

PROCUREMENT PROCEDURES

1.0 PURPOSE AND AUTHORITY:

The purpose of this document is to describe the process through which the Mount Ascutney Regional Commission (MARC) will procure consultant services and equipment for the accomplishment of assignments provided by state and/or federal agencies that are beyond the ability of the Commission staff either due to workload or available in-house expertise. This procedure also applies to MARC when procuring services or materials that are not fulfilling state or federal contracts.

This document is intended to satisfy the requirements to self-certify MARC procurement procedures in compliance with applicable federal regulations 2 CFR §§200.317-326. Specific federal agency or Vermont requirements also apply and are in addition to those outlined in Title 2.

These policies and procedures have been developed in accordance with the following state and federal statutes and regulations, as most recently amended or updated:

- A. 24 VSA Chapter 117 - Vermont Municipal and Regional Planning and Development Act.
- B. Vermont Community Development Program, Grants Management Guide.
- C. Vermont Agency of Administration Administrative Bulletin 3.5 - Contracting Procedures, if considered a vendor.
- D. Vermont Agency of Administration, Administrative Bulletin 5.0.
- E. Code of Federal Regulations (CFR) Title 2, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
 - 1) 2 CFR §§200.317-326 Procurement Standards
 - 2) 2 CFR §200.112 Conflict of Interest
 - 3) 2 CFR §200.113 Mandatory disclosures

If provisions of these Procurement Procedures conflict with provisions of federal or state statute or regulations, the most stringent shall apply.

2.0 DEFINITIONS:

Agency - an agency, department, division, or other administrative unit of the State of Vermont or Federal Government.

Contract - Contract means a legal instrument by which the MARC purchases property or services needed to carry out the project or program. The term contract includes all such agreements whether or not characterized as a “contract,” “agreement,” “purchase order,” “procurement,” “license agreement,” “maintenance agreement,” “support agreement,” or other similar term (Vermont Bulletin 3.5 and 5.0). A contract is for the purpose of obtaining goods and services for MARC’s own use and creates a procurement relationship (2 CFR §200.22).

Contractor - Any party with which MARC has signed a contract. Characteristics indicative of a procurement relationship between MARC and a contractor are when the contractor provides goods and services within normal business operations, provides similar goods or services to many different purchasers, normally operates in a competitive environment, provides goods or services that are ancillary to the operation of the Federal program, and is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons (2 CFR §200.23).

Equipment - Tangible, personal property (including information technology systems) having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit (2 CFR §200.33).

Pass-Through Entity – a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program (2 CFR §200.74).

Services - includes professional services of an individual or of persons working for a business enterprise, that provide an expertise in construction, design, engineering, information technology, real estate, equipment maintenance, etc.

Subaward - an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity (2 CFR §200.92).

Subrecipient – a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program (2 CFR §200.93).

Supplies – all tangible personal property other than those as described as Equipment above (2 CFR §200.94).

3.0 GENERAL PROCUREMENT:

- A. MARC will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.
- B. MARC will maintain a written code of standards of conduct as part of MARC Personnel Policies governing the performance of their employees engaged in the award and administration of contracts under this program. In addition, no employee, officer or agent of MARC shall participate in the selection, award or administration of a contract supported by State or Federal funds if a conflict of interest, real or apparent, is involved. Such a conflict would arise when:
 - 1) The employee, officer or agent or,
 - 2) Any member of his/ her or their immediate family or,
 - 3) His, her, or their partner, or
 - 4) Any organization which employs, or is about to employ, any of the above has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

MARC officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts. MARC may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct will provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of MARC.

- C. MARC will review proposed procurements to avoid the purchase of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase and to increase free and open competition. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

- D. In order to foster greater economy and efficiency, MARC will endeavor to enter into State and local intergovernmental agreements for procurement or use of common or shared goods and services.
- E. MARC will try to use federal and state excess and surplus property instead of purchasing new equipment and property when such use is feasible and reduces project costs.
- F. MARC 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.
- G. MARC will maintain records sufficient to detail the history of procurement. These records will include, but not necessarily limited to, the rationale of the method of procurement, selection of contract type, contractor selection, or rejection, and the basis for the contract price.
- H. MARC will use time-and-materials type contracts when procuring on state and/or federal jobs only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:
 - 1) The actual cost of materials; and
 - 2) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative (indirect) expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, MARC must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

- I. MARC alone will be responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protest, disputes, and claims. These standards do not relieve MARC of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of MARC unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having jurisdiction.
- J. MARC will have protest procedures (see Section 6.0) to handle and resolve disputes as part of all contracts awarded, and shall, in all instances of such occurrences, disclose information regarding the protest to the said state and/or federal awarding Agency. A protestor must exhaust all State and local potential remedies before pursuing a protest with the Federal Agency. Review by the Federal agency will be limited to alleged violations of federal laws or regulations, or MARC protest procedures.
- K. 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, and 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 work authorization 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.
- L. Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such a description shall 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. All solicitations will identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- M. MARC will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluations of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This shall not preempt state licensing laws.
- When contracting for architectural and engineering (A/E) 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.
- N. MARC 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. MARC will not preclude potential bidders from qualifying during the solicitation period.
- O. MARC will use one of the following methods of procurement.
- 1) **Purchase orders:** All purchases over \$100 require a Request for Disbursements form to be approved by the Executive Director before the purchase can be made.
 - 2) **Procurement by Micro-Purchases:** (2 CFR 200.320(a)(1)) Micro-purchase procurement is intended to be used only for equipment and supplies, not for contracted services. Staff shall follow sound business practices and seek price quotes to the extent possible for all micro-purchases that are below \$10,000 in aggregate (or \$2,000 in the case of acquisitions for construction subject to the Davis Bacon Act). To the extent practicable, MARC will distribute micro-purchases equitably among qualified suppliers.
 - 3) **Procurement by Small Purchase** (i.e., Simplified Acquisition) (2 CFR 200.320(a)(2)). Small purchases of goods and services that cost up to \$100,000 in aggregate shall be procured using a simplified procurement process which solicits price or rate quotations obtained from at least three qualified sources. Small purchase procurement files must contain a summary of the quotes and a written explanation for the selection.
 - 4) **Standard Procurement Process** (i.e., formal advertising). For those purchases above \$100,000, MARC shall use either a sealed bid or a competitive proposal process.

a) Procurement by Sealed Bids: (2 CFR 200.320(b)(1)) 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 following conditions apply.:

- 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 or unit price contract, and the selection of the successful bidder can be made principally based on price.

If sealed bids are used, the following requirements apply:

- a) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers (e.g., ad in newspaper, and postings on MARC website and in VT Bid System), providing them sufficient response time prior to the date set for opening the bids (e.g., a minimum of three weeks to respond);
- b) 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;
- c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- d) 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 usual taken advantage of; and
- e) Any, or all, bids may be rejected if there is a sound documented reason. Examples of which would include past bad experiences with the bidding contractor or bad references.

(See examples for a) through e) subsections above in VTrans' *Guidebook for Municipality Managed Projects* at <https://vtrans.vermont.gov/highway/local-projects/general-information/guidebook>.)

b) Procurement by Competitive Proposals: (2 CFR 200.320(b)(2)) 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 sealed bids. If this method is used, the following requirements apply:

- i. 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 practical;
- ii. Proposals must be solicited from an adequate number of qualified sources;
- iii. MARC will have a written method for conducting technical evaluations of the proposals received and for selecting recipients; and
- iv. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered (e.g., the most qualified/responsive proposal is not necessarily the lowest cost proposal).

- 5) **Procurement by Noncompetitive Proposals: (2 CFR 200.320(c))**. 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:

- a) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;
- b) The item is available only from a single source;
- c) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- d) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from MARC; or
- e) After solicitation from a number of sources, competition is determined to be inadequate.

If this is utilized, then clear documentation for the justification should be kept in the contract file, explaining why a noncompetitive process was utilized.

6) Procurement of Design/Engineering Services:

- a) MARC will comply with 19 VSA 10a for procurement of Architectural Engineering (A/E) and related professional services.
- b) Procurement for design and/or engineering services over \$100,000 shall be done using a qualifications-based selection process in accordance with the Brook's Act.

P. Contracting with small and minority businesses, women's business enterprises and labor surplus area firms (2 CFR §200.321). MARC will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible. Affirmative steps must 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 above.

Q. Procurement of recovered materials (2 CFR §200.323). MARC, as a political subdivision of Vermont, and its contractors will 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 by 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.

- R. **Contract cost and price** (2 CFR §200.324). MARC will perform a cost or price analysis in connection with every procurement action over the \$100,000 threshold, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, MARC will make independent estimates before receiving bids or proposals.

MARC 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 must 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 rates¹ in the surrounding geographical area for similar work.

Cost 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 MARC under Subpart E – Cost Principles of 2 CFR § 200. MARC may reference its own cost principles that comply with the Federal cost principles.

The cost plus a percentage of cost and percentage of construction cost methods of contracting will not be used.

- S. **Federal awarding agency or pass-through entity review** (2 CFR §200.325). MARC will make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if MARC desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

- 1) MARC will make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent costs estimates when:
 - a) MARC's procurement procedures or operation fails to comply with these procurement standards;
 - b) The procurement is expected to exceed the \$100,000 threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - c) The procurement, which is expected to exceed the \$100,000 threshold, specifies a "brand name" product;
 - d) The proposed contract is more than the \$100,000 threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - e) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the \$100,000 threshold.
- 2) MARC is exempt from the pre-procurement review if the Federal awarding agency or pass-through entity determines that its procurement systems comply with these standards.
 - a) MARC may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

- b) MARC may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from MARC that it is complying with these standards. MARC will cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

T. **Bonding requirements** (2 CFR §200.325). For construction or facility improvement contracts or subcontracts exceeding the \$100,000 threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the MARC provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- 1) 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 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.
- 2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- 3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

U. **Contract provisions** (2 CFR §200.327). MARC's contracts will contain the applicable provisions as described below and contained in Appendix II to Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards. In addition to other provisions required by the Federal agency or MARC, all contracts made by MARC under the Federal award will contain provisions covering the following, as applicable.

- 1) Contracts for more than the \$100,000 threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions as appropriate.
- 2) All contracts in excess of \$10,000 will address termination for cause and for convenience by MARC including the manner by which it will be affected and the basis for settlement.
- 3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 will include the equal opportunity clause provided under 41 CFR 601-4(b), in accordance with Executive Order 11246 "Equal Employment Opportunity" (30FR 12319, 12935, 3 CFR Part 1964-1965 Comp., p. 339), as amended by Executive Order 11375 "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- 4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities 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 will be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the wage determination made by the Secretary

of Labor. In addition, contractors will be required to pay wages no less than once per week. MARC will 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. MARC will report all suspected or reported violations to the Federal awarding agency. The contracts will 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 will 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. MARC will report all suspected or reported violations to the Federal awarding agency.

- 5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by MARC 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).
- 6) 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.
- 7) 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 MARC 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).
- 8) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (43 U.S.C. 6201).
- 9) Debarment and Suspension (Executive Orders 12549 and 12689) – A contract award (see 2CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System 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 1968 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, and parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. In addition, a contract award must not be made to parties listed on the Vermont Building and General Services (BGS) website at <http://bgs.vermont.gov/purchasing/debarment>.
- 10) 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 organization for influencing or attempting to influence an officer or employee of any agency, 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.

- V. The MARC procurement file must contain the following, in addition to all other items listed in these Procurement Procedures:
- 1) The technical specifications/Scope of Work for all proposed procurement (purchases or personal services contracts).
 - 2) The final draft contract, agreement or purchase order must include submission of MARC cost estimates, a description of the cost on price analysis performed by MARC, and the technical evaluation of all proposals.
- X. A procurement selection committee shall be established for technical evaluation and consultant selection, and it may include the state or federal agency as a non-voting member.
- Y. MARC shall use state and/or federal agency provided pro-forma contracts and agreements for contractual compliance with State and Federal requirements.
- Z. MARC shall prepare a technical evaluation for the proposals received, which will become a part of the procurement file.

4.0 OTHER PROVISIONS:

- A. **Salary Caps.** All contracts using U.S. EPA assistance for a contractor or sub recipient shall comply with 2 CFR 1500 including 2 CFR 1500.10(a) dealing with the authorized direct salary cap under federal assistance agreements.
- B. **Minority/Women's Business Enterprise (MBE/WBE).** MARC shall make a good faith effort to apply Justice/Equity/Diversity/Inclusion principles and to encourage the participation and bidding of minority and women-owned business enterprises whenever procuring construction, equipment, services and supplies, especially as related to accomplishing the goals and conditions of federal assistance awards and contracts. The organization will follow the guidelines and requirements of Title 40 CFR Part 33, Subpart-C, in addition to using the basic reporting requirements of EPA Form 5700-52A to document and implement the policies, procedures and systems necessary to make opportunities available to MBE/WBE firms.
- C. **Cost Sharing, Matching and In-Kind Contributions.** The MARC may accept cash and third-party in-kind support to assist in the implementation and pursuit of its goals and mission. When addressing federal cost share, match or in-kind contribution requirements of federal assistance awards, all contributions, including cash and third party in-kind, shall meet all requirements of 2 CFR 200.306, including the following criteria.
- 1) Are verifiable from the recipient's records.
 - 2) Are not included as contributions for any other federally assisted project or program.
 - 3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.
 - 4) Are allowable under the applicable cost principles.
 - 5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.
 - 6) Conform to other provisions of Circular A-110, as applicable.

5.0 PURCHASE OF EQUIPMENT:

- A. All equipment procured on behalf of a state and/or federal agency must be pre-approved if not in an approved work plan. The purchased equipment must be directly related to the implementation of a specific state and/or federal program and is to be used only for the originally authorized purpose. If the equipment is no longer needed, MARC will notify the state and/or federal agency of this for possible use on other projects or programs supported by said agency. However, when acquiring replacement equipment approved by a specific state and/or federal agency, MARC may use the equipment to be replaced as a trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment with approval of the appropriate state and/or federal agency. All documentation showing trade-in value must accompany MARC's invoice in which reimbursement is being requested for that equipment.
- B. MARC will not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private firms which provide equivalent services.
- C. MARC will be responsible for the management of the equipment while in use in such a fashion that at a minimum meets the following requirements:
 - 1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of the property, who holds title, the acquisition date, the cost of the property, the location and use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
 - 2) A physical inventory of the property must be taken, and the results reconciled with the property records at least every two years.
 - 3) A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property. Any loss, damage, or theft shall be investigated.
 - 4) Adequate maintenance procedures must be developed to keep the property in good condition.
- D. When original or replacement equipment acquired under an agreement is no longer needed for the original project or program, disposition of the equipment will be made as follows:
 - 1) Items of equipment with a current per-unit market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation.
 - 2) Items of equipment with a current per-unit market value in excess of \$5,000 may be retained or sold and the state or federal agency shall have the right to an amount calculated by multiplying the current market value or proceeds from sale by the state or Federal Government's share of the equipment.
- E. In cases where MARC fails to take appropriate disposition actions, the state and/or federal awarding agency may direct MARC to take excess property and disposition actions. The Federal Government may reserve the right to transfer title to the Federal government or a third party when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:
 - 1) The property shall be identified in the agreement or otherwise made known to the MARC in writing.
 - 2) The state and/or federal awarding agency shall issue disposition instructions within 120 calendar days after the end of said agency's support of the project for which it was acquired. If the state and/or Federal agency fail to issue disposition instructions within the time frame, MARC will follow the instructions as described above. When title is transferred, the MARC will be paid an

amount calculated by applying the percentage of participation in the purchase to the current fair market value.

- F. Title to supplies acquired under an agreement will vest upon acquisition to MARC. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the state and/or federal award, and if the supplies are not needed for any other state and/or federally sponsored programs or projects, MARC shall compensate the awarding agency for its share.

6.0 GRIEVANCE RESOLUTION PROCEDURES:

- A. MARC will maintain a grievance resolution system which ensures that contractors are treated fairly when resolving disputes with the terms, conditions, and specifications of their contracts or purchase orders.
- B. MARC will act responsibly, and in a timely manner, when resolving a grievance.
- C. MARC will maintain sufficient records to detail the significant history of a grievance.
- D. MARC will, in all instances of such occurrences, disclose information regarding the protest to the Agency.
- E. A protester must exhaust all potential remedies with MARC before pursuing a protest with the appropriate Agency. Review by the Agency will be limited to alleged violation of federal laws or regulations, or MARC grievance procedures.
- F. A grievance committee shall be established; appointing a VTRANS Planning Coordinator or Contract Administrator, as appropriate, as a non-voting member.

PROCUREMENT PROCEDURE ADOPTION

Adopted by the Mount Ascutney Regional Commission Board of Directors.

Thomas Marsh, Chair

Date

ⁱ The State of Vermont considers profit a negotiable item and caps it at 10%.