

## **Mountain Line PURCHASING POLICY**

### **Foreword from the Chair of the Mountain Line Board of Directors:**

The following Purchasing Policy has been developed to ensure proper accountability of the public funds entrusted to Mountain Line and to maintain those controls necessary for Mountain Line to efficiently operate. The uniform Purchasing Policy ensures adequate control over budgets and expenditures, and adherence to legal and ethical procurement procedures. Centralized review and processing of purchases, using standardized guidelines is an essential component of Mountain Line's overall financial management system.

Compliance with these policies and guidelines is obligatory. In many instances, these policies are simply restatements of the requirements and regulations governing Mountain Line's procurement practices. The policies contained within have been reviewed and adopted by Mountain Line Board of Directors on September 18, 2014 and were updated August 1, 2022. Abuse or non-compliance with the policies and guidelines could result in disciplinary action or personal financial liability. It is of the utmost importance that all employees affected understand these policies and guidelines. It is the responsibility of the the CEO and General Manager as well as Department Directors and Division Managers to ensure that all employees adhere to these policies and guidelines.

---

Chair, Mountain Line Board of Directors

Updated August 1, 2022

**Table of Contents**

Contents

<b>SECTION ONE: GENERAL PROVISIONS</b>	<b>7</b>
<b>1.1 Purpose</b>	<b>7</b>
<b>1.2 Authority</b>	<b>7</b>
<b>1.3 Requirements: Planning</b>	<b>8</b>
<b>1.4 Capital Outlay Buying</b>	<b>8</b>
<b>1.6 Conflict of Interest</b>	<b>10</b>
<b>1.7 Severability</b>	<b>10</b>
<b>1.8 Confidential Information</b>	<b>10</b>
<b>1.9 Records Retention</b>	<b>10</b>
<b>1.10 Salesmen Calling on Users</b>	<b>11</b>
<b>1.11 Taxes</b>	<b>11</b>
<b>1.12 Purchasing with Grant Funds</b>	<b>11</b>
<b>1.13 Year-End Cutoff</b>	<b>11</b>
<b>1.14 Procurement Card</b>	<b>11</b>
<b>1.15 Approval of Accounting System</b>	<b>11</b>
<b>1.16 Right to Inspect</b>	<b>11</b>
<b>1.17 Right to Audit Records</b>	<b>11</b>
<b>1.18 Reporting of Anticompetitive Practices</b>	<b>12</b>
<b>SECTION TWO: PURCHASING ETHICS</b>	<b>13</b>
<b>2.1 Employee Ethics</b>	<b>13</b>
<b>2.2 Vendor Ethics</b>	<b>13</b>
<b>2.3 Fraud</b>	<b>13</b>
<b>2.4 Penalty</b>	<b>13</b>
<b>2.5 General Counsel Opinion</b>	<b>13</b>
<b>2.6 Acquisition of Unnecessary and/or Duplicative Items</b>	<b>14</b>
<b>2.7 Geographical Preference</b>	<b>14</b>
<b>SECTION THREE: REQUISITIONS AND PURCHASE ORDERS</b>	<b>15</b>
<b>3.1 Purpose</b>	<b>15</b>
<b>3.2 Purchasing Requirements at Various Dollar Thresholds</b>	<b>15</b>
<b>3.3 Exempt Purchases</b>	<b>15</b>

<b>SECTION FOUR: CHANGE ORDERS</b>	<b>17</b>
<b>4.1 General Information</b>	<b>17</b>
<b>4.2. Construction Projects</b>	<b>17</b>
<b>4.3 Equipment, Goods, and Services</b>	<b>17</b>
<b>SECTION FIVE: SOURCE SELECTION</b>	<b>18</b>
<b>5.3 Formal Bid and Quote Levels</b>	<b>18</b>
<b>5.4.1 Authority</b>	<b>19</b>
<b>5.4.2 Bid Specifications</b>	<b>19</b>
<b>5.4.3 Request for Bids</b>	<b>19</b>
<b>5.4.4 Pre-Bid Conference</b>	<b>20</b>
<b>5.4.5 Addendum to an Request for Bids</b>	<b>20</b>
<b>5.4.6 Bid Opening</b>	<b>20</b>
<b>5.4.7 Pre-Opening Modification or Withdrawal of Bids</b>	<b>20</b>
<b>5.4.8 Errors/Corrections to Bids</b>	<b>20</b>
<b>5.4.9 Unsigned Bids</b>	<b>20</b>
<b>5.4.10 Late Bids</b>	<b>21</b>
<b>5.4.11 Bid and Performance/Payment Bonds</b>	<b>21</b>
<b>5.4.12 Identical Bids</b>	<b>21</b>
<b>5.4.13 Rejection and Cancellation of Bids</b>	<b>21</b>
<b>5.4.14 Rejections</b>	<b>21</b>
<b>5.4.15 Responsibility of Bidders and Offerors</b>	<b>22</b>
<b>5.4.16 Bid Evaluation and Award</b>	<b>22</b>
<b>5.5 Contract Award</b>	<b>23</b>
<b>5.6 Construction Contracts</b>	<b>23</b>
<b>5.7 Competitive Sealed Request for Proposals (RFP's)</b>	<b>23</b>
<b>5.7.1 General Provisions</b>	<b>23</b>
<b>5.7.2 Request for Proposal Procedures</b>	<b>23</b>
<b>5.7.3 Evaluation of Proposals</b>	<b>23</b>
<b>5.7.4 Proposal Addenda and Best and Final Offers</b>	<b>24</b>
<b>5.7.5 Negotiations with Offerors</b>	<b>24</b>
<b>5.8 Selection of Architectural-Engineering Professional Design Services</b>	<b>24</b>
<b>5.8.1 Direct Selection</b>	<b>24</b>
<b>5.8.2 Public Competition</b>	<b>24</b>
<b>5.8.3 Qualifications Based System</b>	<b>24</b>

<b>5.9 Selection of Construction and Construction Related Services</b>	<b>25</b>
<b>5.11 Micro Purchases</b>	<b>26</b>
<b>5.13 Sole Source Purchases</b>	<b>26</b>
<b>5.13.1 General Information</b>	<b>26</b>
<b>5.13.2 Sole Source Procurement</b>	<b>26</b>
<b>5.14 Emergency Purchases of Materials and Services</b>	<b>27</b>
<b>5.14.1 Purpose</b>	<b>27</b>
<b>5.14.2 Definition</b>	<b>27</b>
<b>5.15.3 Procedures</b>	<b>27</b>
<b>SECTION SIX: CONTRACT FORMATION AND ADMINISTRATION</b>	<b>28</b>
<b>6.1 Types of Contracts</b>	<b>28</b>
<b>6.2 Multi-year Contracts</b>	<b>28</b>
<b>6.3 Contract Form and Execution</b>	<b>28</b>
<b>6.4 Cost Principles</b>	<b>28</b>
<b>6.5 Cost or Pricing Data</b>	<b>28</b>
<b>6.6 Assignment of Rights and Duties</b>	<b>28</b>
<b>6.7 Contract Administration</b>	<b>28</b>
<b>6.7.1 Principles</b>	<b>28</b>
<b>6.8 Contracts</b>	<b>29</b>
<b>6.9 Termination of a Contract</b>	<b>29</b>
<b>6.9.1 Terminating for Convenience</b>	<b>29</b>
<b>6.9.2 Terminating for Cause</b>	<b>29</b>
<b>6.10 Contract Periods</b>	<b>30</b>
<b>SECTION SEVEN: SPECIFICATIONS</b>	<b>31</b>
<b>7.1 Definition</b>	<b>31</b>
<b>7.2 Maximum Practicable Competition</b>	<b>31</b>
<b>7.3 Specifications Prepared by Other Than Mountain Line Personnel</b>	<b>31</b>
<b>7.4 Brand Name or Equal Specification</b>	<b>31</b>
<b>SECTION EIGHT: LEGAL AND CONTRACTUAL REMEDIES</b>	<b>32</b>
<b>8.1 Protest of Award</b>	<b>32</b>
<b>8.2 Timeframe for Filing of Protests</b>	<b>32</b>
<b>8.2.1 Protests Concerning Improprieties in a Solicitation.</b>	<b>32</b>
<b>8.3 Stay of Procurements During a Protest</b>	<b>32</b>
<b>8.4 Confidential Information</b>	<b>32</b>

<b>8.5 Decision by the Management Services Director</b>	<b>32</b>
<b>8.6 Remedies</b>	<b>33</b>
<b>8.7 Appeals to the CEO and General Manager</b>	<b>33</b>
<b>8.8 Filing of a Contract Claim</b>	<b>33</b>
<b>8.8.1 Content of Claim</b>	<b>33</b>
<b>8.8.2 Management Services Director Decision</b>	<b>33</b>
<b>8.8.3 Final Decision</b>	<b>33</b>
<b>8.8.4 Issuance of a Timely Decision</b>	<b>34</b>
<b>8.8.5 Appeals to the the CEO and General Manager</b>	<b>34</b>
<b>8.8.5.1 Content of Appeal</b>	<b>34</b>
<b>8.9 Mountain Line Claims Against a Contractor</b>	<b>34</b>
<b>8.9.1 Hearing</b>	<b>34</b>
<b>8.9.2 Mediation</b>	<b>34</b>
<b>8.9.3 Arbitration</b>	<b>34</b>
<b>8.10 Responsibility of Bidders and Offerors</b>	<b>34</b>
<b>8.10.1 Determination of Non-Responsibility</b>	<b>34</b>
<b>8.10.2 Right of Non-disclosure</b>	<b>35</b>
<b>8.11 Suspension and Debarment of Vendors</b>	<b>35</b>
<b>8.11.1 Purpose</b>	<b>35</b>
<b>8.11.2 Authority to Debar or Suspend</b>	<b>35</b>
<b>8.11.3 Causes for Debarment or Suspension</b>	<b>35</b>
<b>8.12 Matters Not Proper for Debarment or Suspension</b>	<b>35</b>
<b>8.13 Period of Debarment</b>	<b>35</b>
<b>8.14 Notices to Vendor</b>	<b>36</b>
<b>8.15 Imputed Knowledge</b>	<b>36</b>
<b>8.16 Reinstatement.</b>	<b>36</b>
<b>8.17 Hearing Procedures</b>	<b>36</b>
<b>8.17.1 Recommendation by the Hearing Officer</b>	<b>37</b>
<b>8.17.2 Final Decision by the Management Services Director</b>	<b>37</b>
<b>8.17.3 Judicial Review</b>	<b>37</b>
<b>8.17.4 Exclusive Remedy</b>	<b>37</b>
<b>8.18 FTA Clause</b>	<b>37</b>
<b>8.19 Notice of Legal Matters</b>	<b>37</b>

<b>SECTION NINE: LEASING</b>	<b>38</b>
<b>9.1 General Information</b>	<b>38</b>
<b>9.2 Procedural Information</b>	<b>38</b>
<b>9.3 Rental of Equipment</b>	<b>38</b>
<b>9.4 Leasing of Buildings</b>	<b>38</b>
<b>SECTION TEN: COOPERATIVE PURCHASING</b>	<b>39</b>
<b>10.1 Intergovernmental Agreement (IGA)</b>	<b>39</b>
<b>10.2 Intergovernmental Purchasing Agreements Required</b>	<b>39</b>
<b>10.3 Cooperative Purchasing Authorized</b>	<b>39</b>
<b>SECTION ELEVEN: MATERIALS MANAGEMENT</b>	<b>40</b>
<b>11.1 General Provisions</b>	<b>40</b>
<b>11.2 Disposition</b>	<b>40</b>
<b>SECTION TWELVE: FEDERAL CLAUSES</b>	<b>41</b>
<b>12.1 Required Clauses</b>	<b>41</b>
<b>12.2 Selection of FTA Clauses</b>	<b>41</b>
<b>12.2.1 Suspension/Debarment</b>	<b>41</b>
<b>12.2.2 Lobbying</b>	<b>41</b>
<b>12.2.3 Disadvantaged Business Enterprise (DBE)</b>	<b>41</b>
<b>12.2.4 Buy America</b>	<b>41</b>
<b>12.2.5 Davis Bacon Wage</b>	<b>41</b>
<b>GLOSSARY</b>	<b>42</b>
<b>FORMS</b>	<b>45</b>
<b>Form A: Method of Procurement Decision Matrix</b>	<b>46</b>
<b>Form B: Independent Cost Estimate</b>	<b>47</b>
<b>Form C: Fair and Reasonable Determination</b>	<b>48</b>
<b>Form D: Responsibility Determination Checklist</b>	<b>49</b>
<b>DISCLOSURE OF RESPONSIBILITY STATEMENT</b>	<b>50</b>
<b>NON-COLLUSION AFFIDAVIT</b>	<b>52</b>
<b>VENDOR EVALUATION FORM</b>	<b>53</b>

## **SECTION ONE: GENERAL PROVISIONS**

### **1.1 Purpose**

The purpose of this manual is to establish the purchasing policies for Mountain Line and to inform Mountain Line staff and the public of these policies. The policies presented in this manual have been reviewed and approved by the Board of Directors, and should be used to determine the appropriate policies to be followed for a particular procurement. In cases where this policy does not address a particular situation, the Arizona State Procurement Code found in Title 41 of the Arizona Revised Statutes will be followed.

### **1.2 Authority**

In accordance with ARS 11-201, the Board of Directors is the only entity that has authority to incur financial, legal and other obligations on behalf of Mountain Line, its agencies and elected officials. Although some Mountain Line officials may have express or implied authority to enter into contracts, all of their expenditures are subject to budgetary approval by the Board of Directors. To ensure fiscal control, the Board of Directors must approve all contracts or specifically authorize a designated elected or appointed official to enter into contracts. Neither elected nor appointed officials may exceed the limits of this Purchasing Policy unless the Board of Directors or the Arizona Revised Statutes delegate specific authority.

#### **1.2.1 The Board of Directors has delegated its authority as follows:**

- A. Accounting Personnel, Operations Supervisors, Eligibility Specialist, Mechanics, HR Specialist, HR Technician, Clerk of the Board, and other employees not otherwise identified may approve purchases and contracts of less than \$1,000.
- B. Mobility Planner, Transit Planner, Capital Project Manager, Facilities Coordinator, Fleet Supervisor, Maintenance Manager, Operations Coordinators, Assistant Operations Managers, IT and HR Managers, and other managers not otherwise identified may approve purchases and contracts of less than \$10,000.
- C. Operations Director, Marketing and Communications Director, Deputy General Manager, Management Services Director, Purchasing and Contracts Officer, and the Safety Manager may approve purchases and contracts for amounts less than \$30,000.
- D. The the CEO and General Manager must approve all purchases and contracts for amounts of \$30,000 or greater but that are less than \$100,000.
- E. The Board of Directors must approve all purchases of goods and services for \$100,000 and above. These procurements must be put on the Board's agenda and be routed through the Internal Services, General Counsel, and the CEO and General Manager.
- F. The the CEO and General Manager may approve work orders or change orders to Board approved contracts if the contract does not change by the lesser of \$20,000 or 15% of total value, as long as budget capacity exists.
- G. The Purchasing and Contracts Officer may approve emergency or field expediency purchases to personnel, as specified in section 10, provided such delegation is limited, specific, and subject to immediate revocation.
- H. The Purchasing and Contracts Officer has the authority for issuing invitations for formal bids and Requests for Proposals.
- I. The Purchasing and Contracts Officer shall coordinate and manage the disposal of Mountain Line's surplus and obsolete materials and equipment.
- J. The Purchasing and Contracts Officer will develop the specific procedures necessary for the purchasing process.
- K. All contracts shall be reviewed by General Counsel

#### **1.2.2 Delegations of Additional Authority by Resolution**

The Board of Directors may grant additional authority to the the CEO and General Manager, or other specified Mountain Line personnel, to act on the Board's behalf, beyond the authority otherwise identified in this Purchasing Policy, through a Board resolution specifically delegating such authority, as follows:

##### **A. Fiscal Year Delegation Resolution**

The Board of Directors may pass a resolution delegating authority to the the CEO and General Manager, on the Board's behalf, to (i) issue procurement requests, (ii) grant awards, (iii) sign and enter into individual contracts or agreements, and (iv) sign such additional documents and take such actions as are reasonably necessary to effectuate the terms of such awards, contracts and/or agreements, up the amount budgeted for each individual project ("Project Budget") as specified in an approved budget for a particular fiscal year ("Fiscal Year Budget"), up to an aggregate limit for all projects that shall not exceed the total authorized budget amount for such projects in the Fiscal Year Budget.

**B. Intergovernmental Agreement Delegation Resolution**

The Board of Directors may pass a resolution delegating authority to the the CEO and General Manager, on the Board's behalf, to authorize and execute agreements, and sign such documents in such form as finally approved and take such actions as are reasonably necessary to effectuate the terms of such agreements, with other public, non-profit, and for-profit agencies for transportation related projects valued at or below a maximum per-project value to be established in the resolution (e.g., \$100,000), up to an aggregate limit over a five-year period, also to be established in the resolution (e.g., \$500,000).

**C. Project-Specific Delegation Resolution**

The Board of Directors may pass a resolution regarding a specific, approved project, delegating authority, on the Board's behalf, as follows:

- i. Authorizing the the CEO and General Manager or its designee to sign and enter into individual contracts and/or agreements of a minimum specified dollar amount or greater (e.g., \$100,000), up to an aggregate total of the project's authorized budget amount, and to sign such documents in such form as finally approved and to take such actions as are reasonably necessary to effectuate the terms of such contracts and/or agreements.
- ii. Authorizing the Management Services Director or its designee to sign and enter into individual contracts and/or agreements between a minimum specified dollar amount and a maximum specified dollar amount (e.g., \$50,000 or more and less than \$100,000 ), up to an aggregate total of the project's authorized budget amount, and to sign such documents in such form as finally approved and to take such actions as are reasonably necessary to effectuate the terms of such contracts and/or agreements.
- iii. The specified dollar amount identified in any resolution delegating authority regarding a specified project to the the CEO and General Manager and/or the Management Services Director to sign and enter into contracts or agreements for a specified project shall apply equally to any change order or amendment to an existing contract or agreement that would result in the total dollar amount of the contract or agreement falling within the delegated authority in the same manner and to the same extent as if the original dollar amount of the contract or agreement had fallen within such delegated authority.
- iv. Notwithstanding any delegation of authority by resolution, any new contract or agreement, or any change order or amendment to an existing contract or agreement, that would cause the total cost of a specified project for which authority has been delegated to exceed the total Board-approved budget for that project may be signed and approved only by the Board of Directors.

**1.3 Requirements: Planning**

When unusual requests for goods and services are anticipated, a requesting Responsibly Buyer should notify the Purchasing and Contracts Officer and Management Services Director as soon as possible in order to provide sufficient lead time for the procurement of the goods or services.

Acquiring goods and services is a many faceted process that requires interaction and cooperation among all persons involved. Proper planning for future requirements and communication of these needs will result in materials and services being available when needed by staff.

The importance of proper planning by staff cannot be over-emphasized. Through effective planning, the user can (1) avoid lost staff hours caused by material stock outs and/or shortage; (2) reduce the number of "rush" purchases necessary to avoid stock outs; (3) increase the overall efficiency of Mountain Line through reduced procurement costs; (4) avoid increased acquisition costs often occurring in "rush" purchase situations; (5) identify goods which can be standardized throughout the Divisions; (6) reduce the cost of goods or services through the continuous evaluation and modification of specifications, to identify and delete items which add cost, but not necessarily value, to the product.

**1.4 Capital Asset Purchasing**

Capital Outlay Buying is defined as machinery, equipment, and vehicles with a usual life exceeding one year, costing \$5,000 or more. Also included are land, building and improvements other than buildings costing \$5,000 or more.



Generally, capital outlay purchases must be proposed and approved as part of the annual budget process. However, occasionally it is necessary to make non-budgeted capital outlay purchases when unusual circumstances exist. Non-budgeted capital outlay purchase requisitions are subject to Management Services Director and the CEO and General Manager review and approval to determine the availability of funds. The Management Services Director may review any capital outlay purchases. If the Management Services Director determines that funds are available, the request will be forwarded to Purchasing and Contracts Officer and Finance.

The approved requisition and specifications must be received (when required) at least 6 weeks prior to expected delivery date. Each Division is responsible for the timely submission of requisitions and specifications for its capital outlay equipment. Approved items costing less than \$100,000 will be purchased as soon as possible after receipt of approved requests.

Capital items over \$100,000 will be purchased through the competitive bid process set forth in this Purchasing Policy.

### **1.5 Value Analysis**

The Purchasing and Contracts Officer in conjunction with the Management Services Director shall conduct an ongoing program of value analysis, deciding the propriety of each contemplated purchase based on whether it has value to Mountain Line at the price for which it is being sold. The value analysis program includes evaluation of the effectiveness of systems, products, specifications, standards, practices, and procedures, to determine their ability to satisfy the required function at the lowest total cost to Mountain Line. In determining the total cost of ownership, it may be necessary to consider elements other than the initial purchase price, such as the item's performance, reliability, quality, and maintainability.

#### **1.5.1 Independent Cost Analysis (not applicable to micro-purchases)**

Responsible Purchasers must complete an Independent Cost Estimate for all procurements \$10,000 and greater *prior* to seeking quotations, bids and proposals.

The independent cost estimate must be completed and documented as part of the procurement process. The estimate must be completed prior to gaining quotes, bids, and proposals. The Purchasing and Contracts Officer may assist with completing estimate. Form B: Independent Cost Estimate, found in Forms section, contains required information for completing estimate.

For small purchases, less than \$99,999.99, responsible Purchasers must complete and submit form with quotations and requisition request. For Solicitation Purchases, \$100,000 and greater, responsible Purchasers may be required to complete and submit form with solicitation request and other related documents.

#### **1.5.2 Fair and Reasonable (applicable to all purchases)**

Responsible Purchasers must determine and certify every purchase as fair and reasonable. In order to determine fair and reasonable, a responsible Purchaser may consider any or all of the following:

- Reasonable based on recent purchase
- Current price list/catalog
- Commercial market sales price based on advertisement
- Similar item in related industry
- Personal knowledge of item procured
- Regulated rate (utility)

Form C: Fair and Reasonable Determination, found in Forms section, contains required information to be submitted or certified with every invoice or receipt.

Responsible Purchaser may sign invoice as certification for micro purchases, less than \$10,000. For small and solicitation purchases, the form must be completed and submitted with requisition request.

#### **1.5.3 Cost Price Analysis (not applicable to micro-purchases)**

All small and solicitation procurements, \$10,000 and greater, require a cost price analysis in accordance with FTA C 4220.1E. The cost price analysis will be performed by the Responsible Purchaser along with input from the Management Services Director. Cost Price Analysis is subject to the following guidance from FTA.

- A. Cost Analysis - A cost analysis must be performed when the offeror is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost; e.g., under professional consulting and architectural and engineering services contracts.

A cost analysis will be necessary whenever adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalogue or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

- B. Price Analysis - A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.
- C. Profit - Grantees 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.
- D. Federal Cost Principles - Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. Grantees may reference their own cost principles that comply with applicable Federal cost principles.

The cost price analysis shall be documented by Responsible Purchaser with narrative justification that will be submitted and maintained as part of decision package to the Purchasing and Contracts Officer.

### **1.6 Conflict of Interest**

Arizona State Statute, **ARS 38-503**, defines conflict of interest, in part, as follows:

Conflict of Interest; Any public officer or employee of a public agency who has, or whose relative has, a substantial interest in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.

The mere employment of an individual simultaneously by Mountain Line and an outside company that has a direct or indirect business relationship with Mountain Line, in itself, establishes no conflict of interest. A conflict of interest would arise if actions by Mountain Line employee conferred a direct or indirect pecuniary or proprietary benefit on Mountain Line employee or a relative by virtue of that person's connection with the outside business. The law provides that when the potential for a conflict of interest arises, Mountain Line employee must make his interest (or that of a relative) known and refrain from taking any action or otherwise participating in any way in the matter.

When a potential for conflict of interest arises, Mountain Line employee must provide written notification to the Management Services Director, identifying what relationship exists that could be classified as a potential conflict. Should a question arise pertaining to any potential conflict of interest in a purchasing situation, managers should consult with the Management Services Director or General Counsel for advice.

### **1.7 Severability**

The provisions of this policy are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, or division, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this policy, or the validity of its application to other persons or circumstances.

### **1.8 Confidential Information**

Procurement information shall be a public record to the extent provided in **ARS 39-121** and shall be available to the public as provided in the statute. Claims of confidentiality may be honored in limited circumstances to the extent allowed under the law as an exception to the public records requirements. Confidential information shall be designated as follows:

- A. If a person believes that a bid, proposal, offer, specification, or protest contains information that should be withheld, a statement advising the Management Services Director of this fact shall accompany the submission and the information shall be so identified wherever it appears.
- B. The information identified by the person as confidential shall not be disclosed if the Management Services Director makes a determination that disclosure should not be made. General Counsel may be asked to assist in these determinations.
- C. Claims of confidentiality will be considered on a case-by-case basis.

### **1.9 Records Retention**

All procurement records whether written or electronic shall be retained and disposed of by Mountain Line in accordance with record's retention guidelines and schedules issued by the State of Arizona Department of Library, Archives and Public Records. If a contract is funded in whole or in part by assistance from a federal agency, then the record's retention requirements of that granting agency shall be followed. Defacing or changing records is expressly prohibited and will result in

disciplinary action. Records or documents are not to be removed from their normal location in the Procurement Office without approval of the Management Services Director.

All determinations and other written or electronic records pertaining to a solicitation, award or performance of a contract shall be maintained by Mountain Line in a bid file kept by the Purchasing and Contracts Officer or Management Services Director.

#### **1.10 Salesmen Calling on Users**

All new contacts between suppliers and responsible Purchasers should be coordinated through the Procurement Office. This action is to protect the interests of the supplier and Mountain Line by ensuring that ethical standards are observed, as well as to prevent the possibility of an unauthorized order from occurring. Any person who places an unauthorized order on behalf of Mountain Line runs the risk of being held personally liable for the cost of the purchase.

#### **1.11 Taxes**

Mountain Line is responsible for the payment of all applicable sales and use taxes as may be required by the State of Arizona or its political subdivisions, or municipalities, in accordance with State tax laws, or local tax laws.

Mountain Line is exempt from the payment of Federal Excise taxes.

#### **1.12 Purchasing with Grant Funds**

If grant funding is used for purchases and the specific funding agencies policies and guidelines are not covered by Mountain Line's Purchasing Policy, compliance with those policies and guidelines is obligatory. Any additional policies or procedures required by outside funding sources shall be followed when they apply to a particular procurement. It is the responsibility of each Director or Manager to develop procedures and guidelines to ensure that all employees adhere to Mountain Line's purchasing policies and procedures and any additional purchasing policies and procedures required by their other funding sources.

#### **1.13 Year-End Cutoff**

All expenditures for goods and services must be charged to the fiscal year in which they were received or performed, regardless of when the order was placed or when the invoice is received.

#### **1.14 Procurement Card**

Mountain Line employees may apply for a company issued Purchasing Card, as approved by their Manager and Director. New card holder applications may be requested from the Card Administrator or Management Services Director. After the application is approved, all new card holders must receive an instructional document from the Purchasing and Contracts Officer prior to receiving the card. This information is required for all employees authorized to use a Purchasing Card. The instructional document will cover all policies and procedures for procurement card usage, reconciliation, and reporting. A complete procurement card policy, as adopted by the Board of Directors, will be provided during training. Repeated abuse of the card shall result in suspension of card privileges.

The procurement card is to be used for small purchases (defined as those less than \$10,000) and travel expenses. Purchases must NOT be split in order to avoid issuing a purchase order for goods and services that exceed \$10,000. Cardholders may use a card for expenditures greater than \$10,000 upon completion of a requisition and approval of their manager. The Card Administrator or Management Services Director can modify authorized single transaction limits for a limited period of time as needed.

#### **1.15 Approval of Accounting System**

The Management Services Director may require that the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles prior to award of a contract.

#### **1.16 Right to Inspect**

Mountain Line may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant, or any subcontractor or sub-consultant that is related to the performance of any contract awarded or to be awarded by Mountain Line.

#### **1.17 Right to Audit Records**

Mountain Line may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as to the extent that the books and records relate to the cost or pricing data. Any person who receives a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing by the Management Services Director. Mountain Line is entitled to audit the books and records of a

contractor, consultant or any subcontractor or sub-consultant under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contractor or consultant, and by the subcontractor or sub-consultant for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing by the Management Services Director.

#### **1.18 Reporting of Anticompetitive Practices**

If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the Management Services Director and Mountain Line General Counsel. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the Management Services Director.

[Go to top](#)

## **SECTION TWO: PURCHASING ETHICS**

### **2.1 Employee Ethics**

It is the policy of the Purchasing Office to promote Mountain Line's reputation for courtesy, fairness, impartiality, integrity, service, economy, and government by law. The responsibility for implementing this policy rests with each individual who participates in the purchasing process, including the procuring department and suppliers, as well as purchasing personnel. No public employee having official responsibility for a purchasing transaction shall represent Mountain Line in that transaction when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
2. The employee, the employee's domestic partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as officer, director, trustee or partner, has a personal and substantial participation in the transaction, or owns or controls more than five (5%) percent of the firm;
3. The employee, the employee's partner or any member of the employee's immediate family has a pecuniary interest arising from the transaction;
4. The employee, the employee's partner or any member of the employee's immediate family is negotiating, or has an arrangement concerning prospective employment with a bidder, offeror or contractor;
5. No employee having official responsibility for a purchasing transaction shall solicit, demand accept or agree to accept any payment, loan subscription, advance deposit of money, services, entertainment or anything of more than nominal value from any bidder, offeror, contractor or subcontractor.

Employees may attend functions that are not limited exclusively to Mountain Line employees, i.e., an industry trade fair, or like function. Purchases made directly from any Mountain Line employee must be reviewed by the Management Services Director and a written conflict of interest statement must be submitted for the public record.

Any person involved in a transaction may request a written Legal Counsel's opinion about the applicability of these provisions.

### **2.2 Vendor Ethics**

Mountain Line requires vendors to also be held to certain ethical requirements as follows:

1. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a purchasing transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised;
2. All bidders, offerors, contractors or subcontractors shall submit with their bid a disclosure of interest form to inform any personal interest of any member of the Board of Directors, the CEO and General Manager, executive staff member, or the spouse of each official;
3. Failure to make the required disclosure may result in disqualification, debarment, and suspension from bidding and recession of contracts;
4. No contractor or subcontractor shall give, demand or receive from any supplier, subcontractor, or competitors any bribe, kickback, or anything of value in return for participation in a purchasing transaction or agreeing not to compete in a transaction; and
5. Architects or engineers employed by Mountain Line may not furnish building materials, supplies or equipment for any structure or project on which they are providing professional services.

### **2.3 Fraud**

An act of fraud is committed if an employee of Mountain Line negotiates a personal purchase by fraudulent use of a Mountain Line requisition or purchase order number. Fraud also occurs if an employee claims a purchase is on behalf of Mountain Line when in fact the purchase was made solely for personal use. A personal purchase from the State Contracts is also an offense subject to prosecution. Fraud is subject to prosecution and employee discipline.

### **2.4 Penalty**

Willful violation of Mountain Line's purchasing Ethics Code may result in disciplinary action up to and including termination of employment. Mountain Line staff is encouraged to request assistance whenever questions arise regarding the applicability of these provisions.

### **2.5 General Counsel Opinion**

Mountain Line staff is encouraged to request assistance from General Counsel whenever questions arise regarding the applicability of these provisions.

## **2.6 Acquisition of unnecessary and/or duplicative items**

Mountain Line will avoid the acquisition of unnecessary and/or duplicative items.

## **2.7 Geographical preference**

Mountain Line will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt Arizona licensing laws from being considered in those disciplines that are regulated by the State of Arizona. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services if an appropriate number of qualified firms, given the nature and size of the project, are able to compete for the contract.

[Go to top](#)

## SECTION THREE: REQUISITIONS AND PURCHASE ORDERS

### 3.1 Purpose

A purchase order serves as a contract between Mountain Line and a supplier for the procurement of equipment, supplies, services, materials, land, buildings, and the lease/purchase or rental of equipment.

The three most important purposes and functions of a requisition is to convey to the vendor and the Purchasing Office exactly what the user requirements are, obtain the proper approvals, and to ensure that budgeted funds are available prior to committing Mountain Line funds. Users should make certain the product or service description is clear, concise and contains sufficient information to process the requisition into a purchase order and so that the vendor provides the correct goods and services. Requisitions that are properly created increase the efficiency of the purchasing process and reduce the time needed to process the requisition.

Except in emergencies, Finance will only issue a purchase order after receipt of an approved requisition form. If a purchase order is not filled within 90 days of issuance without notification from the supplier, or if prior arrangements for specified delivery time have been made, that purchase order may be canceled. Finance will discuss this with staff prior to canceling an order.

### 3.2 Purchasing Requirements at Various Dollar Thresholds

The following table indicates the requirements for purchasing at various dollar levels.

Dollar Amount	Requisition/ Purchase Order	Three Written Quotes	Formal Solicitation (Bid/RFP/RFQ)
0 - \$9,999.99	No	Not required	No
\$10,000 - \$99,999.99	Yes	Yes	No but may be prudent
> \$100,000	Yes	Yes	Yes

Purchases that do not require a purchase order should be acquired with as much competition as practical. Departments are required to be responsible for obtaining best value at this threshold. The three written quotes obtained for purchases must be kept on file with the Purchasing and Contracts Officer or Management Services Director and made available when requested for Mountain Line's annual audit.

### 3.3 Exempt Purchases

Purchases that are exempt from requisition submission are:

- a. Salaries and related costs; FICA, Federal and State withholding tax, Insurance
- b. Travel (see Travel Policies)
- c. Utilities: telephone, mobile phone, gas, electric, water, etc
- d. Expenditures from Petty Cash
- e. Single or cumulative purchases of \$9,999.99 or less
- f. Postage
- g. Media or News Publications: journals, newspapers, magazines
- h. Advertising or Publications regarding operated services: print, radio, video, etc
- i. Emergency purchases of low-cost items. These may, in certain circumstances be purchased directly by staff and paid as short claims, if prior approval from the Internal Services Office has been obtained.
- j. Insurance settlements.
- k. Revenue refunds.
- l. Governmental permitting fees
- m. Memberships
- n. Others, as approved by the Board of Directors.

### 3.4 Blanket Purchase Orders

Blanket Purchase Orders differ from standard orders because budgeted funds are not encumbered. Blanket purchase orders may be used for purchases that require multiple payments and/or deliveries for undetermined amounts such as copier maintenance.

Only the Purchasing Office may initiate blanket purchase orders. Blanket purchase orders will be requested by staff, in writing, stating the period covered and a not to exceed amount to be purchased during the period. With the exception of copier maintenance agreements, the time period covered should be limited to up to three months.

The use of blanket purchase orders must be very limited, or control over expenditures and economy in purchasing will decrease.

### **3.5 Federally Funded Purchase Orders**

For purchase orders that include federal funded equipment, supplies, services, materials, land, buildings, and the lease/purchase or rental of equipment will require signed federal certification prior to issuance by accounting. The purchase order will also reference and incorporate federal clauses as a term of acceptance of purchase order.

The Purchasing Office will approve issuance of a purchase order upon receipt of signed certifications, as applicable, and provide federal clauses to be referenced and attached to purchase order to be issued by finance.

[Go to top](#)



## **SECTION FOUR: CHANGE ORDERS**

### **4.1 General Information**

Mountain Line, without invalidating the contract, may order changes in the work within the general scope of the contract consisting of additions, deletions, or other revisions; the contract sum and the contract time being adjusted accordingly. All such changes in the work shall be authorized by change order, and shall be performed under the applicable conditions of the contract documents. The contractor shall bear any additional fees and costs incurred by the owner, architect, engineer, or consultant for fees as a result of a change order which adjusts the contract time and which is not because of any act or omission of the owner, architect, engineer or consultant.

The cost or credit to the Owner resulting from a change in the work shall be determined in one or more of the following ways:

1. By unit price stated in the contract documents.
2. By cost, as defined below, properly itemized and supported by sufficient substantiating data to permit evaluation, plus a fee of 10%. Such costs shall be itemized by crafts defined within the schedule of values and limited to the following items directly allocable to the change in work:
  - a. Cost of materials, including cost of delivery.
  - b. Cost of labor, including, but not limited to, social security, and unemployment insurance and fringe benefits required by agreement and worker's compensation insurance.
  - c. Rental value of equipment and machinery.
  - d. Sales tax, insurance and bond premiums.
  - e. Amounts for any additional supervision and field office personnel, which shall not exceed five (5%) percent of the total of the above paragraphs.
3. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; provided that such lump sum shall not exceed that amount calculated under b) above.

### **4.2. Construction Projects**

All change orders within amounts appropriated in the current fiscal year budget for the subject of the bid award will be authorized and executed in the following manner. The change order will be initialed by the project architect/engineer with their recommendation and forwarded for approval or rejection.

Authority to approve change orders is as follows:

\$10,000 or less	Project Manager
\$30,000 or less	Management Services Director
greater than \$30,000	CEO and General Manager

The above authority for Project Managers and Management Services Director applies to the cumulative amount of change orders on a project. A change order tabulation sheet must be submitted showing all change orders incurred for a project along with each request for approval of a change order.

The Board of Directors reserves the right to adjust these authorized approval amounts for any individual project. Requests for Change Order approval should be made at the same time that BOS approves the initial contract award. The initial award should also include any allowances or contingencies above the contract amount.

If any change order causes the total expenditures on a project to exceed the amount of the contract for that project approved by the Board of Directors by more than \$20,000 or more than 10%, whichever is less, then the Board of Directors must approve that change order. The Board of Directors must approve any single change order exceeding \$100,000.

### **4.3 Equipment, Goods, and Services**

All change orders within amounts appropriated in the current fiscal year budget for the subject of the bid award will be authorized and executed in the following manner.

- If the change order is for less than \$30,000 the Management Services Director will have authority for approval or rejection.
- If the change order is between \$30,000 and \$100,000, CEO and General Manager's approval is needed.
- If the change order exceeds \$100,000 the Board of Directors will have the final authority to sign the change order.
- If any change order exceeds the current fiscal year budget for the subject project, the Board of Directors must approve it.

The Board of Directors reserves the right to adjust these authorized approval amounts for each individual project.

**SECTION FIVE: SOURCE SELECTION**

**5.1 Developing Suppliers**

The overriding principle which guides Internal Services in searching for new suppliers and in dealing with current suppliers is to bring about the best competition practical. While it is impractical to secure bids or quotes from every qualified supplier, it is necessary that competition be as representative and as broad as circumstances permit. To assure this competition, every effort is made to solicit bids from manufacturers as well as distributors or dealers.

**5.2 Bidders List**

The Purchasing and Contracts Officer keeps current lists of suppliers who are interested in selling goods to Mountain Line. Suppliers may register for Mountain Line’s Vendor Registration list on Mountain Line’s website. The vendor will remain on one or more commodity lists until either they have failed to bid on a particular commodity for a reasonable period of time, or are determined by the Management Services Director to be no longer responsive and responsible. It is the express responsibility of the vendor to ensure that they are registered to receive invitations of bids and to notify Mountain Line of any address or other relevant change to their application.

**5.3 Formal Bid and Quote Levels**

A. Acquisition of Goods, Materials & Non-professional Services

The amount of price/cost analysis and procedural formality required varies with the specifics of each transaction.

The method of procurement is dictated by a number of factors including estimated cost, available sources, etc. Form A: Method of Procurement Decision is a matrix to be used to document method selected and reason. The form must be completed and submitted for all small and bid/proposal procurements. The form shall be submitted with a purchase order request to Purchasing and Contracts Officer.

The chart below identifies the type of comparative pricing information required for different cost levels, as well as the method to be used.

Micro-Purchase	up to \$9,999.99	Three Price Quotes (verbal is okay)
Small Purchase	\$10,000 to \$99,999.99	Three Written Price Quotes
Solicitations	Above \$100,000	Sealed Competitive Bids

Purchases less than \$10,000 are considered micro-purchases and do not require written quotations.

Small and Solicitation Purchases exceeding \$10,000 (single or cumulative purchases related to a specific project from a single vendor) require the submission of a requisition & price quotes. Divisions must receive three written price quotes from vendors in response to a complete set of written specifications or scope of work. Mountain Line staff must submit a requisition request, as well as a set of written specifications or scope of work, list of vendors contacted and all written responses or non-responses from vendors. This information must be submitted in order to receive a purchase order. Purchases may be made using a procurement card only after a purchase order is issued. A cost analysis will be necessary whenever adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalogue or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

Some purchases may be exempt from requisition submission as provided in Section 3.

B. Acquisition of Architectural and Engineering Services.

The acquisition of services of an architect, landscape architect, assayer, geologist or land surveyor on projects or engineering projects may be selected by a Qualifications Based System (QBS) process, direct selection or public competition in compliance with ARS. § 32-103.

This process and definition are discussed in Section 6.3

C. Acquisition of Legal Services

The acquisition of services of an attorney shall be completed by competitive bid from list of approved qualified firms.

All managers and directors must have approval from General Manager, General Counsel and the Board of Directors in order to obtain legal services outside of General Counsel, even if the services are on a pro-bono basis.

D. Acquisition of other Professional Services

The acquisition of other professional services shall be completed using the same guidelines as Section 1.3 subsection A. Acquisition of Goods, Materials & Non-professional Services.

Divisions must obtain and evaluate qualifications as well as references as part of selection process.

E. Acquisition of Construction Contracts.

Construction contracts will be awarded through a solicitation of bids or requests for qualifications in accordance with Title 34 of The Arizona Revised Statutes (see ,e.g., *ARS § 34-601, et seq.*) and the Qualifications Based System (QBS) set forth under § 6.3.3 below. Purchase of construction related services will be value based, considering price as a factor after evaluation of qualifications.

## **5.4 Competitive Sealed Request for Bids (IFB's)**

### **5.4.1 Authority**

In accordance with the authority delegated by the Board of Directors, the Purchasing and Contracts Officer is responsible for preparation of requests for bids, opening of bids, and recommendations regarding awards in connection with the purchase of supplies, materials and nonprofessional contractual services with an estimated total cost in excess of \$100,000.

All purchases of supplies, materials, equipment and contractual services, except professional services which are procured through the formal RFP process described in Section Seven, made by Mountain Line having an estimated cost in excess of \$100,000 per transaction shall be based on sealed, competitive bids. Notice of Award shall be prepared by the Purchasing and Contracts Officer upon Board of Directors' approval.

### **5.4.2 Bid Specifications**

The first task which must be completed when staff wishes to purchase an item with a total cost in excess of \$100,000 is the preparation of a bid specification. The specification may be written by the Responsible Purchaser with input from the Purchasing and Contracts Officer and Management Services Director. Every effort should be made to ensure that the specification provides potential suppliers with a description which is complete and accurate without being overly restrictive.

Completed bid specification packets including purchase description, delivery and/or performance schedule, and evaluation criteria are available from the Internal Services Office which can be reached at (928) 679-8900 or by visiting the Mountain Line web-site at <https://mountainline.az.gov/services-programs/purchasing/>.

### **5.4.3 Request for Bids**

After the bid specification is prepared, the Purchasing and Contracts Officer issues an, Request for Bids for the desired item, using the Serial Bid number.

The Request for Bids and specifications must be issued in sufficient time before the purchase is made and in sufficient detail to permit free competition. Pursuant to ARS 11-254.01, notice of the Request for Bids shall be published in a newspaper in accordance with the provisions of ARS Title 39, Chapter 2 unless the Board of Directors, by at least two thirds vote of its membership, determines that an emergency exists requiring immediate action to protect the public health or safety. Copies of the invitation and specifications shall be supplied to, and bids shall be solicited from qualified sources consistent with the item to be purchased as determined by Purchasing and Contracts Officer, including all qualified suppliers who, before the issuance of the invitation notify the Purchasing Office in writing that they desire to bid on materials, supplies, equipment, or contractual services.

Current providers of service contracts will automatically receive a notice of call for bids regardless of whether they are registered on the bidder's list. The Notice will indicate the address to which to return the bids, the time deadline for bid submittal, and the place of the bid opening.

#### **5.4.4 Pre-Bid Conference**

A pre bid conference and/or walk through site inspection may be conducted to provide a complete explanation and clarification of all bid specifications to the suppliers. The notice for a pre bid conference will be stated in the Call for Bid documents.

#### **5.4.5 Addendum to an Request for Bids**

An addendum to an Request for Bids shall be issued if necessary to:

1. Make changes in the Request for Bids.
2. Correct defects or ambiguities.
3. Furnish to other bidders, information given to one bidder, if the information will assist the other bidders in submitting bids or if the lack of information will prejudice the other bidders.
4. Correct quantities on the bidding schedule.
5. Correct, add to or clarify specifications.

Addenda shall be posted to the Mountain Line web site at <https://mountainline.az.gov/services-programs/purchasing/>. The addendum shall require that the bidder acknowledge receipt of the addendum. If a bidder fails to acknowledge the receipt of the addendum, Mountain Line may waive the requirement as informality, if the vendor's proposal shows that the information given in the addendum has been addressed in the bid submitted by the bidder.

#### **5.4.6 Bid Opening**

Bids shall be publicly opened at the time and place stated in the invitation. The Purchasing and Contracts Officer or their designated representative will hold the opening of bids, at the time and location stated in the Request for Bids. A reasonable period of time for the preparation of bids shall be allotted between the issuing of the Request for Bids and the scheduled date of opening. Bids are secured by the Purchasing and Contracts Officer or Management Services Director until opening. Bid envelopes will be opened and Bidders Name read aloud at the public bid opening. A representative of the Management Services Director will be present at all bid openings, and will initial each bid. Faxed bids will not be accepted.

On Board approval, Purchasing and Contracts Officer shall make awards with reasonable promptness by giving written notice to the responsible bidder whose bid is responsive, i.e., conforms to the invitation, and whose bid is the most advantageous to Mountain Line concerning price, conformity to the specifications and other factors. The Board may reject all bids if rejection is in the public interest.

All information submitted, excepting proprietary information, will be made available for public inspection following award of the contract.

#### **5.4.7 Pre-Opening Modification or Withdrawal of Bids**

A bidder may modify or withdraw their bid at any time before bid opening if the modification or withdrawal is received before the time and date set for bid opening at the location designated in the call for bids.

#### **5.4.8 Errors/Corrections to Bids**

After bid opening, corrections to bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to Mountain Line or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

- i. The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- ii. The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Management Services Director.

#### **5.4.9 Unsigned Bids**

Bids must be signed by an appropriate officer or authorized representative. However, unsigned bids will not necessarily be rejected if the omission was determined to be a clerical error. A signed document must be submitted declaring the clerical error and stating the offer is true in order for the bid to be evaluated for possible award.

#### **5.4.10 Late Bids**

The Request for Bids states the date, time and place assigned for the opening of bids and no bid will be accepted after the time indicated in the call. A bid will not be considered late if it can be shown that Mountain Line received the bid by the time indicated on the invitation to bids, but internally, improperly handled and/or delivered. Any late bids will not be opened, but returned to the vendor marked as late.

#### **5.4.11 Bid and Performance/Payment Bonds**

Bid and Performance/Payment bonds are normally not required for supplies, materials, equipment, and professional services. These bonds shall be required for contracts for the construction of buildings and public improvements. Bids submitted without bonding requirements will be automatically rejected. Performance/payment bonds are binding on the parties upon execution of the contract.

Payment and Performance bonds may be required for certain other bids and projects at the discretion of Mountain Line. Performance/payment bonds must be executed by a surety company authorized to do business in the State of Arizona. In lieu of a bid bond, the bidder may submit a certified check, or cashier's check.

When a bid bond is required, the bonds of the three lowest bidders are retained in a locked file by the Purchasing and Contracts Officer until award of the bid is made by the Board of Directors. However, a bidder other than the three low bidders, who has deposited a bond/surety may request his bid deposit be returned prior to the award. If the bid is for a procurement for which a contract is required, the three low deposits will be retained until the contract is executed and filed in the Purchasing Office. In case a performance/payment bond is required, deposit of successful bidder will be held until the terms of the contract are completed.

#### **5.4.12 Identical Bids**

In the event that two or more bidders offer identical bids, all bids may be rejected and new bids invited, unless it is deemed in the best interest of Mountain Line to award the bid to one of the tied bidders by using a coin toss, or to split the award if it is agreeable to both bidders and will not result in added cost to Mountain Line.

#### **5.4.13 Rejection and Cancellation of Bids**

The Board of Directors reserves the right to reject any and all bids if they consider it to be in the best interest of Mountain Line.

Prior to opening, a solicitation may be canceled in whole or in part when it is determined, in writing, that such action is in Mountain Line's best interest for reasons including, but not limited to:

- a. Mountain Line no longer requires the proposed procurement;
- b. Mountain Line can no longer reasonably expect to fund the procurement; or
- c. proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.

When a solicitation is canceled prior to opening, notice of cancellation shall be sent to all businesses solicited. The notice of cancellation shall identify the solicitation, the reason for cancellation, and where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement.

After opening, but prior to award, all bids or proposals may be rejected in whole or in part when it is determined in writing that such action is in the best interest of Mountain Line for reason including, but not limited to:

- a. The procurement is no longer required;
- b. Ambiguous or otherwise inadequate specifications were part of the solicitation.
- c. The solicitation did not provide for consideration of all factors of significance to Mountain Line;
- d. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
- e. All otherwise acceptable bids or proposals received are at clearly unreasonable prices; or
- f. There is reason to believe that the bids or proposals may not have been independently arrived at in an open competition, may have been collusive, or may have been submitted in bad faith.

A recommendation to reject any or all bids is documented by means of an explanatory letter from the Purchasing and Contracts Officer to General Manager. The reason for cancellation or rejection shall be made part of the bid file and available for public inspection.

#### **5.4.14 Rejections**

A bid may be rejected if:

- a. the bidder is determined to be non-responsible pursuant to Section 9.10.1;
- b. the bid is non-responsive in accordance with Section 6.3.6;
- c. the bid is otherwise not advantageous to Mountain Line.

A proposal, statement of qualifications or quotation may be rejected if:

- a. the person responding to the solicitation is determined to be non-responsible pursuant to Section 9.10.1;
- b. it is unacceptable;
- c. the proposed price exceeds available funds or is otherwise unreasonable;
- d. it is otherwise not advantageous to Mountain Line.

#### **5.4.15 Responsibility of Bidders and Offerors**

##### **A. Determination of non-responsibility.**

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding shall be prepared by the Purchasing and Contracts Officer. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. Factors which may be considered in determining if a prospective contractor is responsible may include but not be limited to:

1. The proposed contractor's financial, physical, personnel or other resources, including subcontracts;
2. The proposed contractor's record of performance;
3. Whether the proposed contractor is legally qualified to contract with Mountain Line;
4. Whether the proposed contractor has supplied all necessary information concerning its responsibility;
5. Whether required certifications are signed and submitted.

The final determination shall be made using Form D: Responsibility Determination Checklist by the Purchasing and Contracts Officer, or designee, and shall become part of the contract file and is made a public record.

The M Purchasing and Contracts Officer may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be stated in the solicitation.

All vendors shall be required to complete a disclosure of responsibility statement and an affidavit of non-collusion when submitting bids and proposals. See Forms for examples.

##### **B. Right of Non-disclosure.**

Mountain Line shall not disclose information regarding responsibility furnished by a bidder or offeror pursuant to this section.

##### **C. Federal Certification and Clauses.**

Mountain Line often requires bidders to respond with signed certification and clauses in order to be responsive. Bidders are responsible for verifying that all required certifications are submitted at time of bid.

If a certification is not submitted, the bidder may be ruled unresponsive, and the bid rejected. See Forms for examples of the Federal Clauses and Certifications.

#### **5.4.16 Bid Evaluation and Award**

After the bid opening, the Responsible Purchaser will prepare a detailed tabulation of all bids, which will then be reviewed by the Purchasing and Contracts Officer. In case of a difference between the unit prices and extended totals in a bid, the unit price shall prevail. In case of a difference between written words and figures in a bid, the amount stated in written words shall govern. All relevant state and local and use taxes shall be included in the final bid amount shown as this is the amount that will be used for purposes of bid evaluation. After reviewing the bids with the staff originating the request and the bid evaluation committee (if such a committee is being used), the staff will submit a recommendation for award to the lowest responsive, responsible bidder. If the scores for two or more of the highest scoring bids are within ten percent (10%) of one another, Mountain Line will conduct interviews with those bidders in order to arrive at a determination of the lowest responsive, responsible bidder before a recommendation for award is made. The recommendation must go through the Purchasing and Contracts Officer for review, then to the Board of Directors.

Upon completing a recommendation for award (or rejection of bids), the Purchasing and Contracts Officer will, in writing, notify all offerors of the recommendation.

If the low bid is found to be unacceptable, justification will be submitted in writing to Purchasing and Contracts Officer. The recommendation to the Board of Directors must contain detailed explanations as to how or why the low bid was unacceptable.

Mountain Line reserves the right to waive any minor informality in accepting bids and awarding contracts.

### **5.5 Contract Award**

The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the Request for Bids.

### **5.6 Construction Contracts**

In accordance with Title 34 of the Arizona Revised Statutes, bids will be solicited for the construction of public buildings and improvements.

Alternate Project Delivery Methods (APDM) is authorized under ARS §Title 34. These include Construction Manager at Risk (CMAR), Design Build and Job Order Contracting (JOC). See Section 6.9 for additional guidance and limitations.

In the event the low responsive and responsible bid for a construction project exceeds available funds and such bid does not exceed such funds by more than five percent (5%), the the CEO and General Manager is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive responsible bidder, in order to bring the bid within the amount of available funds.

### **5.7 Competitive Sealed Request for Proposals (RFP's)**

#### **5.7.1 General Provisions**

Competitive sealed proposals are only to be used when provided by statute or when the use of competitive sealed bidding is either not practical or not advantageous to Mountain Line as determined by the Management Services Director. This process is generally used for the procurement of professional and non-professional services.

#### **5.7.2 Request for Proposal Procedures**

Professional and/or other services with an estimated value of \$100,000 or more shall be procured through a formal request for proposals. The procedure for formal request for proposals is established for the purpose of providing an alternative method to sealed competitive bid for the purchase of professional and other services. The procedural guidelines outlined in section 6.4 Competitive Sealed Request for Bids, also apply to RFPs. As with formal bids, the Responsible Purchaser initiates the process and assists the Purchasing and Contracts Officer in creating a "Scope of Work or Services". When the RFP is ready to issue, Notice of RFP is published in the newspaper for four consecutive days, and copies of the Notice of RFP are sent to the current contractor (if applicable) and all those who have registered with Mountain Line as potential providers for the required services.

RFP's, at a minimum, include a Scope of Work, Submittal Requirements, and Evaluation Criteria. Contractual terms and conditions should be included in the RFP.

Proposals will be opened publicly at the time and place stated in the RFP. The RFP will include a statement of how the proposals will be evaluated, the relative importance of price and other factors, the general terms of the written contract, and that professional liability insurance may be required. No evaluation factors other than those listed in the RFP may be used in the evaluation.

#### **5.7.3 Evaluation of Proposals**

The RFP shall state the criteria to be used in the evaluation of the proposals and shall include their relative importance. Specific numerical weighting is not required.

##### **5.7.3.1 Evaluation Committee**

A selection committee is appointed to evaluate the proposals and make a recommendation based on the criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation.

#### **5.7.4 Proposal Addenda, Best and Final Offers, and Interviews**

Questions from offerors regarding any clarifications of the RFP will be answered prior to the opening. If any question results in a change to the scope of work, an addendum will be made and distributed to all offerors who have requested a bid packet.

Prior to award, Mountain Line may issue a written request for best and final offers. The request shall state the date, time and place for the submission of the best and final offers. Best and final offers shall be requested only once unless the Purchasing and Contracts Officer makes a written determination that it is advantageous to Mountain Line to conduct further discussions or change Mountain Line requirements. The request shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediately previous offer will be construed as their best and final offer. All persons who submitted a proposal shall be given the opportunity to submit a best and final offer if one is requested.

If the scores for two or more of the highest scoring proposals are within ten percent (10%) of one another, the evaluation committee will conduct interviews with each such proposer before recommending an award.

#### **5.7.5 Negotiations with Offerors**

The proposals will be reviewed by staff and the Purchasing and Contracts Officer, or evaluation committee. Negotiations may be conducted with vendors. Offers shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors.

Negotiations may be conducted concurrently with offerors for the purpose of determining contract award. Exclusive negotiations may be conducted with the offeror whose proposal is determined to be the most advantageous to Mountain Line. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive negotiations are conducted and an agreement is not reached, Mountain Line may enter into exclusive negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process.

A recommendation will then be made to the Board of Directors based on an evaluation of all factors stated in the RFP.

Upon Board of Director approval, award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to Mountain Line, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The bid file shall contain the basis on which the award is made.

### **5.8 Selection of Architectural-Engineering Professional Design Services**

The services of architect and engineering related services may be acquired through a qualifications based selection process, Request for Statement of Qualifications, direct selection or public competition as provided under **A.R.S. §§ 34-103 and 34-601, et seq.**

#### **5.8.1 Direct Selection**

Contracting of Architects and Engineers (A/Es) by direct selection is accomplished by selecting the consultant based on knowledge of their qualifications and experience, agreeing on a negotiated scope of work and then fixing the compensation. If agreement on scope of work or compensation cannot be agreed upon, another consultant may be selected. Ranking of firms is not required under this selection process.

#### **5.8.2 Public Competition**

Public competition includes publishing an advertisement of the competition for not less than fifteen days before the due date, stating the type and location of the work with information as to the proposed cost, and the means of obtaining full information of the proposed competition.

#### **5.8.3 Qualifications Based System**

Selection may also be made according to a Qualifications Based System (QBS) pursuant to **A.R.S. § 34-603, et seq.** Firms engaged in the lawful practice of the profession may submit an annual statement of qualifications (SOQ) and experience pursuant to **A.R.S. § 34-103(E)**. A selection committee is formed to evaluate the current SOQs on file with Internal Services. The committee should consist of at least three persons and shall comply with the requirements of **A.R.S. § 34-603(C)(2)**. The committee shall select, in order of preference and based on criteria established, a short



list of at least three firms deemed to be the most qualified to provide the services required. The selection of the short list must be based on demonstrated competence and qualifications only. If the scores for two or more of the highest scoring SOQs are within ten percent (10%) of one another, the selection committee will conduct interviews with those firms before selecting the short list. Fees, price man-hours or any other cost information may not be considered in the selection of the short list.

After a short list is selected, negotiations may commence for a contract with the highest rated firm for the required services. The negotiations shall include consideration of compensation and other contract terms and conditions Mountain Line determines to be fair and reasonable. In making this determination, Mountain Line shall take into account the estimated value, the scope, complexity and nature of the required services. If a satisfactory contract cannot be negotiated with the highest rated firm at a price or on other contract terms, negotiations shall be formally terminated. Negotiations would then be started with the next highest rated firm, in sequence, until an agreement is reached or a determination is made to reject all firms on the short list.

The provisions set forth above are intended to be complementary to the provisions of **A.R.S. § 34-603, et seq.**, and those provisions are incorporated herein. Requests for qualifications pursuant to **A.R.S. §§ 34-103 and 603, et seq.**, shall be utilized for the following, except when federal funds are used and then federal rules will apply:

- i. Architect services.
- ii. Construction-manager-at-risk construction services.
- iii. Design-build construction services.
- iv. Engineer services.
- v. Job-order-contracting construction services.
- vi. Landscape architect services.
- vii. Assayer services.
- viii. Geologist services.
- ix. Land surveying services.

### **5.9 Selection of Construction and Construction Related Services**

Mountain Line may utilize various methods for construction and construction related services including Alternate Project Delivery Methods (APDM) as authorized under ARS §Title 34. These include Construction Manager at Risk (CMAR), Design Build and Job Order Contracting (JOC). Each of these methods is subject to additional federal guidelines when project is federally funded.

When utilizing an APDM, Mountain Line will use a 2 step process to ensure compliance with federal rules for price based decision making related to construction procurements. Mountain Line will:

1. Step 1 Qualifications Based System to select firm(s) qualified to provide necessary engineering and architecture professional services: Responsible Purchaser, with assistance of the Purchasing and Contracts Officer and the Management Services Director, will first issue a Request for Qualifications (RFQ). A selection committee will be used to evaluate the qualifications. The committee should consist of at least three persons and the evaluation process shall be conducted in compliance with the requirements of A.R.S. § 34-603(c)(2). The committee shall select, in order of preference and based on criteria established, a short list of at least three firms deemed to be the most qualified to provide the services required. The selection of the short list must be based on demonstrated competence and qualifications only. If the scores for two or more of the highest scoring firms are within ten percent (10%) of one another, the selection committee will conduct interviews with those firms before selecting the short list. Fees, price man-hours or any other cost information may not be considered in the selection of the short list.
2. Step 2 Sealed Bid: After a short list is selected, a Request for Proposals will be issued to those on the short list in compliance with Arizona Revised Statutes § 34-603(F)(3). Based on the criteria set forth in the RFP, which may include price, negotiations may commence for a contract with the highest rated firm for the required services. The negotiations shall include consideration of compensation and other contract terms and conditions Mountain Line determines to be fair and reasonable. In making this determination, Mountain Line shall take into account the estimated value, the scope, complexity and nature of the required services. If a satisfactory contract cannot be negotiated with the highest rated firm at a price or on other contract terms, negotiations shall be formally terminated. Negotiations would then be started with the next highest rated firm, in sequence, until an agreement is reached or a determination is made to reject all firms on the short list.

### **5.10 Selection of Legal Services**

The services of outside legal shall be acquired by the following process.

Persons engaged in providing legal services may submit statements of qualifications and expressions of interest in providing such services. Mountain Line may specify a uniform format that profiles qualifications and assures equal opportunity for potential offerors. Persons may amend these statements at any time by filing a new statement.

Whenever practicable, Mountain Line shall give adequate notice for the need for such services. The notice shall describe the services required, list the types of information and data required of each offeror and state the relative importance of particular qualifications.

Mountain Line may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. If the scores for two or more of the highest scoring offers are within ten percent (10%) of one another, Mountain Line will conduct interviews with those offerors before making an award. Discussions shall not disclose any information derived from proposals submitted by other offerors.

The provisions of this section are not applicable to contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to a criminal prosecution or an existing or probable judicial proceeding in which Mountain Line is or may become a party or to a contract for special investigative services for law enforcement purposes.

All resultant contracts to the offeror determined in writing to be the most qualified and after negotiation of compensation, determined to be fair and reasonable, shall be placed before the Board of Directors for award.

### **5.11 Micro Purchases**

Micro purchases are defined as those transactions whose total cost (tax and shipping included) are less than \$10,000. These purchases may be completed at the purchaser level. Purchase orders are not required for micro purchases. Orders shall not be split between invoices or by multiple procurement card holders in order to avoid obtaining a purchase order. Micro purchases may be made with a Mountain Line procurement card.

Small purchases over \$10,000 and under \$100,000 shall be procured through the written quote process. No less than three businesses shall be contacted to solicit quotes from. These written quotes shall be kept on file for audit and public record retention.

### **5.12 Other professional Services**

All other professional service contracts shall be procured through the competitive sealed RFP process with pricing levels set as in section 5.7.

### **5.13 Sole Source Purchases**

#### **5.13.1 General Information**

A sole source purchase is the purchase of a commodity available from only one supplier. A purchase of this type generally is of a special nature because of the type of goods materials, or services required by the user. The user department will be required to justify, in writing, the reasons for selecting a product or service that is available from a sole source only, including obtaining the necessary Board approval as indicated in Section 1.2.

Sole source purchases are contrary to public purchasing procedures, and therefore the selection of products or services of a sole source nature must be limited as much as possible. The only justification for sole source purchases are: 1) the purchase of a sole source item is to Mountain Line's best economic interest; or, 2) the items are generally classified as "captive" source items and cannot be procured from other sources because of manufacturer marketing arrangements, patents, etc.

#### **5.13.2 Sole Source Procurement**

When an item or service is required which is thought to be available only from a single supplier, the following procedures shall be followed:

- a. For purchases with an anticipated cost of \$100,000 or less a purchase requisition shall be transmitted to the Purchasing Office indicating that only one source is known to exist. Efforts should be made by the Responsible Purchaser to locate any other possible sources, and the names of those contacted who were unable to supply the required items or services shall be noted in the comment section of the requisition, except for proprietary purchases. The Purchasing Office will review the requisition and attempt to identify any potential suppliers who are not listed on the requisition. If no other source is found a purchase order will be issued to the sole supplier who is known to be capable of filling the order.

- b. Request for sole-source purchases with an anticipated cost of over \$100,000 shall be transmitted to the Purchasing Office in requisition form in the same manner as above, with the names of potential suppliers, except for proprietary purchases, who have been contacted by the requesting department listed on the requisition. The Purchasing Office will attempt to locate any other potential suppliers, and will publish notice of the proposed purchase in the newspaper for four consecutive days, with a request that anyone who wishes to be considered as a potential supplier contact the Purchasing Office. If any supplier other than the one previously identified is found to exist, then the purchase must be done through the formal bid process. If no other suppliers are discovered, the Purchasing Office will notify the Responsible Purchaser who will then submit a request for approval of the purchase to the Board of Directors for consideration as an agenda item. If the Board approves the purchase, a purchase order will be issued.

## **5.14 Emergency Purchases of Materials and Services**

### **5.14.1 Purpose**

The purpose of this section is to enable Mountain Line to respond quickly in procuring materials and/or services when an emergency condition exists.

### **5.14.2 Definition**

The Management Services Director may authorize others to make emergency procurements if there exists a threat to public health, welfare or safety or if a situation exists which makes compliance with Sections 5.4 and 5.7 impracticable, unnecessary or contrary to public interest. Emergency procurements shall be made with as much competition as practicable under the circumstances.

Any item that is procured under this emergency clause using the reasoning that "a situation exists which makes compliance with Sections 5.4 and 5.7 impracticable, unnecessary or contrary to public interest", may be considered as a one-time opportunity purchase and must:

- a. Be capital equipment or capital equipment as part of a capital project.
- b. Clearly demonstrate that the price is significantly below market price. Two other vendor quotes shall be required.
- c. Receive the CEO and General Manager approval prior to placing the order.
- d. Receive post acquisition approval from the Board of Directors.

### **5.15.3 Procedures**

There are separate procedures to be followed for emergencies occurring during (i) regular hours, and (ii) at all other times.

- a. From Monday through Friday, 8:00 A.M. to 5:00 P.M., all emergency purchases are to be handled through the Purchasing Office. Emergency purchases will be left to the discretion of the Director. For purchases over \$100,000, the Management Services Director will advise the the CEO and General Manager of the emergency condition and request approval. The Responsible Purchaser, or Director, shall provide whatever information or assistance is deemed necessary. The Responsible Purchaser shall immediately transmit a purchase requisition with EMERGENCY indicated in the comment section and the reasons why the indicated acquisition is an emergency.
- b. In the event the emergency occurs after regular working hours and contact with the Management Services Director cannot be made, a Director may act for the Management Services Director as outlined herein:
  - i. Emergency purchases of \$100,000 or less may be authorized by the responsible Director, and confirmed by transmitting a purchase requisition marked "EMERGENCY" to the Management Services Director as soon as possible the next normal working day following the purchase date. The Director shall approve the purchase requisition and a brief but complete explanation shall be included in the requisition to support the emergency nature of the purchase.
  - ii. Approval of emergency purchases of over \$100,000 shall be limited to the the CEO and General Manager or the Deputy General Manager. A Director may proceed under procedures as outlined in section 6.11.3.b.i. above, for purchases of over \$100,000 without the prior approval of the the CEO and General Manager only in the most extreme emergency circumstances and only after all efforts to contact the the CEO and General Manager or an authorized delegate have been exhausted. The the CEO and General Manager must be notified as soon as possible of this type of emergency procurement and a report must be drafted and forwarded to the the CEO and General Manager.

## **SECTION SIX: CONTRACT FORMATION AND ADMINISTRATION**

### **6.1 Types of Contracts**

Mountain Line generally requires that all contractors use Mountain Line's independent contractor agreements which set forth many of the requirements contained in this policy, as well as certain language that is statutorily required in all government contracts. Exceptions may be made for one-time purchase of products or goods without continuing service agreements.

### **6.2 Multi-year Contracts**

Unless otherwise provided by law, a contract for materials or services may be entered into for any period of time deemed to be in the best interest of Mountain Line, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

1. Prior to use of a multi-term contract, it shall be determined that: (a) estimated requirements cover the period of the contract and are reasonably firm and continuing; (b) the contract will serve the best interests of Mountain Line by encouraging effective competition or otherwise promoting economies in Mountain Line procurement.
2. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract may be cancelled by Mountain Line and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract.

### **6.3 Contract Form and Execution**

All contracts entered into under this Policy shall be executed per Section 1.2 in the name of Mountain Line by Board of Directors, the the CEO and General Manager, the Management Services Director, or the Purchasing and Contracts Officer.

### **6.4 Cost Principles**

The Management Services Director shall establish cost principles which shall be used to determine the allowability of incurred costs for reimbursing costs under contract provisions which provide for the reimbursement of costs.

### **6.5 Cost or Pricing Data**

The submission of current cost or pricing data may be required in connection with an award in situations in which analysis of the proposed price is essential to determine that the price is reasonable and fair.

### **6.6 Assignment of Rights and Duties**

The rights and duties of a Mountain Line contract are not transferable or otherwise assignable without the written consent of the authorized signer on that contract.

### **6.7 Contract Administration**

#### **6.7.1 Principles**

Contract administration primarily consists of actions, which must be taken by the Responsible Purchaser and/or the Purchasing Office and the end user from the time a contract is awarded until the supplies, or services have been delivered and accepted, and payment has been made. Once the purchase has been made or the contract awarded, the contract administration function is the primary link between the supplier, the buyer, and the Responsible Purchaser, to handle problems arising from the procurement action.

Responsible Purchasers and their Directors are responsible for contract administration to assure that the supplier delivers the product or service to Mountain Line user in accordance with the terms and conditions of the contract issued by the Purchasing Office.

To insure consistent contractor compliance, the contract administration includes, but is not limited to the following tasks:

- a. Holding pre-performance conferences to emphasize Mountain Line requirements and contractor responsibilities under certain complex or critical contract programs.
- b. Follow up with the contractor and Responsible Purchaser on problems occurring during the period of performance. It is the responsibility of the Responsible Purchaser to document and keep records of vendor performance on contracts. This information is crucial in determining contract extensions or terminations.
- c. Upon notification from the Responsible Purchaser, supported by documentation, a letter of non-performance will be sent to a vendor who has unsatisfactorily performed on a Mountain Line contract. This notice may state

performance standards that must be satisfied by a time indicated, quantity of goods to be provided, or quality of service provided.

- d. Follow-up on past due purchase orders and expedite delivery as necessary.
- e. Take necessary actions to amend existing contracts through required approval channels.
- f. Take necessary actions to terminate existing contracts, when required, through approved channels.
- g. Resolve contract provision disputes within the authority limits granted by the Board of Directors, Arizona State Statutes, and internal procedures.

## **6.8 Contracts**

A contract is a written agreement for the procurement or disposal of supplies, services, insurance, equipment or construction. To be effective and legal, a contract must include offer and acceptance by competent parties and the furnishing of some good or service for an agreed monetary consideration. Contracts shall include provisions necessary to define the rights of the parties to the contract. All services provided to Mountain Line, by outside agencies, firms or individuals shall be on a contractual basis.

Generally Mountain Line utilizes only "fixed price" contracts, but might in a special instance, because of market conditions, utilize a contract with price increase provisions.

A fixed price contract is used when the extent and type of work necessary can be reasonably specified and the cost reasonably estimated. Any time there is a price increase under these contracts, there must be supporting documentation from the vendor showing an increased price for raw materials from their supplier. Escalator clauses relating to the Consumer Price Index may be included in the contract language.

A Requirements contract is a fixed price agreement set up to provide for recurring purchases of indefinite quantities from the same supplier for a specified period of time.

A cost-plus-a-percentage-of-cost provides reimbursement to the supplier for their actual cost plus an agreed-upon percentage of the costs of the supplier's overhead and profit. The use of cost-plus-a-percentage-of-cost contract is prohibited.

## **6.9 Termination of a Contract**

Terminating a contract is normally the last alternative after all other administrative means have been sought to resolve a problem between Mountain Line and a contractor. There are two reasons for terminating or canceling a Mountain Line contract: for convenience, and for cause (default).

### **6.9.1 Terminating for Convenience**

There are three types of terminations for convenience used by Mountain Line:

- a. Mutual Convenience: An example of this type is where both parties agree that the contractor is no longer able to provide the service or product under an existing contract.
- b. Unilateral Mountain Line Convenience: Depending upon the terms of the written contract, this type of termination may occur whenever Mountain Line determines that termination is in the best interests of Mountain Line or that funds are not available.
- c. Unilateral cancellation: This type of termination is when funding becomes insufficient to complete the contract.

### **6.9.2 Terminating for Cause**

This type of termination is employed when the contractor is in default or breach of contract. The Responsible Purchaser will make recommendation of termination to the Purchasing and Contracts Officer, who will determine reasonability of cancelation. Depending upon the situation and the terms of the written contract, it is Mountain Line's standard practice that a cure notice be sent via certified mail by the Purchasing Office to the contractor. This notice shall set forth the details regarding the deficiencies, with the dates and background information supporting non-performance or substandard performance. A firm cure date must be established for correction of the deficiencies. The period must be of a reasonable length of time to cure the deficiencies; normally the time period varies from ten to thirty days, depending upon the individual circumstances of each case. Assuming the contractor does not cure the deficiencies to the satisfaction of Mountain Line, the Purchasing and Contracts Officer will then send a show cause letter by certified mail to the contractor, wherein the contractor is requested to show cause as to why their contract should not be terminated. The Purchasing and Contracts Officer will then establish another deadline date for an answer to the show cause letter; usually five to ten days. Unless the contractor shows sufficient cause why the contract should not be terminated for cause, the Purchasing and Contracts Officer will initiate the necessary steps to terminate the agreement and document the final action accordingly.

In all termination actions, the Purchasing and Contracts Officer must rely on the Responsible Purchaser to provide the necessary documentation to justify contractual decisions that are made. The Purchaser and other end users are the "eyes and ears" of Mountain Line, expressing satisfaction or dissatisfaction with contractor performance. The Purchasing and Contracts Officer either resolves the problem or recommends termination of the appropriate contract to the Board of Directors or contract approver.

The usual procedure for terminating a contract is by no means the exclusive method. The action taken will always depend upon the written terms of the contract, and the actual, factual situation presented. Mountain Line reserves the right to employ all other available mechanisms and remedies to deal with a breach of contract.

#### **6.10 Contract Periods**

Contracts should be for periods of time that coincide with Mountain Line's fiscal year whenever practical. Contracts whose renewal terms span more than one fiscal year must include language noting that the continuation of the contract is subject to non-appropriation. Contracts may have renewal clauses, but each individual renewals should not exceed five years, and total duration of contract should not exceed fifteen years.

[Go to top](#)

## **SECTION SEVEN: SPECIFICATIONS**

### **7.1 Definition**

As used in this Section, "specification" is used interchangeably with "scope" or "scope of work" and means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery.

### **7.2 Maximum Practicable Competition**

All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying Mountain Line's needs and shall not be unduly restrictive.

To the extent practicable and unless otherwise permitted by this Policy, all specifications shall describe Mountain Line's requirements in a manner that does not unnecessarily exclude a material, service, or construction item.

Proprietary specifications shall not be used unless the Purchasing and Contracts Officer determines in writing that such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of proprietary specifications.

To the extent practicable, Mountain Line shall use accepted commercial specifications and shall procure standard commercial materials.

### **7.3 Specifications Prepared by Other Than Mountain Line Personnel**

All specifications, including those prepared by architects, engineers, consultants and others for public contracts, or subcontractors, shall seek to promote overall economy for the purposes intended and encourage competition in satisfying Mountain Line's needs and shall not be unduly restrictive. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.

### **7.4 Brand Name or Equal Specification**

A brand name or equal specification may be used when the Purchasing and Contracts Officer determines that use of brand name or equal specifications is advantageous to Mountain Line.

A brand name specification may be prepared and utilized only if a written determination is made that only the identified brand name item will satisfy Mountain Line's needs.

[Go to top](#)

## **SECTION EIGHT: LEGAL AND CONTRACTUAL REMEDIES**

### **8.1 Protest of Award**

Any bidder objecting to the recommendation of award, rejection of a bid, solicitation procedures of a bid, or any portion thereof (the Protester), must submit a written protest to the Management Services Director. The protest must be filed with the Management Services Director within five (5) business days from notification of the recommendation. This protest must be submitted prior to the Board of Directors meeting at which the recommendation is on the agenda for award or rejection, or submitted to the CEO and General Manager as delegation permits.

The written protest shall contain the following information:

1. The name, address and telephone number of the protester; and
2. The signature of the protester or its representative; and
3. Identification of the solicitation number; and
4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. The form of relief requested.

### **8.2 Timeframe for Filing of Protests**

#### **8.2.1 Protests Concerning Improprieties in a Solicitation.**

Protests based upon alleged improprieties in a solicitation that are apparent before the solicitation due date shall be filed not less than five (5) working days before the solicitation due date.

Otherwise, protests shall be filed within ten (10) days after issuance of notification of award or issuance of notice of intent to award, as applicable.

The Management Services Director, without waiving Mountain Line's right to dismiss the protest for lack of timeliness, may consider any protest that is not filed timely.

The Management Services Director shall give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. Interested parties have the right to intervene in the proceedings.

### **8.3 Stay of Procurements During a Protest**

In the event of a timely protest Mountain Line may proceed further with the solicitation or with the award of the contract unless the Management Services Director makes a written determination that there is a reasonable probability that the protest will be sustained or that the stay of procurement is not contrary to the substantial interests of Mountain Line.

### **8.4 Confidential Information**

Material submitted by a protestant shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law as determined pursuant to Section 1.7 (Confidential Information).

If the protestant believes the protest contains material that should be withheld, a statement advising the Management Services Director of this fact shall accompany the protest submission in accordance with Section 1.7.

### **8.5 Decision by the Management Services Director**

The Management Services Director shall issue a written decision within fourteen (14) days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.

The Management Services Director shall furnish a copy of the decision to the protestant, by certified mail, return receipt requested, or by any other method including facsimile or electronically, that provides evidence of receipt. The written determination of the the CEO and General Manager shall be final.

The Management Services Director may schedule, but is not required to, a hearing on the appeal, if the Management Services Director deems it appropriate.

The time limit for decisions set forth may be extended by the Management Services Director for a reasonable time, not to exceed thirty days. The Management Services Director shall notify the protestant in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.



The Management Services Director may dismiss a protest, upon written determination if:

- A. The protest does not state a valid basis for protest; or
- B. The protest is untimely (not within five (5) business days from notification); or
- C. The possible remedies would unfairly prejudice other interested parties, impact the integrity of the procurement system, or have a serious detrimental effect on the good faith of the parties, cost to Mountain Line, the urgency of the procurement, and the impact of the relief upon the using Division.

### **8.6 Remedies**

If the Management Services Director sustains the protest in whole or part and determines that a solicitation or proposed contract does not comply with the policy, the recommendation for award shall be stayed and an appropriate remedy shall be implemented.

In determining an appropriate remedy, the Management Services Director shall consider all the circumstances pertaining to the proposed procurement including but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, cost to Mountain Line, the urgency of the procurement, and the impact of the relief upon the using department.

An appropriate remedy may include one or more of the following:

1. Withdraw staff recommendation, and reissue the solicitation;
2. Withdraw staff recommendation, and issue a new solicitation;
3. Withdraw staff recommendation, and recommend award of contract consistent with Mountain Line Purchasing Policy;  
or
4. Such relief as is determined necessary to ensure compliance with this section.

### **8.7 Appeals to the CEO and General Manager**

If the determination of the Management Services Director is not satisfactory to the party submitting the protest, an appeal with the the CEO and General Manager may be requested. The appeal must contain the same information listed in Section 9.1 and a copy of the decision of the Management Services Director. The appeal must contain the precise factual or legal error in the decision of the Management Services Director from which an appeal is taken.

This appeal must be made within ten (10) business days from receipt of the Management Services Director's determination.

The same remedies are available as listed in Section 9.6. The the CEO and General Manager shall give notice of the appeal to the successful contractor if award has been made or, if no award has been made, to interested parties. Such interested parties shall have the right to request copies of the appeal and to intervene in the proceedings.

The written determination of the the CEO and General Manager shall be final.

### **8.8 Filing of a Contract Claim**

#### **8.8.1 Content of Claim**

The claim shall be in writing and shall include the following information:

1. The name, address, telephone number and email address of the claimant;
2. The signature of the claimant or its representative;
3. Identification of the solicitation or contract number;
4. A detailed statement of the legal and factual grounds of the claim including copies of relevant documents; and
5. The form of relief requested.

#### **8.8.2 Management Services Director Decision**

If a contract claim cannot be resolved by mutual agreement, the Management Services Director shall, upon a written request by the contractor for a final decision, issue a written decision no more than sixty days after the request is filed. Before issuing a final decision, the Management Services Director shall review the facts pertinent to the contract claim or controversy and secure any necessary assistance from legal, financial, procurement, and other advisors.

#### **8.8.3 Final Decision**

The Management Services Director shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall include:

1. A description of the claim;
2. A reference to the pertinent contract provision;
3. A statement of the factual areas of agreement or disagreement;
4. A statement of the Management Services Director's decision, with supporting rationale;
5. A statement regarding the appeals process that is available pursuant to this Article.

#### **8.8.4 Issuance of a Timely Decision**

The time limit for decisions set forth may be extended for good cause. The Management Services Director shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision is anticipated.

If the Management Services Director fails to issue a decision within sixty days after the request on a claim is filed or within the time prescribed under Section 9.8.2, the contractor may proceed as if the Management Services Director had issued an adverse decision.

#### **8.8.5 Appeals to the the CEO and General Manager**

An appeal of a final decision of the Management Services Director on a claim shall be filed with the CEO & General Manager within five business days from the date the decision is received. The appellant shall also file a copy of the appeal with the Management Services Director.

##### **8.8.5.1 Content of Appeal**

The appeal shall contain a copy of the decision of the Management Services Director and the basis for the precise factual or legal error in the decision of the Management Services Director from which an appeal is taken.

The the CEO and General Manager may assign the claim to a hearing in accordance with Section 9.8.1 or to mediation services in accordance with Section 9.9.2 or to arbitration in accordance with Section 9.9.3.

#### **8.9 Mountain Line Claims Against a Contractor**

All contract claims asserted by Mountain Line against a contractor that are not resolved by mutual agreement shall promptly be referred by the Purchasing and Contracts Officer to the Mountain Line the CEO and General Manager for action as described in following sections.

##### **8.9.1 Hearing**

Hearings on appeals of claims decisions shall be conducted in accordance with Section 8.17.

##### **8.9.2 Mediation**

Contract claims may be resolved utilizing mediation services if the the CEO and General Manager determines the use of such services is in the best interest of Mountain Line.

##### **8.9.3 Arbitration**

Contract claims may be resolved utilizing arbitration if the the CEO and General Manager determines the use of arbitration is in the best interest of Mountain Line. The claim shall be settled by arbitration in accordance with the current construction industry arbitration rules of the American Arbitration Association or, at the option of Mountain Line, in accordance with the provisions of the Arizona Revised Statutes, Article I, Chapter 9, Title 12.

#### **8.10 Responsibility of Bidders and Offerors**

##### **8.10.1 Determination of Non-Responsibility**

If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Purchasing and Contracts Officer. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. Factors which may be considered in determining if a prospective contractor is responsible may include but not be limited to:

- i. The proposed contractor's financial, physical, personnel or other resources, including subcontracts;
- ii. The proposed contractor's record of performance;
- iii. Whether the proposed contractor is legally qualified to contract with Mountain Line;
- iv. Whether the proposed contractor has supplied all necessary information concerning its responsibility.

The final determination is made by the Purchasing and Contracts Officer and shall become part of the contract file and is made a public record.

The Purchasing and Contracts Officer may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be stated in the solicitation.

All vendors shall be required to complete a Statement Regarding Responsibility and Compliance with Immigration and Anti-Terrorism Laws and an Affidavit of Non-collusion when submitting bids and proposals. See the Forms section of this policy for examples.

#### **8.10.2 Right of Non-disclosure**

Mountain Line shall not disclose information regarding responsibility furnished by a bidder or offeror pursuant to this section.

### **8.11 Suspension and Debarment of Vendors**

#### **8.11.1 Purpose**

The purpose of this section is to provide for the suspension and debarment of any person or firm from consideration for awards for Mountain Line contracts. This action shall be based upon certain types of criminal convictions, civil judgments or contract violations, or for any other cause deemed to affect responsibility as a Mountain Line contractor.

#### **8.11.2 Authority to Debar or Suspend**

The Purchasing and Contracts Officer is delegated the authority to debar or suspend a party from participating in Mountain Line procurement.

#### **8.11.3 Causes for Debarment or Suspension**

The causes for debarment or suspension include, but are not limited to, the following: The causes for debarment or suspension include, but are not limited to, the following:

- A. Conviction of any person or subsidiary or affiliate of any person for commission of a criminal offense arising out of obtaining or attempting to obtain a public or private contract or subcontract, or in performance of such contract or subcontract.
- B. Conviction of any person or any affiliate of any person under any statute of the federal government, this state or any other state for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, or receiving stolen property; or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Mountain Line contractor and which conviction arises out of or obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- C. Conviction or a civil judgment finding a violation by any person or any subsidiary or affiliate of any person under state or federal antitrust statutes; arising out of the response to a solicitation.
- D. Violations of contract provisions of a character which are deemed to be so serious as to justify debarment action, including, but not limited to, the following:
  1. Abandonment of a contract without good cause; or
  2. Knowingly failing without good cause to perform in accordance with the specifications or within the time limits provided in; or
  3. Failure to perform or unsatisfactory performance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
- E. A determination by the Arizona Registrar of Contractors that the contractor has violated the provisions of ARS 32-1121 et seq.
- F. Any other cause that the Purchasing and Contracts Officer reasonably determines to be so serious and compelling as to affect responsibility as a Mountain Line contractor, including suspension or debarment of such person or any affiliate of such person by another governmental entity for any cause listed in this Section.

#### **8.12 Matters Not Proper for Debarment or Suspension**

Any conviction or judgment dated more than three (3) years prior to the notice of suspension or notice of debarment shall not be a basis for any debarment or suspension of a person or an affiliate of a person.

#### **8.13 Period of Debarment**

The period of time for debarment shall not exceed three years from the date of the determination.

If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by the other debarring agency.

#### **8.14 Notices to Vendor**

If the Purchasing and Contracts Officer implements a debarment, the Purchasing and Contracts Officer shall notify the person in writing within seven days of the debarment action by certified mail, return receipt requested or by any other method that provides evidence of receipt. The person may submit a request to the Purchasing and Contracts Officer for an administrative hearing within fourteen days of issuance of the debarment action. If a hearing is granted, it shall be conducted in accordance with this Section.

If the Management Services Director proposes to debar a vendor, the vendor shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances.

The vendor shall in writing, advise the Purchasing and Contracts Officer within thirty (30) days of receipt of the notice of a hearing of its intention to appear under 8.17 of this Section. Failure to provide written notice of appearance within the thirty-day period shall be a waiver of the right to appear in the hearing.

#### **8.15 Imputed Knowledge**

Improper conduct by a person may be imputed to a vendor for purposes of debarment where the impropriety occurred in connection with the vendor's duties for or on behalf of, or with the knowledge or approval of, the contractor.

The improper conduct of a person or its affiliate having a contract with a contractor may be imputed to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, or approval, of, the contractor.

#### **8.16 Reinstatement.**

The Purchasing and Contracts Officer may at any time after a final decision on debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.

Any debarred person may request reinstatement by submitting a petition to the Purchasing and Contracts Officer supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.

The Purchasing and Contracts Officer may require a hearing on the request for reinstatement.

The decision on reinstatement shall be in writing and specify the factors on which it is based.

#### **8.17 Hearing Procedures**

If a hearing is required or permitted under this Section, the Purchasing and Contracts Officer shall appoint a Hearing Officer, based upon the case, qualifications and experience of the officer if independent of Mountain Line employment..

If a hearing is required or permitted under this Section, the Hearing Officer shall arrange for a prompt hearing and notify the parties of the time and place of the hearing.

The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.

The Hearing Officer may:

- A. Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- B. Require parties to state their positions concerning the various issues in the proceeding;
- C. Require parties to produce for examination those relevant witnesses and documents under their control;
- D. Rule on motions and other procedural items on matters pending before such officer;
- E. Regulate the course of the hearing and conduct of participants;
- F. Establish time limits for submission of motions or memoranda;
- G. Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
  - i. Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
  - ii. Excluding all testimony of an unresponsive or evasive witness; and
  - iii. Expelling the person from further participation in the hearing;
- H. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice;
  - i. Administer oaths or affirmations; and
  - ii. Assess or apportion damages or costs associated with the hearing matter or the proceedings to the parties involved.

A transcribed record of the hearing shall be made available at cost to the requesting party.

#### **8.17.1 Recommendation by the Hearing Officer**

The Hearing Officer shall make a recommendation to the Purchasing and Contracts Officer based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.

The Purchasing and Contracts Officer may affirm, modify, or reject the Hearing Officer's recommendation in whole or in part, may remand the matter to the Hearing Officer with instructions, or make any other appropriate disposition.

#### **8.17.2 Final Decision by the Purchasing and Contracts Officer**

A decision by the Purchasing and Contracts Officer shall be final. The decision shall be sent to all parties by certified mail, return receipt requested or by any other method that provides evidence of receipt. The decision shall state that any party adversely affected may within ten days request a rehearing with the Purchasing and Contracts Officer. If a stay was issued, the final decision by the Purchasing and Contracts Officer shall lift any such stay, unless the Purchasing and Contracts Officer determines that the continued stay is necessary to protect the substantial interest of Mountain Line.

#### **8.17.3 Judicial Review**

Any final decision of the Purchasing and Contracts Officer of a protest or debarment under this Policy is subject to judicial review in accordance with A.R.S. Title 12 by any party to the proceeding. Exhaustion of the procedures set forth in this Policy shall be a condition precedent to seeking judicial review and the complaint seeking review shall be filed within thirty (30) days of a final decision by the Purchasing and Contracts Officer.

#### **8.17.4 Exclusive Remedy**

Notwithstanding any law to the contrary, this Section shall provide the exclusive procedure for asserting a claim or cause of action against Mountain Line arising in relation to any procurement conducted under this Chapter.

### **8.18 FTA Clause**

In accordance with the requirement of 49 CFR 29 subpart C, a suspension and debarment clause will be included in all procurement solicitations and agreements exceeding \$100,000 and any subcontracts that exceed \$100,000.

Additionally, all vendors submitting goods or services valued over \$100,000 may not be excluded or disqualified from participation in federally funded programs. Vendors must certify against own suspension and debarment as well as include the language of the federal requirement in all subcontracts, requiring same certification and verification.

The Suspension and Debarment Certification can be found in Forms. The certification required must be completed and returned by vendor with their proposal.

The Purchasing and Contracts Officer will verify the certification of the vendor using the Excluded Parties List System. The verification will be printed and maintained with the procurement file. Vendors found on the list will be rejected immediately and barred for contracting with Mountain Line until such time as the suspension or debarment is lifted.

### **8.19 Notice of Legal Matters**

The Contractor must give notice to NAIPTA and FTA of any current or prospective legal matters that may affect the Federal government. This requirement is applicable to all procurement transactions expected to equal or exceed \$25,000."

[Go to top](#)

## **SECTION NINE: LEASING**

### **9.1 General Information**

A lease/purchase financing agreement is a contract by which one party conveys property to another for a period of time in exchange for the payment of interest and a portion of principal on the purchase price of the property.

The use of lease/purchase financing will be limited to those situations in which it is in Mountain Line's best interest to secure third party financing. Purchases made with lease purchase financing are made using the same purchasing guidelines as other purchases.

### **9.2 Procedural Information**

Responsible Purchasers must submit requests to use lease purchase financing to the Management Services Director.

Upon approval, the Management Services Director will forward the approval to the Responsible Purchaser and the Purchasing Office. Staff will then submit a requisition to Internal Services for procurement of the equipment.

### **9.3 Rental of Equipment**

Equipment should only be rented to fill short-term equipment needs. This may include one-time, short-term needs or short term needs that may be re-occurring in which the rental of equipment is more cost effective than ownership of the equipment.

### **9.4 Leasing of Buildings**

The Board of Directors has delegated authority to the CEO and General Manager to negotiate lease contracts up to \$100,000. Any lease that exceeds \$100,000 must be done through the RFP process. The Board of Directors must award all lease contracts.

[Go to top](#)

## **SECTION TEN: COOPERATIVE PURCHASING**

### **10.1 Intergovernmental Agreement (IGA)**

A cooperative purchasing IGA allows Mountain Line to make purchases using the results of bids and RFPs from other governmental agencies. When it is in Mountain Line's best interest, using a bid or RFP from another agency with which Mountain Line has an IGA may be used. This allows Mountain Line to purchase like goods and services without going through the bid process, which has already been done by the agreeing agency. The vendor must agree to sell the goods at the same price. The bid or RFP from the other agency must have been let within the last twelve (12) months.

Mountain Line's Attorney and Purchasing and Contracts Officer will review cooperative purchases to determine whether the standard contract or the vendor's cooperative contract is most appropriate to use.

### **10.2 Intergovernmental Purchasing Agreements Required**

Mountain Line is not authorized to participate in cooperative purchasing unless, prior to the solicitation, an Intergovernmental Purchasing Agreement is executed between the parties. All agreements entered into pursuant to this Article shall be approved by the Board of Directors.

### **10.3 Cooperative Purchasing Authorized**

Mountain Line may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services, or construction with one or more eligible procurement units in accordance with an agreement entered into between the participants. Parties under a cooperative purchasing agreement may:

- A. Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services, or construction.
- B. Cooperatively use materials or services.
- C. Commonly use or share warehousing facilities, capital equipment and other facilities.
- D. Provide personnel, except that the requesting eligible purchasing unit may pay the public purchasing unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.

[Go to top](#)

## **SECTION ELEVEN: MATERIALS MANAGEMENT**

### **11.1 General Provisions**

The Purchasing and Contracts Officer shall develop and administer procedures governing:

1. The management of materials during their entire life cycle.
2. The acquisition and distribution of federal surplus materials.
3. The sale, lease, trade-in, or disposal of surplus, scrap and salvage materials as provided by statute A.R.S. 11-251.
4. The transfer or trade-in of excess materials, surplus materials and fixed assets.

### **11.2 Disposition**

The Board of Directors acts in all matters pertaining to the disposition of surplus materials as provided by statute. The disposition of surplus materials shall be as follows:

1. Surplus materials shall be disposed of as provided by law. Only certified funds or cash shall be accepted for sales of surplus property.
2. Auctions shall be advertised in accordance with statutory provisions. When making sales by auction, the solicitation shall specify all terms and conditions of any sale.
3. Materials to be disposed of by trade-in to a vendor for credit on an acquisition shall be subject to the same approval levels set forth for contract approvals as in section 1.2. For credit amounts under \$10,000, the Operation Managers may approve, from \$10,000 to \$30,000 the Management Services Director or Purchasing and Contracts Officer may approve, from \$30,000 to \$100,000 the CEO and General Manager may approve, and any credit amount exceeding \$100,000, the Board of Directors must approve.

Without public auction, by unanimous approval of the Board of Directors, property may be sold or leased or donated to any other duly constituted governmental entity including the State, cities, towns or other counties; or Mountain Line property may be sold, leased or donated to any charitable, social or benevolent nonprofit organization in or operating in this State.

Mountain Line may acquire Federal or State Surplus Property as may be usable and necessary for public purposes. These acquisitions can only be made by authorized Directors.

Notwithstanding any other provision surplus, unclaimed, or lost property not needed by using departments may be disposed of through a donation process provided that any such noncompetitive disposition is made pursuant to a request submitted to the Management Services Director or Purchasing and Contracts Officer for review, approval of the the CEO and General Manager, and for assets exceeding \$100,000 in retained value, approval by the Board of Directors. The Board of Directors shall consider the monetary loss to Mountain Line and determine whether such disposition is in the public interest.

[Go to top](#)



## **SECTION TWELVE: FEDERAL CLAUSES**

### **12.1 Required Clauses**

All FTA funded procurements require the incorporation of certain clauses that can be found in the FTA master agreement. The exact clauses that are required for a particular procurement, e.g., the purchase of rolling stock or the construction of a facility, can be found in the *Best Practices Procurement Manual*. This resource, published by FTA and updated regularly, describes the full range of the type of procurements Mountain Line may encounter. At the beginning of the new fiscal year or at such time as the are issued Certifications and Assurances, updates and amendments to the Master agreement or 4220.1E., it will be the Purchasing and Contracts Officer responsibility, along with the Management Services Director, to review the master agreement and FTA C 4220.1E and its further amendments to ensure that any new clauses are identified and incorporated as appropriate in Mountain Line procurements.

### **12.2 Selection of FTA Clauses**

The Purchasing and Contracts Officer will ensure that the required and appropriate clauses are incorporated in all solicitations before being released to the public and sent to interested vendors. Micro-purchases may include basic boilerplate that is embedded in the purchase order.

Some commonly used clauses are listed below. The examples are not exhaustive of federal clauses and each procurement will specifically be evaluated to ensure applicable clause(s) are captured.

#### **12.2.1 Suspension/Debarment**

The Suspension/Debarment clause/certification will be included in all FTA-funded procurement solicitations and agreements exceeding \$25,000 and any subcontracts that exceed \$25,000. This addresses the requirements of 49 CFR 29 subpart C.

#### **12.2.2 Lobbying**

The Lobbying certification will be included in all procurement solicitations and agreements exceeding \$100,000 and any subcontracts that exceed \$100,000. This addresses the requirements of 49 CFR 20.

#### **12.2.3 Disadvantaged Business Enterprise (DBE)**

The Disadvantaged Business Enterprise certification will be included all procurement and agreements as well as all subcontracts. This addresses the requirements of 49 CFR 26.

#### **12.2.4 Buy America**

The Buy America certification will be included in all procurement solicitations and agreements exceeding \$100,000 and any subcontracts that exceed \$150,000. This addresses the requirements of 49 USC 5323.j and 49 CFR 661.

#### **12.2.5 Davis Bacon Wage**

The Davis Bacon Wage requirements will be included all procurement and agreements as well as all subcontracts for construction services. This addresses the requirements of 29 CFR 5.5(a).

[Go to top](#)

## **GLOSSARY**

Addendum – An addition or supplement to a document typically used for bids and RFPs.

Auction – A public sale of property to the highest offeror.

“Best interest of Mountain Line” – A term used in the absence of specific authority or instruction, to authorize an official to use discretion in taking action deemed to be most advantageous.

Bid – An offer submitted in response to a notice of call for bids; can become a contract upon acceptance by Mountain Line.

Bid Bond – A written agreement or check by which a third party guarantees that a bidder will accept a contract as bid, if it is awarded.

Bid Opening – The public opening of bids which are recorded and made available for public inspection.

Bidders List – A list of names and addresses of suppliers from whom bids, proposals and quotations might be expected.

Business - Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Capital Outlay Buying - Machinery, equipment, and vehicles with a usual life exceeding one year and costing more than \$1,000. Also included is land, buildings, and improvements other than buildings costing more than \$5,000.

Change Order - A written modification to a contract which directs a contractor to make changes in the work within the general scope of the contract. The cost impact to the contract is also established.

Collusion – A secret agreement to commit a fraudulent, deceitful, unlawful, or wrongful act.

Competitive Sealed Bid (Bid) - A process used to award contracts for the procurement of supplies, materials and non-professional services over one-hundred thousand dollars to the lowest responsive and responsible bidder. This is the most preferred method of procurement.

Competitive Sealed Request for Proposals (RFP) - A process used to award contracts for the procurement of professional services in amounts over one-hundred thousand dollars. The process includes advertising notice of RFP, evaluating proposals received, negotiating proposals with acceptable or potentially acceptable offerors, and awarding the contract after consideration of evaluation factors in the RFP and price.

Conflict of Interest – The actual or potential conflict in which a person – any gain from (or hold interest in) a company doing business with their employer. Reference § A.R.S 38-501 et seq.

Construction - The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property. Construction does not include the routine operation, repair or maintenance of existing structures, buildings or real property.

Contract – An agreement between parties, usually written, with binding legal and moral force; usually exchanging goods or services for money or other consideration.

Contract Administration – The management of all actions, after the award of a contract that must be taken to assure compliance with the contract, including timely delivery, acceptance, payment, and closing the contract.

Contractor - Any person or business who agrees to furnish goods or services for a certain price; may be a prime or sub-contractor.

Cooperative Purchasing – The combining of requirements of two or more political entities in order to obtain the benefits of volume purchases and/or reduction in administrative expenses.

Debarment - An action taken by Mountain Line to prohibit a person or business from participating in Mountain Line procurement due to previous illegal or irresponsible action.

Department - Any Mountain Line office, division, or department.

**Escalation Clause** – A contract provision which permits the adjustment of contract prices by an amount or percent if certain specified contingencies occur, such as changes in the vendor's raw material costs.

**Ethics** – The study of human conduct which deals with right and wrong; the philosophy of dealing with moral conduct, duty and judgment; conforming to professional standards of conduct.

**Fraud** – A deliberate misrepresentation of the truth, or a fact, intended to make money, rights privilege or property away from another person(s).

**Informal bid** – a request for price quotations for goods or services that does not require a sealed bid, public opening or reading.

**Lease Purchase** – A rental contract in which payments are applied as installment payments for equity or ownership upon completion of the agreement.

**Minor Informalities** - A mistake excluding a judgmental error, that has no or negligible effect on price, quantity, quality, delivery, or other contractual terms. The waiver or correction must not prejudice other bidders or offerors.

**Non-professional Services** - Services not requiring special licensing or certification, such as, but not limited to, clerical services.

**Offeror** – A person or business that makes an offer.

**Qualifications Based System (QBS)** – The lawful process for selection of design professionals by public owners in Arizona. It is a negotiated procurement process for selection based on qualifications and competence in relation to the work performed. Price is not allowed to be used as an evaluation criterion in a QBS, but is negotiated after the highest rated firm is selected.

**Performance Bond** – A contract of guarantee, executed subsequent to award by a successful bidder to protect the buyer from loss due to the bidder's inability to complete the contract as agreed.

**Procurement** – The combined functions of purchasing, inventory control, traffic and transportation, receiving, receiving inspection, and salvage and disposal operations.

**Professional Services** - Services that exacts the use or application of special learning or skills. Examples of professional services include, but are not limited to, architects, engineers, medical services, legal services and consultants.

**Protest** – A complaint about governmental administrative action or decision brought by a bidder or vendor, with the intention of receiving a remedial result.

**Purchasing** – The act and function of responsibility for the acquisition of equipment, materials, supplies and services.

**Purchasing Manual** – A document, adopted by the Board of Supervisors, which stipulates rules for purchasing relations with suppliers, other departments and the public, and prescribes the policies to follow.

**Purchase Requisition** - An electronic document used by departments to request that a contract be entered into for a specific need, and any include, but not limited to, the description of the requested item, cost, quantity, vendor name, delivery schedule, shipping instructions, and departmental account number.

**Relative** - Husband, wife, parent, brother, sister, child, stepchild, grandparent, grandchild of employee, or parent of employee's spouse.

**Responsible Bidder or Offeror** – A bidder whose reputation, past performance, and business and financial capabilities are such that the bidder would be judged to be capable of satisfying the Mountain Line's need for a specific contract.

**Responsive Bidder or Offeror** - A person or business who submits a bid or proposal which conforms in all material respects to the Request for Bids or request for proposals.

**Salvage** – Property having some value in excess of its basic material content, but is in such condition that it has no reasonable prospect of use for any purpose as a unit, and its repair or rehabilitation for use is clearly impractical.

**Scrap** – Materials damaged defective or deteriorated to the extent that it has no value except for its basic material content.

Specification - Any description of the physical or functional requirements or characteristics of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing, or preparing a material, service or construction item for delivery.

Subcontract – Any contract agreement or purchase order with other than a prime contractor, calling for the performance of any work, or for the furnishing of any material, required for the performance of a prime contract.

Suspension - An action taken by the Mountain Line, temporarily disqualifying a person from participating in Mountain Line procurement.

Terms and Conditions – a phrase generally applied to the rules under which all bids must be submitted and the stipulations, included in most purchase contracts, often published by the purchasing office for the information of all potential bidders.

Term of Contract – Time period covered by a contract.

Terms of Contract – Stipulations made in a contract.

Value Analysis – An organized effort directed at analyzing the function of systems, products, specifications, standards, practices and procedures for the purpose of satisfying the requires function at the lowest total cost of effective ownership consistent with requirements for performance, reliability, quality and maintainability.

Unauthorized Order - Any order placed which does not conform to this policy manual.

## **FORMS**

Form A: Method of Procurement Decision Matrix

Form B: Independent Cost Estimate

Form C: Fair and Reasonable Determination

Form D: Responsibility Determination Checklist

Disclosure of Responsibility Statement

Affidavit of Non-Collusion

Federal Clauses and Certifications

Vendor Evaluation

[Go to top](#)

**Form A: Method of Procurement Decision Matrix**

Project Name:

Method of Procurement Matrix: To best determine which method of procurement is suitable, classify your situation by checking off the appropriate boxes below. In order for the selected method to be suitable, all elements of selected process must apply.

- #1: Micro Purchase: < \$10,000 AND Multiple Sources
- #2: Small Purchases and Solicitations: Competitive Procurement  
> \$10,000 AND Multiple Sources AND Not an emergency  
\*\* 100k or greater requires SEALED bid/proposal
  - Option A: Quotations/Catalog/Web, Request for Quotes (RFQ) or Request for Bid (RFB):  
Complete and adequate specifications or purchase description - Two or more responsible bidders willing to compete - Selection can be made on basis of price - Procurement suitable for firm/fixed price - No discussion with bidders needed after receipt of offer
  - Option B: Competitive Proposals (RFPs) or Statement of Qualifications (SOQ):  
Complete specifications not feasible - Bidder input needed for specifications - Two or more responsible bidders willing to compete - Discussion needed with bidders after receipt of proposals, prior to award - Fixed price can be set after discussions
  - Option C: Time and Materials Contract (subset of RFP):  
Fixed Price cannot be set for work - Complete extent of work unknown, whether time or material use, or both
- #3: Sole Source:  
OEM, custom item - Only one source available - Approved by FTA-Sole Source - Public exigency issue/emergency - Competition is inadequate after public solicitation
- #4: Emergency Procurement: (subset of sole source):  
Health or Safety issue that prohibits delay
- #5: Option, Change Order, Amendment, Extension: (subset of sole source):  
Prior Purchase Date and PO (if applicable): \_\_\_\_\_  
Justification/Reason: \_\_\_\_\_

Comments/Reason for Procurement Method: \_\_\_\_\_

Prepared by: \_\_\_\_ Title: \_\_\_\_  
Date: \_\_\_\_\_

[Go to top](#)

**Form B: Independent Cost Estimate**

Procurement Type:  Goods OR  Services

Date of Estimate: \_\_\_\_\_

Description of Purchase, including Procurement #: \_\_\_\_\_

Method of Obtaining Estimate: I obtained the following estimate from....

- Published Price List/Past Pricing (date) \_\_\_\_\_  Engineering or technical estimate
- Independent Third Party estimate
- Other (specify) \_\_\_\_\_

Cost estimate details: in US Dollars. Complete either A or B

*If multiple items (varying parts), reference saved catalog or webpage with pricing lists. Catalog pages or webpage lists can be copied/printed and attached as reference. DO NOT SUBMIT WHOLE CATALOGS to Purchasing or Finance.*

Option A: Cost of Standard Items

Product	Cost (\$/ea) Delivered	Cost (\$/ea) No Freight	Notes/Data Sources

Option B: Cost of Services, Repairs, or Non-Standard Items

Item/Task: \_\_\_\_\_

Materials	Other Direct Costs	Labor Rate per Hour	Labor Class	Allocated Overhead	SG&A	Profit	Total

Notes: \_\_\_\_\_

Prepared by: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_

[Go to top](#)

**Form C: Fair and Reasonable Determination**

Project Name, including Procurement #:

I hereby determine the price to be fair and reasonable based on at least one of the following:  
Check all applicable:

- Found reasonable based on comparison with recent purchase
- Obtained from current price list
- Obtained from current catalog
- Commercial market sales price from advertisements
- Similar in related industry
- Personal knowledge of item procured
- Regulated rate (i.e. utility)
- Other:

Comments:

Purchaser: \_\_\_ Title:

Date:

[Go to top](#)



**Form D: Responsibility Determination Checklist**

Date: \_\_\_\_\_

Procurement Serial Number: \_\_\_\_\_

Bidder/Proposer: \_\_\_\_\_

Description of Services/Goods: \_\_\_\_\_

\_\_\_\_\_

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.		
Research	Acceptable	Comment
1. Appropriate financial, equipment, facility, and personnel	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2. Ability to meet the delivery schedule.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Satisfactory period of performance	<input type="checkbox"/> Yes <input type="checkbox"/> No	
4. Satisfactory record of integrity, not on declined, disbarred, or suspended listings.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5. Receipt of all necessary data from Supplier, including certifications.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
6. Search on EPLS (Excluded Parties List System) completed and results attached ( <a href="https://www.sam.gov">https://www.sam.gov</a> )	<input type="checkbox"/> Yes <input type="checkbox"/> No	

[Go to top](#)

**DISCLOSURE OF RESPONSIBILITY STATEMENT**

**PG 1 OF 2**

1. List any convictions of any person, subsidiary, or affiliate of the company, arising out of obtaining, or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

---

---

---

2. List any convictions of any person, subsidiary, or affiliate of this company for offenses such as embezzlement, theft, fraudulent schemes, etc. or any other offenses indicating a lack of business integrity or business honesty which affects the responsibility of the contractor. (See procurement policy section 6.2 for types of offenses.)

---

---

---

3. List any convictions or civil judgments under state or federal antitrust statutes.

---

---

---

4. List any violations of contract provisions such as knowingly (without good cause) to perform, or unsatisfactory performance, in accordance with the specifications of a contract. \_\_\_\_\_

---

---

5. List any prior suspensions or debarments by any governmental agency.

---

---

---

6. List any contracts not completed on time. \_\_\_\_\_

---

---

7. List any penalties imposed for time delays and/or quality of materials and workmanship.

---

---

---

8. List any documented violations of federal or state labor laws, regulations, or standards, occupational safety and health rules.

---

---

[Go to top](#)

**DISCLOSURE OF RESPONSIBILITY STATEMENT**

**PG 2 OF 2**

I, \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_,  
Name of individual Title & Authority Company Name

declare under oath that the above statements, including any supplemental responses attached hereto, are true.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Title:

My Commission expires:

\_\_\_\_\_

(Notary Public)

[Go to top](#)

**NON-COLLUSION AFFIDAVIT**

**AFFIDAVIT BY CONTRACTOR**

**CERTIFYING THAT THERE WAS NO COLLUSION IN BIDDING FOR CONTRACT**

STATE OF ARIZONA ) ) ss

COUNTY OF: ) )

\_\_\_\_\_  
(Name of Company, Representative)

being first duly sworn, deposes and says:

That she/he is \_\_\_\_\_ of

(Title) \_\_\_\_\_

(Name of Company) \_\_\_\_\_ and

That pursuant to Section 112 (C) of Title 23 USC, he/she certifies as follows:

That neither he/she nor anyone associated with the said

\_\_\_\_\_  
(Name of Company)

has, directly or indirectly entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding for the bid for the:

By: \_\_\_\_\_

(Name of Individual/Representative)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Title:

My Commission expires:

\_\_\_\_\_  
(Notary Public)

[Go to top](#)

**VENDOR EVALUATION FORM**

Division/Location \_\_\_\_\_

Vendor Name \_\_\_\_\_

Bid/RFP # \_\_\_\_\_

Contract Award Date \_\_\_\_\_

Type of Service Provided \_\_\_\_\_

**Rate the Following Service Issues**  
1 - Poor 2 - Fair 3 - Good 4 - Excellent

Quality of Service	4 3 2 1
Delivery Time of Goods or Services	4 3 2 1
Quality of Product or Service	4 3 2 1
Responsiveness to Departmental Questions/Concerns	4 3 2 1

**Documentation of Responsiveness**

Date \_\_\_\_\_ Time Called \_\_\_\_\_ Phone # \_\_\_\_\_

Person Contacted \_\_\_\_\_

Description of contracted services (Detail exceptional or poor ratings)

---

---

---

---

Was the problem resolved to satisfaction?

---

---

---

---

[Go to top](#)