

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 federal law, state law, the Joint Powers Agreement (JPA), and/or SWT's Bylaws, then federal law, 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 federal law, state law, the JPA, and SWT's Bylaws.
- (c) Efficient.
- (d) Understandable to all users.

1.2 Ethics, Conflicts of Interest, and Standards of Conduct

- (a) **Policy.** 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) **Personal Conflicts of Interest.**
 - (1) No employee, officer, or agent of SWT 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. Such a conflict of interest would arise when any of the following parties has a financial or other interest in the entity selected for award: (1) an employee, officer, or agent of SWT; (2) any member of his or her immediate family; (3) his or her partner; or (4) an organization that employs, or intends to employ, any of the above.
 - (2) No employee, officer, or agent of SWT will make investments or act for personal gain based upon special knowledge obtained, whether directly or inadvertently, as a result of employment with SWT.
 - (3) No employee, officer, or agent of SWT will have any relationship with or engage in any activity which might involve or lead to personal obligations which could impair the objectivity of such person's judgment, or imply to others that favoritism or obligations exist between such persons and third-party contractors.
- (c) **Gifts and Gratuities.** No employee, officer, or agent of SWT may solicit or accept gifts, gratuities, favors, or anything of monetary value from a contractor, potential contractor, or parties to subcontracts. Acceptance of gifts at any time, except unsolicited advertising or promotional material of nominal value, is prohibited.

- (d) **Elected or Appointed Officials.** All elected or appointed officials of SWT shall comply with Minnesota Statutes section 471.895 (prohibiting certain gifts by interested persons).
- (e) **Violations.** Violation of this section by any employee shall subject the individual to disciplinary action, up to and including termination, as determined by the CEO. Violation of this section by contractors or their agents may be considered a breach of contract and shall subject such contractor or agent to action up to and including cancellation of contract and suspension and debarment from contracting with SWT. Violation of this section by bidders or potential contractors may be considered to make such bidder or proposer ineligible to bid or render a bid or proposal non-responsive.

1.3 Quick Reference Guide to Purchasing Methods and Approvals

Value of Purchase	Purchase or Payment Process	Approval Required
Less than \$100	Invoice, check request, or petty cash (if < \$50)	Department Manager
\$100–\$10,000	Invoice, check request, or purchase order	Department Director
\$10,001–\$25,000	Purchase order or contract	CEO
\$25,000.01–\$175,000	Purchase order or contract	SWT Board
Greater than \$175,000	Contract	SWT Board

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 \$175,000 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) **Home Depot and Northern Tool 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) **Corporate Credit Card:** SWT maintains a corporate credit card through Flagship Bank for a variety of purchases, including approved employee travel expenses, conference registrations, and online purchases. The corporate credit card may be used only upon request to the Finance Department and with the supporting documentation and approvals required under this Policy. All purchases using the corporate credit card shall be made by the Finance Department. The Finance Department shall maintain a log of who has requested to use the corporate credit card and the purpose for which it was requested.
- (f) **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.
- (g) **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 www.GSA.gov/portal/category/100120.

- (h) **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.
- (i) **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 \$25,000, 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 \$175,000 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 \$10,000 must be approved by the Department Director. Any purchase made by the Department Director is subject to approval by the Finance Director.

All purchases of \$10,000 to \$25,000 must be approved by the Department Director, 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 \$25,000 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 \$25,000 or less, the CEO may approve and sign the contract on behalf of SWT. In the absence of the CEO, the COO or CAO may sign the contract on behalf of SWT.

When a proposed contract exceeds \$25,000, the contract must be approved by the Board. Once authorized, the CEO will execute the contract.

2.3 Contract Amendments

If the original contract is more than \$25,000, then any contract amendment for more than \$25,000 must be submitted to the Board for approval. The CEO may sign any other amendment to the contract. In the absence of the CEO, the COO or CAO may sign any other amendment to the contract.

If the original contract was \$25,000 or less, then any contract amendment that will bring the proposed amended contract to more than \$25,000 must be submitted to the Board for approval. The CEO may sign any other amendment to the contract.

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 \$25,000 or less must be approved by the CEO or his/her designee. Sole source procurements of more than \$25,000 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. Contracts paid for with Federal funds are subject to the requirements of Section 9 of this Policy.

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–\$175,000	Two written quotations or sealed bids required
Greater than \$175,000	Sealed bids required

Note: The CEO's approval authority extends to contracts up to \$25,000. Any contract over \$25,000 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 \$175,000, 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, SWT 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 \$175,000, 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 recommended, fully document the reason(s).
 - (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, subds. 2(a), (3).
- (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, subds. 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 \$25,000, 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 \$25,000 should always be evaluated by a selection team.
- (2) Proposals for services costing \$25,000 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

The Commission has adopted a separate Meals and Travel Policy.

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 \$175,000. If the value of the surplus property is estimated to exceed \$25,000 but not to exceed \$175,000, 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 \$175,000. If the value of the surplus property is estimated to exceed \$175,000, 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 14405 W. 62nd St., Eden Prairie, MN 55346.

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.

9.0 PROCUREMENTS MADE WITH FEDERAL FUNDS

For purchases or contracts made with Federal awards or grants, including FTA funds, SWT and its contractors must comply with procurement standards in 2 C.F.R. §§ 200.318–323, 200.325, and 200.326. In addition to all other provisions of this Policy, the provisions of this Section 9 will apply when a purchase or contract is being made with Federal funds. Where there is a conflict between this Section 9 and another provision of this policy, the provision of this Section 9 will apply.

9.1 General

- (a) SWT will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Contracts will contain the applicable provisions described in Appendix II to 2 C.F.R. Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- (b) Acquisition of unnecessary or duplicative items will be avoided. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (c) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, SWT will enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. SWT will use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (d) SWT will use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

- (e) SWT will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- (f) SWT will maintain records sufficient to detail the history of procurement. These records will include, but not be limited to, the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (g) SWT will use a time-and-materials type contract only after determining that no other contract is suitable and if the contract contains a ceiling price that the contractor exceeds at its own risk. SWT will assert a high degree of oversight over the contract in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (h) SWT will alone be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements.

9.2 Competition

- (a) All procurement transactions will be conducted in a manner providing full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals will be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
 - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - (2) Requiring unnecessary experience and excessive bonding;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive contracts to consultants that are on retainer contracts;
 - (5) Organizational conflicts of interest;
 - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
 - (7) Any arbitrary action in the procurement process.
- (b) SWT must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

- (c) SWT has written procedures for procurement transactions. These procedures ensure that all solicitations:
 - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
 - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (d) SWT will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, SWT will not preclude potential bidders from qualifying during the solicitation period.

9.3 Methods of Procurement

For purchases or contracts made with Federal funds, SWT will use one of the following methods of procurement.

- (a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold specified in 2 C.F.R. § 200.67 (currently \$10,000). To the extent practicable, SWT will distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if SWT considers the price to be reasonable.
- (b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$175,000. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- (c) Procurement by sealed bids (formal advertising). Bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.
 - (1) In order for sealed bidding to be feasible, the following conditions should be present:
 - (i) A complete, adequate, and realistic specification or purchase description is available;

- (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and
 - (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- (2) If sealed bids are used, the following requirements apply:
- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, and the invitation for bids must be publicly advertised;
 - (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 - (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 - (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 - (v) Any or all bids may be rejected if there is a sound documented reason.
- (d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
 - (2) Proposals must be solicited from an adequate number of qualified sources;
 - (3) SWT must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 - (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 - (5) SWT may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

- (e) [Reserved]
- (f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - (1) The item is available only from a single source;
 - (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
 - (4) After solicitation of a number of sources, competition is determined inadequate.

9.4 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

- (a) SWT will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps will include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as 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 paragraphs (1) through (5) of this section.

9.5 Contract Cost and Price Analysis

- (a) SWT will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold defined in 2 C.F.R. § 200.88 (currently \$250,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, SWT will make independent estimates before receiving bids or proposals.
- (b) SWT will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To

establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for SWT under 2 C.F.R. § 200, Subpart E—Cost Principles. SWT may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

9.6 Bonding Requirements

For construction or facility improvements or subcontracts exceeding the Simplified Acquisition Threshold defined in 2 C.F.R. § 200.88 (currently \$250,000), if the Federal awarding agency or pass-through entity has not determined that SWT's bonding policy and requirements adequately protect the Federal interest, the following minimum requirements apply:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price.

9.7 Required Contract Provisions

All contracts made by SWT under a Federal award must contain provisions covering the following, as applicable:

- (a) Contracts for more than the Simplified Acquisition Threshold defined in 2 C.F.R. § 200.88 (currently \$250,000), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (b) All contracts in excess of \$10,000 must address termination for cause and for convenience by SWT, including the manner by which it will be effected and the basis for settlement.
- (c) Equal Employment Opportunity. Contracts for construction work paid for in whole or in part with Federal funds must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b).
- (d) Davis-Bacon Act. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by SWT must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance

with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. SWT must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. SWT must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. SWT must report all suspected or reported violations to the Federal awarding agency.

- (e) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by SWT in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (f) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (g) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-

1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- (h) Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (i) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- (j) Procurement of Recovered Materials. SWT and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.