with the Authority fully comply with all federal, state and local laws, regulations and ordinances pertaining to non-discrimination, equal employment and affirmative action. The Executive Director is further authorized and directed to utilize disadvantages, minority and women's business requirements in the Authority's contracting as may be applicable under federal or state grant contracts or as may be imposed by federal and state laws and regulations. The Authority is committed to the establishment of a more comprehensive policy regarding affirmative action and opportunities for minority and women's business enterprises and disadvantaged enterprises and to the development of implementing rules, regulations and procedures as soon as practicable. The Executive Director is further authorized and directed to take all necessary steps to collect sufficient statistical and anecdotal evidence to determine

whether a formal preference program for minority and women's businesses is necessary to remedy discrimination against such businesses. Such steps shall be taken on a schedule that would permit any resulting program to be in place prior to the award of any major design or capital contracts and may include review of existing data collected by agencies within the jurisdiction of the Authority, the commissioning of a consultant study for the Authority itself, or the collaboration with other agencies in a joint study.

ADOPTED by the Board of the Regional Transit Authority for the Pierce, King and Snohomish Counties region at a regular meeting thereof held on the 22<sup>nd</sup> day of March 1994.

  
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Bruce Laing, Chair of the Board

ATTEST:

  
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Delores Grubbs, Clerk of the Board

Agenda Item: 8a  
Resolution No. 19

Staff Contact: Bob Gunter  
Phone No. 623-7580

**ACTION:**

Approve Resolution No. 19 establishing formal procedures for the procurement of materials and the performance of work and services for the RTA. The resolution covers both standard public works bidding (Section 2) and the process for selecting consultants for professional services (Section 7). The resolution also provides additional flexibility to the RTA Board in the following areas:

- Competitive proposal process (Section 3).
- Prequalification of equipment/materials and contractors or consultants (Section 4).
- Cooperative or joint procurements with other public agencies (Section 8D).
- Authority for debarments and suspensions (Section 11).
- Authority for sole source, proprietary and "special circumstances" procurements (Sections 5, 6 and 9).

**DISCUSSION:**

The establishment of a procurement system is a necessary prerequisite to any significant contracting by the RTA for standard public works or for the selection of consultants. This resolution establishes procedures which will guide the RTA's procurement efforts in both arenas. Since consultant services contract will probably be the first major contracting by the RTA, Section 7 of the resolution is of immediate importance. That section provides that the Executive Director can initiate and contract for consultant services below \$25,000. Contracts above that amount are required to go through a formal advertisement process followed by proposals to a consultant selection board. If the contract is likely to exceed \$100,000, the resolution requires that at least one RTA Board member serve on the selection board.

Please note that under Section 10 the Resolution of protests and appeals on prequalification and bid decisions have been delegated to the Executive Director.

The concluding Section 14 has been added to confirm the RTA's commitment to equal employment and affirmative action with the expectation that a more comprehensive policy and implementing procedures will be developed later this year.

**BUDGET ISSUES:**

The threshold for specific Board approval of procurements is if a contract will exceed \$25,000 (Section 2). Contracts for equipment, materials, supplies and non-professional and professional services less than \$25,000 can be acquired or ordered by the Executive Director under procedures determined by the Executive Director to be in the best interest of the RTA but within any budget appropriations or other Board authorizations applicable to the purchase. (Section 1B).