

# Purchasing Policy for SouthWest Transit

## 1.0 GENERAL DISCUSSION

SouthWest Transit (SWT), through its Board (Board), adopts this purchasing policy. In the event that this policy conflicts with state law, the Joint Powers Agreement (JPA), and/or SWT's Bylaws, then state law, the JPA, and Bylaws govern, in that order.

### 1.1 Purpose

The purpose of this policy is to establish a process for the procurement of goods and services that is:

- (a) Open and competitive.
- (b) Consistent with state law, the JPA, and SWT's Bylaws.
- (c) Efficient.
- (d) Understandable to all users.

### 1.2 Ethics and Conflicts of Interest

- (a) All purchases must be conducted in a manner that fosters public confidence in the integrity of SWT's procurement system and provides open and free competition among prospective suppliers.
- (b) No employee, officer, or agent may participate in the selection, award, or administration of a contract if there is a conflict of interest, real or apparent. A conflict of interest arises when a participating individual has a direct or indirect financial interest, including employment or prospective employment, with reference to the contract.
- (c) All elected or appointed officials of SWT shall comply with Minnesota Statutes section 471.895 (prohibiting certain gifts by interested persons).

### 1.3 Quick Reference Guide to Purchasing Methods and Approvals

Value of Purchase	Purchase or Payment Process	Approvals Required – Prior to purchase approval of the first listed officer is required
Less than \$100	Invoice, check request, or petty cash (if < \$50)	Department Manager (and Finance Director for purchases made by Department Director )
\$100–\$4,999	Invoice, check request, or purchase order	
\$5,000–\$20,000	Purchase order or contract	Department Manager, Department Director, Finance Director, and CEO
\$20,000.01–\$100,000	Purchase order or contract	Department Manager, Department Director Finance Director, CEO, and SWT Board
Greater than \$100,000	Contract	

## 1.4 Purchasing Methods

- (a) Purchasing can be accomplished in a variety of ways:
- (i) **Standard Purchase:** A Standard Purchase Order is not required for items under \$5,000 and is not recommended for items under \$100. An approved invoice payment completes the payment process if the purchase is within the approved budget for that category of purchase.
  - (ii) **Standard Purchase Order:** A Standard Purchase Order must be created by the originating department for purchases over \$5,000 or when required by a vendor.
  - (iii) **Blanket Purchase Orders:** Blanket Purchase Orders are similar to Standard Purchase Orders but are generally (though not always) created at the beginning of the year following approval by the Chief Executive Officer (CEO) or by the Chief Operations Officer (COO), in the absence of the CEO. Blanket Purchase Orders are used primarily for items, such as fuel, that are consistently purchased throughout the year. Every Blanket Purchase Order should document which SWT staff members have authority to use it and should set out any purchasing limitations, which may include monthly or annual maximums.
  - (iv) **Contracts:** Contracts must be used for purchases exceeding \$100,000 and may be used, instead of a Standard Purchase Order, for any purchase over \$5,000.

## 1.5 Payment Processes

Payment for purchases can be made in several ways:

- (a) **Direct Payment:** The Finance Department pays vendors directly if that department has received an approved Standard Purchase Order within budget for the category of purchase.
- (b) **Prepaid Costco Card:** SWT maintains a prepaid card for maintenance and administrative purchases that are required on an immediate basis. This card may be used only with Standard Purchase Orders and requires the same documentation and approvals.
- (c) **Menards House Accounts:** SWT maintains a “house accounts” at Menards for maintenance and administrative purchases that are required on an immediate basis. This account may be used only with Standard Purchase Orders and requires the same documentation and approvals.
- (d) **Credit Cards:** SWT maintains credit cards at Home Depot and Northern Tool for maintenance and administrative purchases that are required on an immediate basis. These cards may be used only with Standard Purchase Orders and require the same documentation and approvals.
- (e) **Check-Requests Forms:** Check-request forms are used when the Standard Purchase Order process is not applicable. The payment process is completed with an approved check request within the approved budget.

- (f) **Employee-Expense Reports:** Employee-expense reports are used by employees for all travel-related expenses, such as when an employee attends a conference. The purposes of this form are to explain the expenses and to reimburse the employee for out-of-pocket expenses or to pay expenses in advance. The employee travel-related expenses may include either actual receipts or amounts at accepted per diem rates as provided by the United States General Services Administration at [www.GSA.gov/portal/category/100120](http://www.GSA.gov/portal/category/100120) [www.GSA.gov/portal/category/100120](http://www.GSA.gov/portal/category/100120).
- (g) **Petty Cash Vouchers:** Petty cash vouchers are used for reimbursement to an employee for items of \$50 or less purchased on behalf of SWT. The Finance Manager is the custodian of the Petty Cash fund. A petty cash form must include an explanation, account code, and authorized signature. Petty cash purchases shall be used only when other payment methods are unavailable.
- (h) **Open Charge Accounts:** It will be advantageous in certain cases to open charge accounts with businesses and vendors for SWT purchases. Establishing an open charge account requires the approval of the CEO. The names of all SWT staff members authorized to purchase through the open charge account will be on file in the Finance Department and will also be provided to the vendor along with the purchasing limitations. Under no circumstances may aggregate purchases from any one vendor under an open charge account exceed \$5,000 in any one month without prior CEO approval. The procedures used to make purchases through an open charge account shall conform with SWT purchasing policy.

## 1.6 Supporting Documentation

Supporting documentation must accompany any request for payment. If signed by the SWT staff member accepting the goods or services, the receiving copy of the Standard Purchase Order or the receiving document is proof that the goods or services were provided to SWT, documents the approval for payment, and documents that the cost incurred is correct. For items under \$5,000, the Department Manager must sign the invoice or check request to document his or her approval and must assign the budget code. Any other required approvals must also be documented.

## 1.7 Decentralized Purchasing

The majority of SWT purchases are decentralized, meaning each department negotiates with the vendor and processes the request for payments.

The Finance Department is responsible for processing Standard Purchase Orders and for ensuring compliance with SWT policies and procedures. The Finance Department generally serves as a resource to other departments to help with purchases and maintains information on State purchasing contracts, approved vendors, past purchases, and other related information. As each department meets its own purchasing needs, the Finance Department is available to answer questions and assist with locating purchasing options but does not call for quotations or place the actual orders with vendors.

## **1.8 Emergency Purchases**

Emergencies may preclude the normal bidding or request-for-proposal processes. In cases in which the emergency purchase exceeds \$20,000, Board approval must be obtained prior to payment.

An emergency is a situation arising suddenly and unexpectedly which requires speedy action essential to health, safety, and welfare of the community. A mere inconvenience is not an emergency. By way of example, an emergency exists when a breakdown in machinery occurs and a dangerous condition develops or when any unforeseen circumstances arise that cause or threaten curtailment of an essential service.

## **1.9 Deliveries**

Please be as explicit as possible when arranging deliveries with a vendor. Give detailed instructions as to delivery location and contact person. Use both first and last name in your arrangements with vendors to aid in ensuring delivery. A name should be referenced on an invoice.

## **1.10 Purchase of SWT Vehicles**

The sales tax and licensing of vehicles is not done at the point of purchase, but rather through Deputy Registrar. All costs associated with getting a vehicle out on the road shall be considered part of its total cost. Thus, licenses, radios, and customizing (signs, interior additions, special shelving in vans, hand railings, etc.) are all considered part of the total cost.

## **1.11 Out-of-State Purchases**

Sales tax is part of the total cost. Even though some purchases are made from an out of state vendor, SWT is required to submit to the State of Minnesota a use tax for items invoiced without the tax.

## **1.12 Bond requirements**

If a contract is over \$100,000 and involves doing a public work, as set forth in Minnesota Statutes Section 574.26, the contractor must provide a performance bond and a payment bond. Minn. Stat. § 574.26, subd. 2 (referencing Minn. Stat. § 471.345, subd. 3, for the amount triggering these bond requirements). In this case, a bid bond should also be required. Failure to obtain required statutory bonds will render the contract invalid. *Id.* Failure to obtain a required payment bond may also make SWT liable to subcontractors and suppliers whom the contractor fails to pay. Minn. Stat. § 574.29.

## **1.13 1099 information**

SWT is obligated to report to the Internal Revenue Service payments to an individual or partnership for services rendered that exceed \$600 in a calendar year. To do so, SWT needs the recipient's business tax identification number or social security number. This tax information should be provided to the Finance Department.

## **2.0 SIGNING AND APPROVAL AUTHORITY**

All purchases are subject to approval as set forth in this section. Under no condition shall an order be divided into two or more smaller orders in an attempt to circumvent the necessity to obtain the appropriate approval.

### **2.1 Authorized Approval**

All purchases under \$5,000 must be approved by the Department Manager. Any purchase made by the Department Manager is subject to approval by the Finance Director.

All purchases of \$5,000 to \$20,000 must be approved by the Department Manager, Finance Director, and the CEO. In the absence of the CEO, the COO may approve purchases as the CEO's designee. If the Department Manager does not approve a purchase, the Finance Director need not review the purchase for approval. Likewise, if the Finance Director declines to approve a purchase, it need not be submitted to the CEO.

All purchases of more than \$20,000 must be approved by the Department Manager, Finance Director, the CEO, and the Board, in that order. SWT approves payments monthly at the regular scheduled Board meetings. The CEO may also request that legal counsel review and approve any purchase, contract, or request for proposals.

### **2.2 Original Contract**

When a proposed contract is \$20,000 or less, the CEO may approve and sign the contract on behalf of SWT.

When a proposed contract exceeds \$20,000, the contract must be approved by the Board. Once authorized, the CEO will execute the contract.

### **2.3 Contract Amendments**

If the original contract exceeds \$20,000 and a cumulative amendment increase is 10 percent or less of the original contract amount, the CEO may sign the amendment.

If the original contract exceeds \$20,000 and the cumulative amendment increase exceeds 10 percent of the original contract amount, the CEO must seek Board approval of the amendment.

If the original contract was \$20,000 or less and the cumulative amendment increase brings the proposed amended contract to more than \$20,000, the CEO must seek Board approval of the amendment.

For change orders to construction contracts and other contracts that provide for payment as work is performed the Commission may grant the CEO authority to approve change orders prior to submission to the Commission. Such approval shall specify a particular percentage of the original contract or up to a specific amount per change order, subject to a total maximum of changes order that can be approved by the CEO without prior Commission approval.

## **2.4 Sole Source Procurement**

Sole source procurements of \$20,000 or less must be approved by the CEO or his/her designee. Sole source procurements of more than \$20,000 must be approved by the Board.

## **3.0 BUDGET-RELATED MATTERS**

### **3.1 Budget**

The responsibility to adhere to a departmental budget lies with that department's manager. The Finance Department will provide an itemized Board-approved budget to each department to follow when coding expenditures. Expenditures shall be coded to the correct account number based on the type of expenditure, not on the amount of budget remaining. Failure to code properly skews actual expenses and provides inaccurate historical data for future budgeting. Budget amounts should not be exceeded without authorization. It is the responsibility of each department to anticipate budget overages and present this information to the CEO, who may ask the Board for approval to transfer funds to that department's budget or ask for approval to move items within the department's budget. Internal budget meetings may, as necessary, be held periodically throughout the year to monitor the current-year activity and anticipate any significant budget issues.

### **3.2 Capital Assets (Capital Outlays)**

An item is considered a capital asset or capital outlay when it is a tangible asset, has a useful life of more than one year, has a value of at least \$5,000, and will be capitalized in accordance with SWT Capital Asset Policy. Items that cost less than \$5,000 and add value to an existing capital asset may also be considered capital assets and capitalized in accordance with the policy. (e.g., items used to refurbish a bus).

It is in the best interest of SWT to maintain capital asset records for financial reporting, as well as for general accountability to our taxpayers. Any item meeting all of the criteria identified above should therefore be coded as a capital outlay when purchased. One-time capital-outlay purchases of less than \$5,000 may also be coded to capital outlay, so that they will not be charged against annual operating subsidy calculations.

### **3.3 Inventory Assets**

Certain items are tangible assets and have a useful life of more than five years but nonetheless do not meet the requirements for a capital asset. These assets must be recorded and maintained in the equipment inventory system. Examples of inventory assets include computers, wireless phones, copiers, faxes, small tools, etc.

Vehicle maintenance inventory and parts must be recorded and maintained in the vehicle maintenance system by the Vehicle Maintenance Manager.

### 3.4 Credits or Returns

Any department that returns an item must provide information to the Finance Department referencing the original purchase-order number and an account number so that credit can be applied to the proper account. In some cases, the refund will not be credited to the expense account but rather to a general refund-and-reimbursement account, such as if the refund occurs after the year that the expense was incurred.

### 3.5 Authorizing Payment of Certain Claims by CEO Without Prior Commission Approval

The Commission may from time to time adopt a Resolution authorizing the payment of certain claims by the CEO without prior Commission approval. Such claims may include contracted items (utilities, rent, **land**, conference and **related** travel expenses, construction, etc.); payroll liabilities; postage; petty cash, licenses and fees; tickets paid by registration fees; employee expenses; amounts due to other government agencies; refunds; programmed professional performances; invoices which offer discounts or have interest added; payments to vendors not allowing charge accounts; motor vehicle registrations; insurance; and payments to comply with agreements, purchases, or invoices which contain a fixed time for payment.

## 4.0 CONTRACTS FOR PURCHASE OF SUPPLIES, MATERIALS, AND EQUIPMENT, RENTAL OF EQUIPMENT, AND CONSTRUCTION, ALTERATION, REPAIR, AND MAINTENANCE

SWT’s contracts and purchases must conform to requirements applicable a party to the JPA. Minn. Stat. § 471.59, subd. 3. SWT is therefore subject to Minnesota Statutes section 471.345, which governs “Contracts” entered into by municipalities. Section 471.345, subdivision 2, defines a “Contract” as an agreement to sell or purchase supplies, materials, or equipment, to rent equipment, or to construct, alter, repair, or maintain real or personal property.

Under no condition shall an order be divided into two or more smaller orders in an attempt to circumvent solicitation and selection requirements.

Note that the dollar amounts mentioned below **exclude** the tax on such items.

### 4.1 Quick Reference Guide to Contracts Governed by Section 471.345

Value of Contract	Solicitation Process
Less than \$5,000	Open market (quotations not required)
\$5,000–\$25,000	Written quotations required
\$25,000.01–\$100,000	Two written quotations or sealed bids required
Greater than \$100,000	Sealed bids required

Note: The CEO's approval authority extends to contracts up to \$20,000. Any contract over \$20,000 must be approved by the board. Approval authority is distinct from the required selection process under section 471.345, which allows all Contracts of \$25,000 or less to be made by quotation or on the open market.

## **4.2 Contracts on the Open Market**

- (a) Contracts of less than \$5,000 may be made on the open market without quotations.
- (b) For purchases of \$5,000 to \$25,000, written quotations are required. Verbal quotations are acceptable only with the prior approval of the CEO. When the quotations are verbal, they should be documented in a writing that lists the contact person and phone number, the amount of quotation, and any other pertinent information.

## **4.3 Contracts Requiring Quotations or Sealed Bids**

If contracts are estimated to exceed \$25,000 but not to exceed \$100,000, the contract may be made either upon sealed bids or by direct negotiation based on quotations. Minn. Stat. § 471.345, subd. 4. If direct negotiation is used, STW must obtain at least two quotations. These quotations should generally be in writing, and a requestor who receives a verbal quotation must document the quotation in writing and on the requisite purchase order. All such quotations, along with the purchasing documents, must be forwarded to the Finance Department to keep on file for one year from the date of purchase. The quotations shall be kept with the payment voucher.

## **4.4 Contracts Requiring Sealed Bids**

- (a) For contracts over \$100,000, SWT shall advertise for sealed bids. The originating department must ensure that the following steps are taken:
  - (i) Make sure that funds have been appropriated for this contract.
  - (ii) Make proper publication in the official SWT newspaper(s).
  - (iii) Distribute terms, conditions, and specifications, and answer any bidder questions.
  - (iv) Open sealed bids at an appropriate time and place, and then tabulate.
  - (v) Award the contract to the lowest responsible bidder. Minn. Stat. § 412.311, subd. 1.
  - (vi) In the event a low bidder is not selected, fully document the reason(s) on the bid tabulation sheet.
  - (vii) Prepare and present to the Board a request for approval of the award. The contract shall be signed by the CEO and a Board Chairperson. The signed resolution must be maintained.
- (b) SWT has a legal mandate to award contracts to the lowest responsible bidder. Submitted bids are deemed an offer to contract and are not subject to negotiation.



- (i) Responsiveness means that the bidder offered to provide the product or service requested in the specification. A bid that offers something other than what the specifications described may be considered “nonresponsive.” A bid may also be considered “nonresponsive” if the vendor has failed to follow the specified procedures (e.g., by not including a requested bond or by submitting the bid after the deadline). Small deviations, such as a typographical error, would not always be sufficient reason to declare a bid “nonresponsive.” However a typo on the statement of the amount should be referred to the CEO for a determination.
  - (ii) Responsibility depends on whether the bidder is capable of performing the work or delivering the product or service requested. A determination of responsibility requires findings that they have the necessary equipment or facilities needed and that they have a track record of sound performance. One way to determine the track record of sound performance is to ask bidders to provide references for similar work or customers.
  - (iii) If the contract is for construction, the contractor must adhere to any responsibility requirements set out in the solicitation document and must satisfy statutory “minimum criteria.” Minn. Stat. § 16C.285, subs. 2(a), (3). These statutory criteria relate primarily to taxation and licensing.
- (c) Data submitted by a business in response to a request for bids is private until the time that bids are due, at which time the name of the bidder and the bid amount becomes public. Minn. Stat. § 13.591, subd. 3(a). All other data in the bid, except trade secret data as classified in Minnesota Statutes section 13.37, becomes public after completion of the selection process. *Id.*

#### **4.5 “Best Value” Selection for Construction, Improvement, Repair, or Maintenance Contracts**

- (a) For construction, improvement, repair, or maintenance contracts of any amount, a request for proposals may be used instead of quotations or sealed bids and the contract may be awarded to the contractor offering the “best value.” Minn. Stat. §§ 412.311, subd. 2, 471.345, subs. 3a, 4a, 5.
- (b) If the contract is for construction, the contractor must satisfy the “minimum criteria” set out in Minnesota Statutes section 16C.285, subdivision 3, defining “responsible contractor.”
- (c) To use the best-value selection method, SWT’s request for proposals must explain the relative weight of price and other selection criteria (including any interview), and SWT must apply these weighted selection criteria in making its award. Minn. Stat. § 16C.28, subd. 1(a)(c).
- (d) Data submitted by a business in response to a request for proposals is private until the time that proposals are due, at which time the name of the responder becomes public. Minn. Stat. § 13.591, subd. 3(b). All other data in the proposal, except trade secret data classified in Minnesota Statutes section 13.37, becomes public after completion of the selection process. *Id.*

#### **4.6 Sourcing through the Cooperative Purchasing Venture**

Under Minnesota Statutes section 471.59, governmental agencies may jointly exercise powers that they have individually. Pursuant to the statute, SWT maintains a membership with the State's Cooperative Purchasing Venture (CPV). As a member of the CPV, SWT can purchase from vendors under State contracts. The advantages of participating in joint ventures are that the bid process is already completed and the prices are often more competitive.

For contracts estimated to exceed \$25,000, SWT must *consider* the availability, price, and quantity of supplies, material, and equipment available through the CPV before purchasing through another source. Minn. Stat. § 471.345, subd. 15.

### **5.0 CONTRACTING FOR PROFESSIONAL SERVICES**

The purpose of this section is to provide guidance in the procurement of professional services for SWT.

#### **5.1 General requirements**

This procedure applies to professional services sought to be obtained for more than \$20,000, including:

- (a) Professional services for planning, analysis, and feasibility studies.
- (b) Legal, financial, auditing, advertising, personnel, training, and other advisory services.
- (c) Engineering services and other similar services.

#### **5.2 Statement of Work**

The single most important document of a professional services contract is the Statement of Work (SOW), as it:

- Provides management with an outline of the project, the work to be done in-house, and the work to be done by the consultant.
- Provides the basis for soliciting proposals.
- Provides the basis for the administration and management of the resulting contract.

The SOW must:

- (a) Outline the nature of the work and level of effort that will be required of the consultant.
- (b) Identify the goals, objectives, criteria, and issues associated with the project. If the plans and objectives are to be developed as part of the project, describe how they are to be finalized and by whom.
- (c) Describe tasks to be accomplished, describe services and information that will be provided by the consultant, SWT staff, or other parties during the conduct of the project, and provide a time schedule for completion of each task.

- (d) Describe the proposed budget and consultant hours required to complete each work task.
- (e) Ensure that all proposals can be prepared on a common basis so as to allow open and free competition between responders.
- (f) Identify the project manager.

### **5.3 Solicitation**

(a) ***General***

The Request for Proposals (RFP), together with the SOW, should provide all of the information that a prospective responder needs to submit a proposal. A RFP need not set out all detailed requirements, and responses may be negotiated to achieve best value.

(b) ***Prospective Responders***

While solicitation may be sent to a minimum of two prospective responders, it is highly recommended that the RFP be sent to any metropolitan area firms or individuals capable of providing the needed services. When special expertise is necessary, national firms or individuals should also be invited to submit proposals.

(c) ***Advertisement***

While not required per se, it is recommended that the solicitation of proposals be advertised in an appropriate publication, such as the State Register, trade journals, and/or the official newspaper when there are only a limited number of known consultants or when the cost of the proposed services represents an appreciable expenditure.

### **5.4 Ethics**

Should SWT use a consultant or firm to prepare or assist in the preparation of a SOW or RFP, that consultant should not be permitted to submit a proposal in response to the SOW/RFP since it would be or would have the appearance of unfair competition. Deviation from this policy requires the approval of the CEO.

### **5.5 Evaluation of Proposals**

(a) ***General***

The need to positively demonstrate that a particular responder should be awarded the contract is a difficult proposition because the evaluation must be based on qualitative data. Accordingly, the guidelines herein attempt to provide a systematic approach to the selection of the most deserving responder.

(b) ***Competency***

Contracts shall be made only with responsible consultants who have the capability to successfully fulfill the contractual requirements. Consideration shall be given to their past performance and experience related to technical resources, their financial

capacity to complete the project, the availability of the specified personnel during the contractual period, and other appropriate criteria.

(c) ***Selection Team***

- (1) Proposals for services costing over \$20,000 should always be evaluated by a selection team.
- (2) Proposals for services costing \$20,000 or less do not require the use of a selection team, but a selection team is nonetheless advisable.
- (3) The selection team should consist of the project manager, specified in the SOW, as team chair and at least one other member, who may be drawn from:
  - (i) Representatives of other SWT functions who have a direct interest in the project.
  - (ii) SWT staff members whose expertise will have value in the selection of the responder.
  - (iii) Peers from other communities with special expertise.
- (4) The project manager is responsible for:
  - (i) Organizing the selection team.
  - (ii) Providing its members with copies of the RFP, proposals, evaluation forms, and other needed data.
  - (iii) Scheduling of meetings.
  - (iv) Scheduling responder interviews, should the selection team desire.
  - (v) Including the consensus of the evaluation team in the recommendation memorandum.

(d) ***Recommendation***

Upon completion of the evaluation process, the project manager shall prepare a recommendation for approval in accordance with the procedures in this section.

(e) ***Data Privacy***

Data submitted by a business in response to a request for proposals is private until the time that proposals are due, at which time the name of the responder becomes public. Minn. Stat. § 13.591, subd. 3(b). All other data in the proposal, except trade secret data as classified in Minnesota Statutes section 13.37, becomes public after completion of the selection process. *Id.*

## **5.6 Long-Term Contracts**

When dealing with service providers with whom SWT may wish to establish a long-term relationship, the formal RFP process for that service must be initiated at least every five years. Review at that point in time shall not preclude a current service provider from resubmitting for consideration. Examples of service providers with long-term relationships would include legal services and audit services.

## **6.0 TRAVEL POLICY**

### **6.1 Meals and Travel Policy.**

**The Commission has adopted a Meals and Travel Policy. This section should be read in conjunction with the Meals and Travel Policy.**

### **6.2 Local mileage reimbursement**

SWT encourages the use of SWT vehicles whenever possible. An employee is nonetheless eligible for compensation for the use of a private automobile for a SWT purpose. SWT's mileage reimbursement rate will be the same rate as the basic mileage deduction allowed by the Internal Revenue Service. Employees should check with the Finance Department for the current rate each year. An appropriate Employee-Expense Report shall be completed and approved for reimbursement.

### **6.3 Business meals**

There are occasions when a SWT employee may be reimbursed for the cost of a meal or other food items. This commonly occurs when there is a business meeting that goes through lunch or a training session that lasts the entire day. The appropriateness of the expenditure should be determined by the department manager in relation to their budget and other policies. Note that the gift acceptance policy does not allow a SWT employee to receive a free meal or accept gifts from a vendor or other interested party. An appropriate Employee-Expense Report must be completed and approved for reimbursement.

## **7.0 DISPOSAL OF PROPERTY**

- (a) SWT may dispose of equipment or excess materials in a variety of ways:
  - (1) The CEO is authorized to scrap used parts and equipment which are being replaced and deemed of no value. If the item has a capital-asset record, the Finance Department must be notified to remove the item from the system.
  - (2) Sale of all other surplus SWT personal property must be handled in conformance with the Municipal Contracting Law Minn. Stat. § 471.35. Surplus Property with a Total Estimated Value of Less than \$25,000.
    - (a) If the value of the surplus property is estimated to be \$25,000 or less, the CEO may sell it either upon quotation or in the open market. If the surplus property is sold based upon quotation, the CEO shall obtain, so far as practicable, at least two quotations which shall be kept on file for a period of at least one year after their receipt.
    - (b) Surplus Property with a Total Estimated Value between \$25,000 and \$100,000. If the value of the surplus property is estimated to exceed \$25,000 but not to exceed \$100,000, the CEO may sell the surplus property upon sealed bids or by direct negotiation, by obtaining two or more quotations for the sale when possible. All quotations obtained shall be kept on file for a period of at least one year after their receipt.

(c) Surplus Property with a Total Estimated Value over \$100,000. If the value of the surplus property is estimated to exceed \$100,000, the CEO shall solicit sealed bids by public notice in the manner and subject to the requirements of the law governing contracts by the Commission.

(d) Notwithstanding any other requirement of this section, the Commission may contract to sell supplies, materials, and equipment which is surplus, obsolete, or unused using an electronic selling process in which purchasers compete to purchase the surplus supplies, materials, or equipment at the highest purchase price in an open and interactive environment pursuant to Minnesota Statutes § 471.345 Subd. 17.

(3) SWT may transfer personal property to another public corporation for public use, regardless of whether SWT receives value in exchange. Minn. Stat. § 471.85.

(b) Employees are normally not eligible to purchase SWT property. However, Minnesota Statutes section 15.054 allows property or materials owned by SWT and not needed for public purposes to be sold to an employee of SWT after reasonable public notice at public auction or by sealed bid if the employee is not directly involved in the auction or sealed-bid process. An employee may purchase no more than one vehicle at a single SWT auction.

(c) Disposal of a capital asset requires Board approval.

## **8.0 DISPUTE AND PROTEST PROCEDURES**

The following dispute and protest procedure is available if required by law, if required by any grant providing funds (including FTA funds) associated with a disputed solicitation or award, or if provided for in a disputed solicitation or the solicitation related to a disputed award. SWT will endeavor to fairly resolve protests that conform to the requirements of these procedures but will not allow protesters to exploit protest procedures to obtain a competitive advantage or obstruct procurement.

SWT requires strict compliance with the following procedures. Failure to comply with these procedures will result in a waiver of protest rights.

### **8.1 Review of Protests**

A protester must exhaust all administrative remedies with SWT before pursuing a protest with the FTA or other funding entity if such process is available. Reviews of protests will be limited to:

- (a) SWT's failure to have or follow its protest procedures, or its failure to review a complaint or protest;
- (b) violations of Federal law or regulation; and
- (c) violations of State or local law or regulation.

If the purchase is funded by the FTA, an appeal to the FTA must be received by the appropriate FTA regional or headquarters office within five (5) working days of the date the protester learned or should have learned of an adverse decision by SWT or other basis of appeal to the FTA.

## 8.2 Definitions

The words defined in this section shall have the following meanings:

- (a) *Procurement* means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, or construction. The term includes all functions that pertain to obtaining any supplies, services, or construction, including descriptions of requirements, selection, solicitation of sources, and preparation and award of contracts.
- (b) A *protest* is a written objection by an interested person to a SWT procurement. SWT will not consider or respond to oral protests.
- (c) *Solicitation* means the process under which SWT invites interested persons to bid or make proposals in connection with its procurement.
- (d) A *solicitation-phase protest* is a protest based on alleged improprieties in a solicitation, including but not limited to exclusion of the responder and objections to pre-evaluation processes.
- (e) An *award-phase protest* means all protests other than solicitation-phase protests.
- (f) An *interested person* is an actual or prospective responder or contractor who alleges that it has been aggrieved in connection with the solicitation or award of a SWT contract.
- (g) A *working day* is an office business day for SWT staff.

## 8.3 Initial Protest Procedures

An interested person desiring to protest must file a written protest, by certified mail, with the SWT contact person designated in SWT's solicitation, with a copy to the COO. If the contact person cannot be identified in the solicitation or is otherwise unavailable, the protest should be filed with the COO at 13500 Technology Drive, Eden Prairie, MN 55344.

The written protest must include the following information:

- (a) The protester's name, company name, address, telephone and fax numbers, and, if available, email address.
- (b) The project name and number (if any), as well as the contract name and number (if any) or other solicitation identifiers.
- (c) Information establishing that the protester is an interested party for the purpose of filing a protest and that the protest is timely.
- (d) A detailed statement of the legal and factual grounds for the protest, including a description of the alleged injury or prejudice to the protester.
- (e) Identification of evidence known to support allegations in the protest, including but not limited to names of the persons involved, a description of relevant occurrences, the documents upon which the protester relies, and the particular aspects or language, if any,

in the solicitation documents which are alleged to be defective or illegal. To the greatest extent reasonably practicable, copies of relevant documents should be furnished with the protest.

- (f) A statement identifying the requested relief or remedy.

#### **8.4 Consideration by the COO**

If these procedures are applicable, the COO will review and consider a timely filed protest and supporting documents, and he or she will render a written decision that addresses the issues raised in the protest. The COO shall not hold any hearing. He or she will take action on the basis of such review and investigation as he or she deems appropriate in his or her discretion. The COO will render a final decision no more than ten (10) working days after the filing of the protest.

#### **8.5 Review by the CEO**

Within three (3) working days after receiving the COO'S written decision, a protester may request that the CEO review of the COO's decision. A request for CEO review must be made in writing to the COO, by certified mail. It shall include a clear reference to the decision to be reviewed and shall state the legal and factual reasons for disagreement with the COO's decision.

The CEO shall not be required to hold any hearing and may take action on the basis of such review and investigation as he or she deems appropriate in his or her discretion. The CEO may, as he or she sees fit, accept further written submissions, take testimony, or make a transcript of hearings or proceedings. The CEO will issue a written decision no later than fourteen (14) working days after receipt of the request for review.

#### **8.6 Deadlines**

The following deadlines apply to protests:

- (a) All protests must be filed within seven (7) working days after the basis of the protest is known or should have been known, whichever is earlier.
- (b) A solicitation-phase protest must be filed before the opening of bids or before the closing date for the receipt of proposals. If a solicitation-phase protest is not filed before these dates, a protester's right to bring a protest is waived.
- (c) A request for CEO review of the COO's decision must be filed within three (3) working days after the protester's receipt of the COO's decision.
- (d) Failure to file a protest or request CEO review within the time periods indicated shall result in a waiver of the protest.

#### **8.7 Deviations**

In the exercise of his or her discretion, and for good cause adequately demonstrated, the COO may waive stated deadlines and insubstantial deviations from the requirements herein.



## **8.8 Duties of the Designated Contact Person**

Upon receiving a written protest, the designated contact person will give the protest to the COO for review and consideration.

In the case of a timely solicitation-phase protest, the designated contact person initially will determine if the scheduled bid opening or proposal due date should be extended pending resolution of the protest and, if so, will issue a notification to all bidders or responder. The designated contact person will notify funding authorities (such as the FTA) upon protest filing and as required by rule or regulation. Notification to the FTA will include a brief description of the protest, the basis of disagreement, the status of the protest, and whether an appeal has been taken or is likely to be taken.

## **8.9 Suspension of Procurement**

The COO or CEO, as a matter of their sole discretion, may suspend or proceed with the procurement process, pending the outcome of a protest.

## **8.10 Records Retention**

All protest-related documents must be retained by SWT for six (6) years.

This Policy was approved by the SWT Commission on April 28, 2016.