

**Metro**Los Angeles County
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metro.net**EXECUTIVE MANAGEMENT COMMITTEE
MARCH 15, 2012****SUBJECT: ACQUISITION POLICY****ACTION: ADOPT A REVISION TO THE METRO ACQUISITION POLICY
FOR CONTRACT MODIFICATIONS****RECOMMENDATION**

Adopt a revised delegation of authority to the Chief Executive Officer (CEO) for contract modifications on a sliding scale up to \$5M per modification, as detailed in Attachment A.

ISSUE

The ability to respond to the demands of Measure R and the America Fast Forward plan require a higher individual threshold for contract modifications. The Measure R Advisor Report, authored by Parsons Brinkerhoff, recommends the CEO be given authority up to \$5 million per modification to address the significant changes that can occur for projects of the size anticipated by Measure R.

This recommendation reflects a sliding scale of authority based on the value of the initial contract award. A comparison chart of current and proposed thresholds is included as Attachment A. The complete revision to ACQ-1, table 10.3.1 is included as Attachment B.

POLICY IMPLICATIONS

Despite the best efforts of the contracting parties to anticipate the future, conditions change, most commonly in construction. Horizontal projects, and especially those in developed urban areas, such as Measure R, are prone to unexpected subsurface conditions and changing requirements from other governmental bodies and citizen groups who are affected by the projects. The length and scope of such projects frequently allows for better ideas to develop which result in design changes.

The ability of the LACMTA to respond rapidly and efficiently to these dynamic conditions is essential to delivering Measure R and other critical LACMTA projects in accordance with Board direction and the need to deliver key infrastructure jobs to Los Angeles County.

Nothing in this policy revision alters the LACMTA process for reviewing and approving contract changes reflected in Administrative Code Section 4-15 and implementing procedures. All changes will still require independent estimates of cost, review and approval by LACMTA Contracting Officers and Counsel, and audit as required.

BACKGROUND

For over 10 years, the Procurement Department has pursued a number of streamlining and process improvement initiatives ranging from revising Metro's guiding law to simplification of Metro Board and agency policy to improve cycle time and project delivery.

In 2004, the law firm of Manatt, Phelps & Phillips, LLP was contracted to conduct an independent review of LACMTA procurement operations. The report, commonly referred to as the, "Polan Report" recommended, among other things, an increase in the delegation of contracting authority to staff.

In February 2010, the Board adopted the Metro Acquisition Policy (ACQ-1) which included an increase of staff authority for individual contract modifications to \$500,000, subject to an overall limitation of \$100,000 or 10% of original contract value for all changes.

In response to a Board Motion in December 2009, Parsons Brinkerhoff was contracted to evaluate LACMTA's current policies, procedures, practices and organizational structure to ensure that the agency can deliver the Measure R projects in the fastest possible time frame and that there are no institutional barriers that would prevent LACMTA from achieving the fastest possible project schedules. The resulting, "Measure R Strategic Advisor" final report was published in June 2010. The report acknowledged the February 2010 Board action but recommended that a further increase to \$5 million per individual change would be necessary to, "significantly expedite change order decision making during construction."

Industry groups, such as, the Association of General Contractors (AGC) and the American Council of Engineering Companies (ACEC) have also recommended a more responsive approach to issuing and resolving change orders.

DETERMINATION OF SAFETY IMPACT

Adoption of the revised delegation of authority will not impact safety of LACMTA patrons or employees.

FINANCIAL IMPACT

The funds required to implement changes are included in each capital project life-of-project budget.

Impacts to Budget

The sources of funds for capital projects are generally not eligible for bus and rail operation expenditures.

ALTERNATIVES CONSIDERED

The Board could choose not to adopt this revision in which case it would continue to review every contract change valued at greater than \$500,000. Alternatively, the Board could choose to increase the contract change authority to an amount greater than \$500,000 but less than \$5M.

NEXT STEPS

The Procurement Department will publicize this policy statement to the agency and draft implementing procedures and conduct necessary training.

ATTACHMENTS

- A. Comparison of Current and Proposed Actions
- B. Revised Acquisition Policy Statement, ACQ-1, table 10.3.1, AUTHORITY TO APPROVE CONTRACT ACTIONS

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COMPARISON OF CURRENT & PROPOSED ACTIONS

WHO	CURRENT ACTION	CURRENT LIMIT	PROPOSED ACTION	PROPOSED LIMIT	
Chief Executive Officer/Deputy Chief Executive Officer	Make Statutorily Required Findings/ Approve/ Award	<i>Modifications to all contracts, including construction contracts, which increase the aggregate contract price by no more than \$100K or 10% of the original contract award, whichever is greater, over the life of the contract, provided no single modification exceeds \$500K, unless the Board has authorized a higher limit.</i>	<i>Modifications to all contracts, including construction contracts, where the original award is:</i>	<i>Individual modification limit</i>	<i>Cumulative limit over the life of the Contract</i>
			<i>Up to and including \$1 Million</i>	<i>\$100,000</i>	<i>\$100,000</i>
			<i>Above \$1 Million, up to and including \$20 Million</i>	<i>\$500,000</i>	<i>10% of the original contract award</i>
			<i>Above \$20 Million, up to and including \$100 Million</i>	<i>\$1,000,000</i>	<i>10% of the original contract award</i>
			<i>Greater than \$100 Million</i>	<i>\$5,000,000</i>	<i>10% of the original contract award</i>

REVISED DELEGATION OF AUTHORITY

10.3.1 AUTHORITY TO APPROVE CONTRACT ACTIONS

WHO	ACTION	LIMIT	
Board of Directors	Make Statutorily Required Findings, Approve and Award contract and modifications to contacts for the acquisition of supplies, equipment, materials, services and construction	Pursuant to CA PUC §130051.9, §130051.11 and §130051.12.	
Inspector General	Approve and Award Contracts and modifications related to OIG operations.	Contract awards up to and including \$100K; and, Modifications up to \$100K cumulative over the life of a contract	
Chief Executive Officer Deputy Chief Executive Officer	Make Statutorily Required Findings pursuant to CA PUC §130233, 130234, 130236, and 130237; Approve and Award:		
	New contracts, to the lowest, responsive, responsible bidder under sealed bid procedures.	Up to and including \$1,000,000	
	All other contracts	Up to and including \$500,000	
	Modifications to all contracts, including construction contracts, where the original award is:	Individual modification limit	Cumulative limit over the life of the Contract
	Up to and including \$1 Million	\$100,000	\$100,000
	Above \$1 Million, up to and including \$20 Million	\$500,000	10% of the original contract award
	Above \$20 Million, up to and including \$100 Million	\$1,000,000	10% of the original contract award
	Greater than \$100 Million	\$5,000,000	10% of the original contract award
Chief Executive Officer	Award construction contracts based on the lowest responsible bid pursuant to CA PUC §130051.9(c)	Unlimited	