



**Metro**


Metropolitan Transportation Authority


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August 13, 2004

TO: BOARD OF DIRECTORS

THROUGH: ROGER SNOBLE  
CHIEF EXECUTIVE OFFICER 

FROM: LONNIE MITCHELL  
EXECUTIVE OFFICER, PROCUREMENT AND  
MATERIAL MANAGEMENT 

SUBJECT: PROCUREMENT OPERATIONS REVIEW

In April 2004, the Chief Executive Officer (CEO) contracted with Steve Polan of the New York City office of the law firm, Manatt, Phelps & Phillips, LLP, to conduct an independent review of procurement operations. Mr. Polan is a well-respected attorney with extensive experience in public transportation industry procurement. He is the former General Counsel of the New York MTA, and while serving in that capacity was primarily responsible for the overhaul of the New York statutes and agency regulations governing its procurement activities. He has also consulted on procurement-related matters with a number of transportation agencies, including New Jersey Transit, Massachusetts Bay Transit Authority, the Port Authority of New York and New Jersey, and Amtrak.

Mr. Polan recently completed his report, which is attached for your review. He has made recommendations that encompass actions within my control, actions for the CEO, suggested actions within the purview of the Board, and finally some which would require legislative change. He finds there is no instant fix or silver bullet to improving procurement operations, and suggests that the combination of recommendations he has made should be considered in total. We have reviewed Mr. Polan's report and generally concur with its findings and recommendations.

Mr. Polan will present his findings and recommendations at the August 2004 Board Meeting for discussion and input. Staff will come back at a future meeting to implement the recommendations.

Attachment

CM04-006

To: Roger Snoble

From: Steven M. Polan and Candace A. Younger  
Manatt, Phelps & Phillips, LLP

Date: August 2, 2004

Subject: Procurement Operations Review

I. Executive Summary

The Los Angeles County Metropolitan Transportation Authority (“Metro”) contracted with the law firm of Manatt, Phelps & Phillips, LLP (“Manatt”)<sup>1</sup> to conduct an independent review of certain aspects of its procurement operations and to suggest recommendations to promote process efficiencies. As discussed below in this report, our findings and recommendations are as follows:

1. Based on our industry survey of comparable transit properties, Metro’s procurement staffing, as measured by Full Time Equivalents (“FTEs”), relative to the number of procurement actions is at the higher end of the peer group agencies surveyed. This appears to be, at least in part, a function of the fact that Metro procurement professionals are involved in a number of complex, yet low-value, administrative and paperwork process activities that are in excess of those that exist in the other agencies. To the extent they are

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<sup>1</sup> Resumes of Manatt attorneys who worked on this review are provided in Exhibit A.

relieved of some of these activities, cycle time could be improved and professional resources could be more effectively targeted to activities that achieve better purchasing value.

2. By its own policy, the Metro Board of Directors (the “Board”) requires Board approval for all contracts (other than construction contracts) in excess of \$200,000, including contracts proposed to be awarded on the basis of sealed bids. There appears to be limited value in Board involvement in awards based on sealed low bids, and such involvement contributes significantly to process inefficiency and delay. Three of the other four agencies surveyed have lesser Board involvement in this area.

3. Metro does not delegate procurement authority, including change order authority, within its organization to the extent of its industry counterparts. Additional delegation can be achieved without a change in law and such delegation would improve cycle time and achieve other efficiencies.

4. Metro does not take full advantage of the discretion afforded by federal law to utilize simplified procedures for small purchases. This is a function of California law, and we recommend that consideration be given to seeking state legislation to move California law toward the flexibility already authorized by the Federal Transit Administration (“FTA”) and encouraged in federal agency practice. By applying small purchase procedures to material procurements over \$40,000 but less than \$100,000, as allowed by federal regulation, Metro could obtain time and money savings as well as improve the perceptions of the agency in the vendor community.

5. Delays in change order<sup>2</sup> processing are a function of both a statutorily required pre-audit process and a cumbersome internal approval process. Current Metro-specific California law requires the submission of certified cost and pricing data and pre-audit of all construction change order proposals valued in excess of \$100,000. This requirement sometimes leads to delay in the implementation of construction change orders with consequent adverse effects to ongoing work and Metro financial interests (e.g., due to contractor claims, increased project management oversight). This restriction on Metro is out of step with peer group practice and is discouraged by federal contracting practice. There are also changes to pre-audit requirements that are permissible within existing law, which should be pursued as a matter of agency policy.

6. The Internet is already changing for the better the way Metro does business and can serve to enhance outreach and increase competition. Time and money savings would be available from increased reliance on the Internet for outreach, vendor notification and the implementation of actual procurements. To some extent, these objectives can be achieved by changes in agency practice. Substitution of the Internet for public newspaper advertising also would be desirable, but this would require a change in state law.

7. Metro has made efforts in recent years to streamline its Procurement Policy Manual (“Procurement Manual”) and make this key source document user-friendly.

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<sup>2</sup> Throughout this report, the terms “change order” and “contract modification” are used interchangeably, unless otherwise noted.

However, the Procurement Manual remains overly detailed and quite cumbersome from a user perspective.

8. There are confusing and inconsistent practices in Metro concerning the application of federal requirements to Metro contracts. It appears that some contracts which receive no federal funding are nevertheless “federalized,” requiring additional paperwork and contract provisions that are unnecessary and may limit competition. Metro needs to more clearly articulate its policy regarding federalization of contracts, with a policy objective to reduce the number of contracts (both operating and capital) burdened by federal requirements.

9. By delaying the issuance of a Notice of Intent to Award, Metro sometimes puts itself in the position of having unresolved vendor bid protests at the time of Board consideration of contracts. This understandably causes delay in Board consideration, and the situation could be avoided if the agency permitted the issuance of a Notice of Intent to Award at an earlier date.

10. Prequalification of contractors, as required by state law and Metro policy, is viewed as unnecessarily burdensome both by the contracting community and some Metro staff. Existing changes to Metro policies and procedures implementing state law were recently approved, but more fundamental changes may still be warranted.

11. The interface between the Metro Procurement and Material Management Department (“PD” or “Procurement Department”) and user departments would

be materially enhanced if user department personnel were better equipped to prepare the work statements required as part of any contract solicitation. The ability to prepare a work statement ready for the initiation of a procurement should be viewed as a core competency of user department personnel involved in the initiation of a procurement action. Responsibility for delays in cycle time are sometimes the subject of finger-pointing concerning the adequacy of work statements prepared by user departments. These problems could be mitigated to some degree by enhanced training and/or the use of technical writing specialists in user departments.

Based on these eleven categories of findings and recommendations, and to summarize specific suggestions discussed below in this report, we believe that procurement process efficiencies could be attained through one or more of the following actions taken by the identified stakeholder:

California Legislature:

- Allow the Metro Chief Executive Officer (“CEO”) to delegate approval of construction contracts below a specified dollar threshold.
- Raise the dollar limit of the small-purchase threshold to \$100,000 for equipment, material, supplies and construction contracts.
- Eliminate or streamline the Metro-specific prequalification and construction change order processes so that they more closely follow federal practice and/or those of comparable transit agencies.

- Allow contract advertising by various means, including via the Internet, in lieu of only newspapers of general circulation.

Metro Board:

- Delegate competitive sealed-bid approval authority to the CEO, subject to further delegation, with possible special case exceptions for planned procurements identified in the budget approval cycle as meriting Board involvement.
- Delegate greater authority over change orders to the CEO, subject to further delegation, and/or expand the use of special change order authorization for major design-build projects.
- Consider modifications to the change order approval process now in development to ensure any new changes decrease rather than increase process inefficiencies.
- Replace the Procurement Manual with a new and concise set of Board-adopted procurement policies or, in the alternative, consider significant changes to the existing Manual.
- Adopt a policy that provides clear guidance regarding which procurement actions must follow FTA rules and that ensures other contracts remain “defederalized.”
- Allow the PD to issue a Notice of Intent to Award, subject to further approval, as soon as a recommendation has been approved by the PD Executive Officer.
- Consider further changes to the prequalification program to the extent permitted by state law.
- Implement a comprehensive legislative strategy to overhaul some or all of the laws applicable only to Metro and its predecessor agencies.

Metro CEO:

- Delegate greater contract and change order approval authority to the Executive Officer – Procurement, subject to further delegation.
- Direct further streamlining of the prequalification process to the extent permitted by state law and Board policy.

PD Management:

- If greater delegation is received from the Board and/or the CEO, consider further delegation among PD staff, as appropriate.
- Reduce or eliminate the use of mailed postcards to solicit interested bidders.
- Develop recommendations for the Board and CEO regarding technical training and/or dedicated staff for Statements of Work.

II. Introduction

To place our assignment and these findings and recommendations in context, it is first important to note the scale of Metro's procurement activities. As one of the nation's largest providers of public transit services in the United States, the scope, variety, and cost of Metro's procurement activities are all significant. In the 12-month period concluding April 30, 2004, Metro estimates that it conducted over 17,000 separate procurement actions with an estimated total value in excess of \$650 million.<sup>3</sup> These actions ranged from the supply of the thousands of individual parts that ensure daily bus and rail service, to the award of complex

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<sup>3</sup> Exclusive of 18,000 P-card transactions valued at \$4.2 million conducted outside of the Procurement Department.



construction and technology service contracts, to the simple purchase of office supplies. An overwhelming percentage of all procurement actions were nondiscretionary; that is, Metro could not reliably discharge its essential public service responsibilities without the material or service obtained in the procurement action. As such, the effective performance of the procurement function must be recognized as critical to Metro's mission.

Each of the more than 17,000 procurement actions implemented by Metro in the past year was governed by a complex and sometimes conflicting array of state and federal statutory and regulatory requirements, supplemented by internal agency policies established by the Metro Board and administered by management.<sup>4</sup> These regulatory and administrative regimes are the product of much history, some relating to the evolution of public procurement practice in general, while others originate in issues and historical problems that are specific to Metro and its predecessor agencies.

As a general matter, it should be noted at the outset that state procurement laws throughout the country and in the federal sector have evolved in recent years away from rigid rules requiring formal competitive sealed bidding for all procurements. In appropriate cases, more flexible arrangements have been authorized that permit and/or encourage simplified methods for low-cost purchases and more sophisticated "best value" purchasing methods for complex procurements. There is and always will be a tension between the perceived integrity controls thought to be ensured by sealed competitive bidding and the potential

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<sup>4</sup> Exhibit B summarizes the evolution of the most significant state and federal statutes and regulations applicable to Metro procurement.

opportunities for abuse that are made possible by the discretion and subjectivity inherent in more flexible procedures.

Metro, like all public agencies, must find a way to balance these tensions sensibly and intelligently, so as to promote confidence both in the vendor community and among its many public constituencies. At the same time, it must strive to promote efficiencies in its processes so as to reduce procurement cycle time, reduce overhead and inventory requirements and promote fair and vigorous competition. Metro must also meet important socioeconomic objectives through its procurements, including programs to promote the use of small and disadvantaged business enterprises and to maximize the use of U.S.-manufactured products. Many of our findings concern the manner in which Metro has balanced these many competing tensions in its procurement policies and procedures, and our recommendations suggest changes to better reconcile often conflicting objectives.

It should also be recognized that there is no instant fix or silver bullet that will result in greater user satisfaction, easy budgetary savings, or greater Board or public confidence in the procurement function. Nor is there any system that has been invented which will eliminate the occasional misdeed or abuse by a dishonest employee or contractor. The actual and perceived problems that exist in Metro's procurement processes, and in particular the perception that many procurement actions take too long, are similar to those that exist in virtually every other transit agency. Metro's recent record of performance is better in some respects and worse in others, but procurement process problems tend to be similar across the industry. These problems reflect the combination of ever-increasing regulation and related

and sometimes overwhelming documentation requirements, antiquated state laws that have not kept pace with best practices encouraged or permitted by federal policy, and the reluctance of state and local governments to provide the same level of autonomy to procurement professionals as exists in the federal government or in the commercial sector.

Metro's procurement process problems have also been significantly compounded by the stringent and somewhat unusual rules that were instituted in response to the overruns and contractor integrity issues that emerged from the major subway construction program in the 1990s. It is apparent that Metro continues to suffer from that legacy. However, it is also quite clear that Metro's record of performance in significant procurements and large construction projects has improved in recent years. Consequently, it may now be the time to address the issue of whether all the strictures of the laws and implementation policies adopted in the mid-1990s continue to be appropriate.

While it is within the Board's and management's means to address many of the issues we have identified, and for the State Legislature to address others, almost all of these matters are questions of policy. We can provide analytic support and frame issues that are ripe for consideration, and we can provide some independent recommendations based on best practices elsewhere, but it is for executive management, the Board and the State of California to choose. As the Metro Board and senior management focus on the issues raised in this report, it will become readily apparent that it is our view that very material time and money savings are likely to be achieved by some lessening and rationalizing of processes, reviews and approvals, including a slight reorientation of Board involvement in routine procurements.

Metro has the means to make or support changes to achieve process efficiencies, but we fully respect that it is for the Board to decide whether to do so, given Metro's history and public perceptions.

### III. Methodology

As part of this study, we have reviewed Metro procurement policies and procedures, applicable statutory and regulatory materials, interviewed Metro personnel and Metro vendors, and surveyed other key United States transit properties. To promote a free and open dialogue, all interviews conducted with Metro employees and vendors were conducted on a confidential and "off the record" basis. We also reviewed current and past reports on Metro procurement issues, including Inspector General reports, FTA compliance reviews and consultant reports on Metro procurement matters prepared by GCAP Business Solutions in 2000, Ralph C. Nash in 2001 and Tama Smith & Associates, Inc. in 2003.<sup>5</sup>

In all, we interviewed more than 30 employees in the Metro Procurement Department, ranging from buyers to contract administrators to middle and senior managers. In addition, we interviewed representatives from other departments, including representatives from Audit, Diversity and Economic Opportunity ("DEOD"), Construction Project Management, Transit Operations, Grants Management, and Planning, as well as from the office of County Counsel and the Inspector General. For the vendor community, Manatt was

provided a list of key Metro vendors and we selected approximately a dozen vendors to participate in a confidential interview process. These vendors were selected to provide a representative sampling of the range of businesses on which Metro relies.

We also surveyed a number of the other large U.S. transit agencies to assess how Metro's policies, procedures, and staffing levels compare to similar organizations and to consider whether there are best practices that Metro might adopt, based on successful models elsewhere. The public transit business is unique, both in terms of the nature of the service it provides and the statutory/regulatory regime under which it operates. Comparing Metro's operations to other industries is not particularly instructive. Thus we selected those transit properties most similar in size and scope to Metro, and were able to obtain the cooperation of New York City Transit ("NYCT"), Massachusetts Bay Transportation Authority ("MBTA"), New Jersey Transit ("NJTransit"), and the Washington Metropolitan Area Transit Authority ("WMATA"). Together with Metro, these agencies comprise five of the six largest transit agencies in the United States.<sup>6</sup> For certain issues that relate to California law, we also surveyed the Bay Area Rapid Transit District ("BART").

Our review, which was conducted over approximately two months, does not purport to be a comprehensive management review of Metro's procurement organization and

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<sup>5</sup> For the most part these previous consultant studies assumed maintenance of the status quo in terms of the statutory and regulatory regime applicable to Metro. As such, the scope and emphasis of these studies were quite different than the focus of Manatt's review. While some recommendations in those studies appear to have been advanced, the limitation of an approach that assumes no change in the regulatory environment will become apparent in this report.

<sup>6</sup> Based upon the American Public Transit Association ("APTA") ranking of transit properties by passenger miles.

systems. Our mandate was to seek out opportunities for process efficiencies that might be achieved by changes that are within the existing legal powers of the organization as well as those that might require statutory change. We have identified a number of possible changes for Metro's consideration.

The organization of the remainder of this report is as follows: In Sections IV, V and VI we summarize what we learned from Metro staff and management interviews as well as the vendor and industry survey. In Section VII we provide a more detailed elaboration of our key findings and recommendations in those areas in which process efficiencies might be achieved. In Section VIII we provide an overview of our recommendations concerning changes in California law that pertain to Metro, and in Section IX we conclude by noting a number of issues that might be worthy of additional study.

#### IV. Metro Perceptions of Procurement Issues and Problems

##### A. Procurement Department

Over the course of several days in May and June 2004, we met with more than 30 representatives of the Procurement Department, from executive management to PD staff responsible for individual purchases. From these meetings, including seven confidential "discussion groups" with managers, senior contract administrators, contract administrators and buyers, we identified certain common trends and perceptions regarding the department, which are summarized here. Management perceptions are addressed first, followed by those raised in the discussion groups.

In our conversations with executive management, five issues came up repeatedly. The first involves concerns about the length of PD “cycle time,” which relates to the number of days from when PD receives a requisition for a particular purchase through the completion of the procurement process for that purchase. Cycle time for many formal procurements, including construction and professional services, is typically four to six months, and sometimes far longer.<sup>7</sup> There are several reasons why PD cycle time is perceived as being needlessly long, several of which may be attributed unfairly to PD staff and management.<sup>8</sup> Many of these reasons and corresponding recommendations for improvement are discussed in this report, such as statements of work and the contract approval process.

The second executive level concern relates to issues associated with, and arguably the lack of, an effective management information system (MIS) to track and manage PD business. For many years, the PD has used a financial information system (FIS) to compile and manage its data, and the suitability of this FIS to Metro’s PD is questionable. We were confronted with some of these limitations directly, as management information necessary to support this study was sometimes difficult to extract from Metro’s systems. Efforts to better adapt the FIS and to incorporate other more targeted MIS programs are underway.<sup>9</sup> On the

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<sup>7</sup> This is in contrast to cycle time for material procurements of inventory, which from June 2003 through June 2004 took 8.6 days on average. Noninventory material purchases averaged 37 days.

<sup>8</sup> There is a concern within the PD about the lack of awareness throughout Metro over the extent to which delays in cycle time are due to acts or omissions outside of the control of the PD, such as defining customer needs, funding issues, audits and other processes over which PD staff have little or no control.

<sup>9</sup> While we were provided with a great deal of information regarding various efforts under way at Metro to enhance process efficiencies through greater or modified automation within and among procurement functions, this report does not address those efforts in detail for two reasons. First, consultants other than lawyers are better suited to opine on such matters. Second, it is our view that the impact of technology-based initiatives is necessarily limited unless and until underlying statutory, regulatory and administrative requirements are streamlined.

other hand, there is a concern among PD executives that, because the PD-managed FIS is used throughout Metro for funding requisitions from project conception through closeout, Metro procurement staff must engage in encumbrance management activities that are not expected of their counterparts at other transit agencies. This was cited as one of several examples for why the number of Metro procurement FTEs might, in relative terms, exceed that of its peers.

The third, fourth and fifth issues common to management are related to one another: statements of work (SOW) received from customer departments, program management and post-award administration. Although we are advised concerning Metro policy that only final SOWs are to be forwarded to the PD, the reality is that the department often receives inadequately developed SOWs that require PD staff and resources to complete. Management believes that additional training regarding SOWs in the customer departments might help.

The related issue of program management involves the clear identification of a project “owner” outside of the PD. Particularly with large purchases involving a number of departments, the PD has difficulty identifying a single customer counterpart to make decisions and take ultimate responsibility over the life of a procurement and resulting contract. This leads to the final executive management concern over post-award contract administration. In addition to what is perceived, on occasion, as inadequate “ownership” of a contract by a customer department, there is a sense that the agency, as a whole, does not recognize the extent to which PD must remain involved in contract management from the time of award through contract closeout. This lack of understanding is cited as a source of



tension between customer departments and PD, as the need for allocating PD resources to a project post-award is challenged and/or questioned.

The discussion groups with staff identified several of the same issues that came up with management, as well as others that impact the day-to-day business of Metro procurements.

As a preliminary note, we were very impressed with the experience and apparent professionalism of all PD staff with whom we met. Nearly every representative has at least several if not many years of relevant contracting experience, much of it from the private defense contracting/aerospace industries, and the overall level of capabilities seems high. Comments were made repeatedly that made clear that PD staff has Metro's best interests in mind, and efforts are continually made to see that rules are followed and that the agency obtains as much as possible for its procurement dollar. From our discussion groups with PD staff, we identified seven common issues.

The first issue, which came up in every discussion group, is a serious concern about the approval processes that must be followed for nearly all formal procurement actions (meaning procurements in excess of small purchase limits), including routine procurements. In particular, we heard numerous complaints about the Board report approval process – from the number of approvals required, the number of nonsubstantive changes that are made at every level of approval, the additional substantiation that must be provided to address potential concerns that might arise at any approval level, and the overall logistics involved in getting anywhere from four to eight or more people to sign off on any given step of a

purchase. Staff resentment and hostility regarding the approval process is quite high. There is a firm belief that much of the work that goes into the approval process is for the benefit of the process alone and has no substantive impact on the value of the purchase. Although steps apparently have been taken to reduce the number of signatures required, the actual steps of the approval process have not declined.

The second issue relates to Metro's change order process, which is universally considered much more cumbersome than any other public or private entity. As with the contract approval process, staff feels that too much time is spent on the approval of change orders that, in the end, has little or no impact on the price or outcome of the needed contract change. The auditing process is cited as a significant cause of delay, in addition to the Board report approval cycle. Some perceive that delays due to change order audits have become worse of late. The change order process ties into management concerns about cycle time because the time lost to change order approval inevitably impacts the timing and cost of contract performance.

The third issue raised by staff in the discussion groups is the consensus that individual contract administrators and buyers have too little authority relative to their experience, the demands of the department and what is granted to their peers in other public- and private-sector entities. The statement was made again and again that individual contract administrators have "no" authority to make purchases without additional approvals, and comparisons were made to the "P-card" program where non-procurement department employees in the field have the ability to complete direct purchases (not to exceed \$2500 in

any case) that contract administrators in the PD could not. This absence of authority, which is attributed, at least in part, to an institutional lack of trust in the PD staff, is at least one cause of a perceived low morale in the department. Comments also were made about a “culture of fear” and excessive oversight from “above” and the Inspector General’s office. Some also attributed morale problems to residual “cultural” issues dating back to the merger of the Los Angeles County Transportation Commission (“LACTC”) and the Southern California Rapid Transit District (“SCR TD”) in 1993.

The fourth common issue relates to the department’s policies and procedures. This, first and foremost, involves the Procurement Manual. Most PD staff seem resigned to the Manual, although wishes were expressed that it be more streamlined. Although efforts have been made to remove “procedures” from the Manual, leaving it with just “policies,” the extent of readily available department procedures is not clear. There are no PD user guides or desk instructions, although efforts apparently are underway to deploy them through the “Virtual Procurement Office” on the agency’s intranet. The combination of the overly complex policy manual with the lack of clear and concise instructions on procedures leads to varying and sometimes conflicting interpretations of the processes to be followed, including how to maneuver through the Metro approval process.

As with management, PD staff has issues with the department’s MIS system, and several comments were made about the FIS’s lack of suitability to procurements. As part of this fifth issue, staff frustration is high not only about the limitations of the FIS but also the

number of separate systems that must be interfaced over the course of a purchase (e.g., the Wizard, CP Tracking, Access, PATS/CCS).

A sixth issue that came up in some of the discussion groups relates to the timing of the release of the Notice of Intent to Award relative to the time allowed to a bidder to protest that award. Metro policy changed in March 2000 to prevent the release of the Notice of Intent to Award prior to the corresponding Board report, which typically is issued 2.5 weeks prior to the Board meeting for contract approval. Because protests can be filed up to 15 days thereafter, the logistics of coordinating contract approval and a protest defense simultaneously are quite complicated and burdensome.

Finally, the seventh issue raised several times in our discussion groups was a skepticism over whether Metro is committed to change and process improvements. Staff mentioned that our meeting was the latest in several that have been convened over recent years by different consultants, and the process improvements that have resulted have been few and far between. There is some resentment about the “promise” of change when suggested improvements are perceived as ignored or otherwise not forthcoming.

#### B. User Departments

In addition to our interviews of PD staff, we also met with representatives of various user departments, including individuals responsible for operations, construction, planning, technology and administrative services.

There was a wide disparity in perspective offered, no doubt reflecting individual experience with individual contract administrators of varying experience and capabilities. In general, most individuals acknowledged that PD performance was “getting better,” although criticism from many individuals was quite sharp. Several themes emerged from the conversations, which are summarized below:

- There is a perception of two different procurement departments, one for construction and one for other activities. There is a perception that the two units are quite separate in operation, that they operate according to different rules and procedures, and that they do not communicate with each other as well as they should.

- The greatest frustrations exist in the areas of construction and in professional services. Construction staff are particularly frustrated by the inflexibility of the change order approval process, which they believe impairs sound project management. If there is one single issue that should be addressed by Metro, the processing of change orders would be at the top of the list.

- The Procurement Manual was harshly criticized. Comments were made that it is so voluminous, complex, obtuse and ambiguous that it provides unlimited opportunity for misinterpretation and overinterpretation. In a climate of fear of oversight that is reported to be pervasive at Metro, this leads to interpretations that are overly cautious and restrictive. Ambiguities are also a cause for inconsistent and ever-changing practices, based on individual ad hoc interpretation. Many in the agency simply do not use the Manual and instead rely on informal rule summaries that have no official status.

- There was considerable praise for some Contract Administrators as incredibly knowledgeable and helpful. However, the view was also expressed by many that other administrators are only reactive and do not adequately assist user departments through the maze of required approvals and paperwork. This was attributed in part to workload demands, but also to fear of taking responsibility

- Repeated comments were made that the group within the PD that is responsible for finalizing and distributing contract forms for completed procurements is slow and error-prone.

- There was broad consensus that the information technology utilized by procurement is antiquated and in need of substantial improvement. However, concerns were also expressed that technology acquisition within the agency, not simply in the PD, lacked a strategic focus, with the result that stand-alone systems were sometimes acquired that lacked necessary integration capabilities.

- The existing prequalification process was sharply criticized as being excessive and counterproductive. These comments in particular mirrored the view of PD staff.

Recommendations for addressing some of the issues underlying the perceptions of both groups are addressed in greater detail in Section VII.

## V. Vendor Community Perceptions of Procurement Issues and Problems

At our request, the PD sent us lists identifying Metro vendors from which we randomly selected vendor survey participants. Of the 20 vendors we solicited to participate in the survey, 11 made themselves available for telephonic interviews, which we conducted in May 2004. As with our discussion groups with PD staff, we committed to maintain confidentiality with respect to these interviews, such that we do not identify the participating vendors by name or contract. The 11 participants varied in size, type of business, and contracting history with Metro, and included representation from the DBE sector. This section presents seven common perceptions that the survey revealed.

The first perception relates to PD staff. Overall, vendors find the level of professionalism, experience, education and abilities of PD staff to be quite high as a group. Comments were made that there are exceptions, but the general rule is that Metro PD staff are as good as or better than their counterparts at other transit agencies. Some vendors commented that particular contract administrators were “too tough” or “not fair,” which – although a source of vendor frustration – is not a negative so long as contract administrators are reasonable in light of agency requirements and market demands. There also were comments about perceived high turnover among procurement staff and references to “morale problems” in the PD.

The second common theme from the vendor survey was concerns about the effectiveness of communication between the PD and the Metro customer departments. Several vendors commented that they have been put in the position of having to ensure that

different parts of Metro are communicating and working towards the same goal in connection with a particular contract. Similar to the fourth issue with PD management, vendors sometimes have trouble identifying a project “owner” outside of the PD, which can lead to delays and inefficiencies. A few comments were made regarding a perceived “lack of trust” between the PD and other Metro departments and having to “mediate” between different parts of the agency.

The remaining common themes gleaned from the vendor survey relate to various milestones encountered over the course of the procurement process. Vendors were asked for their perceptions of Metro’s procurement documents. Although vendors state that the quality of the documents can vary dramatically, there seemed to be a consensus that they have improved over the past few years. However, as with the PD’s own perceptions, vendors maintain that the quality and adequacy of SOW is not consistent. Vendors attribute problems with SOW to the nature of the work, lack of communication between Metro departments as well as Metro staff desire to put as much into the SOW as possible to avoid contract change orders (and the corresponding approval process) in the future. Several vendors believe that Metro’s paperwork in the solicitation and contracting process is much more cumbersome than it needs to be, particularly when compared to what is required by other major transit agencies.

A few vendors volunteered their dissatisfaction with the prequalification process, which was characterized as being relatively unique among transit agencies. Those who raised the issue of prequalification believe that it is too cumbersome, may not make any



difference (because firms are rarely found to be not qualified) and may inhibit competition because it may drive companies away that are reluctant to disclose the required information.

The fifth, and probably most commented-upon, issue that came out of the vendor survey is the contract and change order approval processes. (Vendors did not necessarily distinguish between the approval processes required for a contract award as compared to a change order.) Although some commented that Metro's approval processes have improved over the years, nearly every vendor commented that the process is more cumbersome and takes longer at Metro than anywhere else. Vendor comments about the approval process included the following: the delay between bid date and approval is excessive and very difficult for a vendor that is trying to keep a "team" together or otherwise maintain its bid; there is a perceived "secrecy" regarding an award until the time the Notice of Intent to Award is released, which makes it difficult for the intended awardee to prepare for the contract; the change order approval process is excessively complicated and long and, even when staff and the contractor agree to the scope and price of the change, the approval takes several months; and, oftentimes, what is agreed to with staff and what is ultimately approved can vary dramatically.

The comments on contract closeout were limited, as many vendors had not experienced this process. Of those that had, most had no issue or problems, although one vendor has had serious difficulties wrapping up a contract (and receiving the retainage) from a contract that ended several years ago.

