

Doing Business with Sound Transit

By Janette (“Jan”) Keiser, PE, JD

What is Sound Transit?

Sound Transit is a “special purpose” government agency that serves three counties in the Puget Sound region of Washington: King, Snohomish and Pierce. (Seattle is the largest city in King County; Everett is the largest city in Snohomish County and Tacoma is the largest city in Pierce County.)

Sound Transit’s website is located at www.soundtransit.org. This website contains a wide variety of information about Sound Transit’s Board of Directors, service schedules, news, projects, and opportunities for jobs and contracts and much more. While this is a fairly user-friendly website, there is an almost overwhelming range of information on it. If you are serious about doing business with Sound Transit over the long term, spend some time exploring the website to get a better understanding of what Sound Transit is all about; you’ll learn a lot about what goes on inside the agency by doing this.

There are several documents available on the website relating to doing business with Sound Transit. One is called “*Doing Business with Sound Transit*”. This electronic brochure contains more information than you need to know because it goes into the history of Sound Transit’s formation and service accomplishments. It contains almost too much information about some topics and not enough about how to actually manage some of the topics if you want to pursue Sound Transit work. To prepare this report for Government Contract Watch, I have condensed some of the elements in the Sound Transit document and elaborated on others.

What does Sound Transit do?

Sound Transit provides high capacity public transit services, including Link Light rail; Sounder commuter rail, on heavy rail tracks shared with Burlington Northern Railway; and Regional Express bus services. There are two Link Light rail – one between SeaTac Airport and downtown Seattle and one that runs from one end of downtown Tacoma to the other. Sound Transit is currently working to extend the light rail line from downtown Seattle to the University of Washington campus. Sound Transit’s commuter rail lines runs two segments as well, one from downtown Seattle to Everett and one from downtown Seattle to Tacoma. Sound Transit is currently working to extend the southern commuter rail line to Lakewood. Sound Transit’s Regional Express bus service extends all across the 3-county region.

Sound Transit builds public transportation projects from the ground up using its in-house professional engineering and project management staff, as well as consultants, to plan and design the projects. Sound Transit then issues contracts to construction contractors to build the facilities. Sound Transit has a long term contract with King County to operate the facilities; that is, bus drivers on Sound Transit buses and operators of Sound Transit

light rail vehicles are actually King County employees. Sound Transit owns vehicle maintenance facilities, for the buses, light rail vehicles and commuter trains, and operates these maintenance facilities with Sound Transit employees.

Where does Sound Transit's money come from?

Funding for Sound Transit projects and operations comes from user fees, taxes collected from residents within the 3-county region, and grants from the Federal Transit Administration ("FTA"). Because many of Sound Transit's projects include federal funding, Sound Transit's procurement processes must comply with federal requirements relating to Buy America, participation by Disadvantaged Business Enterprises ("DBE"), compliance with the National Environmental Protection Act and so forth.

Where are Sound Transit's offices?

Sound Transit's administrative offices are located at 401 S. Jackson Street, Seattle, Washington 98104.

What does Sound Transit buy?

Sound Transit buys a wide variety of goods and services to build its capital projects, administer its programs and maintain its vehicles and facilities. There is a page on Sound Transit's procurement portal, which lists contracts awarded for a given year. By scrolling through this list, you can get an idea of the wide range of purchases Sound Transit makes. This list only contains contracts over \$100,000. There are many smaller procurements for goods and services that aren't large enough to get on the list.

How does Sound Transit buy the goods and services it needs?

- **Sound Transit's uses centralized purchasing.**

Sound Transit has a centralized Contracts Department, which is responsible for procuring and administering most of Sound Transit's purchases for goods and services, on an agency-wide basis.

Sound Transit's official publication for print advertising is the Seattle Daily Journal of Commerce. Sound Transit will also advertise larger, specialized, procurements, such as for buses or light rail vehicles, in the *Passenger Transport*, which is a national trade magazine published by the American Public Transportation Association.

It is Sound Transit's policy to publicly advertise procurements expected to cost more than \$100,000.

- **Sound Transit uses E-commerce!**

Sound Transit uses an on-line procurement portal called E-Bid, available at www.soundtransit.ebidsystems.com. Sound Transit's E-Bid page contains general E-Bid information, information about current solicitations, bid results, past contract awards, future procurements, and links to procurement documents. This E-Bid site is relatively user-friendly. You must register, for free, to see most of this information whether you want to look at it as a bidder or are just doing research. Current Invitations to Bid and other current procurements are in the **Solicitations** section of the website.

If you are registered, Sound Transit will send you electronic notices of addenda issued about particular projects as well as notices of new solicitations for work within categories you designate. YOU can also use this site to ask questions about particular procurements.

You can also download procurement documents. If you want a hard copy or a CADD file of the documents, you can go to Sound Transit's Contracts Department and get a copy or use the website to order a copy to be sent to you. There will usually not be a fee for a CD. If you need help with the E-Bid systems, you can contact eBidHelp@soundtransit.org.

Sound Transit does not accept bids or proposals on its E-Bid site. Follow the instructions in the procurement documents for submitting bids or proposals.

You can also use Sound Transit's E-Bid site for certain contract administration tasks, such as filling out your Affidavits of Amounts Invoiced and Paid, as well as your monthly EEO/Apprenticeship reports.

- **Sound Transit has several categories of procurement processes, based on contract size.**

As a public body, Sound Transit is required to comply with state law governing procurements by government bodies. These requirements vary, depending on the size of the contract.

1. **Micro Purchases.** Purchases \$3,000 and less are considered Micro-Purchases and have the following characteristics:
 - a. Micro Purchases may be executed by a Purchase Order.
 - b. Individual Sound Transit departments can issue Purchase Orders without obtaining competitive quotes or going through the Contracts Department.
 - c. Micro Purchases are exempt from Buy America requirements
 - d. Micro Purchases over \$2,000 are subject to prevailing wage requirements

2. **Small Purchases.** Contracts under \$100,000 are considered to be Small Purchases and the requirements are simpler than for larger contacts. Small Purchases have the following characteristics:
 - a. Small Purchases are exempt from Buy America requirements
 - b. Prevailing wage requirements apply.
 - c. The contract must be issued to
 - i. the lowest responsive, responsible bidder, OR
 - ii. the best value, based on price and other factors.
 - d. Procurements for Small Purchase are processed using either
 - i. Invitation for Bid , OR
 - ii. Requests for Quotations
 - e. Contracts may involve negotiations
 - f. It is Sound Transit's policy to post advertisements for Small Purchase opportunities on its E-Bid System.
3. **Small Works Roster.**
 - a. Sound Transit is authorized to use Small Works Rosters for construction work that is estimated to cost less than \$200,000.
 - b. To create the rosters, Sound Transit will, from time to time, advertise for contractors interested in being listed on rosters to perform designated categories of work. These advertisements will be posted on Sound Transit's E-Bid site. If you're interested in being on the one or more roster, you must submit the information required in the advertisement. Sometimes, you must submit qualifications information and sometimes you do not.
 - c. The process for getting work is as follows:
 - i. Sound Transit will create Rosters of interested contactors who are interested in performing the designated work.
 - ii. When Sound Transit needs work performed, it will solicit quotes, often, from at least three contractors on the roster, select the lowest responsive, responsible contractor and award that contractor a purchase order for the work.
 - iii. Bid bonds may be required.

iv. Performance and payment bonds may be required.

d. Small Works contractors must comply with the following requirements:

i. Have specified insurance coverage

ii. Pay prevailing wages.

4. **Limited Public Works Project**

a. A Limited Public Works Project is a project whose estimated value is less than \$35,000.

b. Sound Transit is authorized to waive bonding and retainage requirements.

c. Formal advertisement is not required.

5. **Requests for Information.** Sound Transit will sometimes engage industry in a “conversation” about a particular product, project, or service Sound Transit intends to issue a formal procurement for. Sound Transit will do this by posting a Request for Information (“RFI”). This is not a procurement process – it is market research! Sound Transit may do something with the information and it may not. Generally, industry responds favorably to RFIs because it is a way for industry to influence the procurement process, if there is one, and establish them selves as a leader in the industry. If you are seriously interested in doing work for Sound Transit, you should participate in appropriate RFI processes.

6. **Sealed Bids**

a. Invitations to Bid for work above \$100,000 are publicly advertised by posting on Sound Transit’s E-Bid site at www.soundtransit.ebidsystems.com. Documents can be downloaded from the E-Bid site as well as Contract Documents, Addenda, Planholder’s Lists, Questions and Answers and other information relating to a particular procurement. You must register and designate a “role”. Registration is free and the “role” is not binding, so go head and do it so you can get into the site.

b. Sound Transit does not accept bids on its E-Bid site so you have to take your bid to the place identified in the Invitation for Bids, generally, the Sound Transit offices at Union Station, Seattle.

c. Sealed bids are publicly opened.

- d. Bids are awarded to the lowest responsive, responsible bidder. Generally, Sound Transit uses a fairly standard definition of “responsibility” but has been known to require specific submittals regarding a bidder’s qualifications to perform the work, as part of their “responsibility” evaluation. Further, Sound Transit will frequently hold a bidder evaluation conference with the apparent low bidder to verify “responsibility”.
- e. Sound Transit will almost always hold pre-bid meetings and will often hold site visits.
- f. Sound Transit will also engage in Questions and Answers, which is an informal way of asking questions about a particular procurement. Sound Transit will post all the Questions and Answers on the E-Bid site and will issue addenda if necessary.

7. **Competitive Proposals**

- a. Sound Transit also purchases, primarily professional services, using a one-step or two-step competitive proposals.
 - i. In a one-step process, Sound Transit posts a Request for Proposals. Companies who want to compete for the work will submit a Proposal, which Sound Transit will evaluate to determine which Proposal wins the competition.
 - ii. In a two-step process, Sound Transit posts a Request for Qualifications (“RFQ”). Companies who want to compete submit a Statement of Qualifications (“SOQ”). Sound Transit will evaluate the SOQs and pick the top 3-4 firms that Sound Transit deems to be the most qualified to perform the work. Those firms, called the Short Listed firms, will be issued a Request for Proposals (“RFP”). The firms, if they still want to compete, will submit a Proposal. Sound Transit will evaluate the Proposals to determine the winner.
- b. Requests for Proposals/Qualifications will be posted on Sound Transit’s E-Bid site at www.soundtransit.ebidsystems.com. Documents can be downloaded from the E-Bid site as well as Contract Documents, Addenda, Planholder’s Lists, Questions and Answers and other information relating to a particular procurement. You must register and designate a “role”. Registration is free and the “role” is not binding, so go ahead and do it so you can get into the site.
- c. A key difference between the Sealed Bid and the Competitive Proposal process is that with the Competitive Proposal process, Sound Transit may enter into discussions with the competitors, individually or in a group,

during the proposal process and negotiations with the winner, after the Proposals are evaluated but before the contract is awarded. It is not unusual for Sound Transit to make a selection on the basis of qualifications to perform certain types of work, only to negotiate that work out of the scope of work during pre-award contact negotiations due to budget or other constraints. This is not unusual!

- d. Another key difference is that with the Competitive Proposal process, the selection is not based on price alone. The price will be based on the criteria set forth in the procurement documents, generally some combination of price and other factors, such as experience, understanding of the work, local knowledge and so forth.
- e. Public agencies in Washington are prohibited by federal and state law from awarding contracts for services involving the practice of engineering or architecture on the basis of price. Public agencies are not supposed to ask for pricing information until after the selection of the winning Proposal has been made on the basis of qualifications. Sound Transit gets around this constraint by requiring engineering companies to submit their estimated Level of Effort, which is the number of hours the engineering company estimates will be required to perform the work. While engineering companies don't like this practice, to my knowledge no one has taken Sound Transit to task for engaging in it.
- f. Sound Transit will almost always hold pre-proposal meetings and will often hold site visits. Always, always go to these meetings. When you go, pay attention to the project manager and other technical staff. This is your only opportunity to talk directly to technical staff during the procurement process. Take advantage of this by asking questions. Don't pay attention to the old wives tale that you shouldn't speak up in these meetings for fear of giving away company secrets. Let me emphasize that these meetings are your only opportunity to ask the technical staff candid, penetrating questions during an active procurement. Often, the consultant staff will be available for questioning as well. You will certainly never get another opportunity to talk to them during the procurement process. Do not let these opportunities go by without taking advantage of them.
- g. Sound Transit will also engage in Questions and Answers, which is an informal way of asking questions about a particular procurement. This dialogue takes place on-line at Sound Transit's E-Bid site. Sound Transit will post all the Questions and Answers on the E-Bid site and will issue addenda if necessary. You should take advantage of this opportunity to engage Sound Transit in "dialogue" about anything and everything you are concerned about or have questions about. This is another opportunity you shouldn't let slip through your fingers. If you have a concern about a contract clause, such as the way Sound Transit apportions some type of

project risk, ask about it in the Q & A. If Sound Transit believes this is a common concern and that failing to address it could be the agency does not get competitive proposals, Sound Transit may be persuaded to change the language. I've seen this happen over and over, in every public agency I've ever worked for. But, few vendors realize how much power they have in the market place and thus, rarely take advantage of their individual or collective voices.

- **Sound Transit aggressively administers social responsibility requirements.**

Sound Transit has, since its beginning, adopted a policy of social responsibility and has developed procedures, programming, staff and contract requirements to support this effort, including the following:

- a. Participation by small businesses
- b. Participation by businesses owned by women and minorities (“MWBEs”)
- c. Participation by Disadvantaged Business Enterprises (“DBEs”)
- d. Equal Employment Opportunity
- e. Affirmative Action
- f. Apprenticeship utilization
- g. Payments for pre-apprenticeship programs

Generic and contract - specific requirements for each of these efforts will be described with detail in the procurement documents.

While most of these programs emanate from state or federal law, Sound Transit has used the discretion allowed it under such law to be as aggressive as legally allowed. Because of this, Sound Transit has one of the highest rates of participation by small businesses and Disadvantage Business Enterprises of any public agency in the state of Washington. Frequently, Sound Transit will include these social responsibility factors as part of the evaluation criteria in Competitive Proposal processes or even as part of the responsibility determination in Sealed Bid processes. It is probably fair to say that Sound Transit is the most aggressive public agency in the Puget Sound Region when it comes to administering social responsibility elements. Failure to take these measures seriously is a mistake.

Because Sound Transit uses federal money on many of its capital projects, it is allowed to establish voluntary goals for DBE participation on those projects. Sound Transit has proposed a goal of 18.39% for 2010. This goal is currently under review by the federal government, but generally, this is a formality since Sound Transit is well-versed in the law and practice of DBE inclusion.

Sound Transit has a Diversity Program Office (“DPO”) with fulltime staff to administer its social responsibility efforts. This staff is available to help businesses who want to work with Sound Transit navigate through the social responsibility requirements. If you're a small business, you should consider this office to be your advocate. If you're a

large business, you should consider this office to be your resource. The Sound Transit website has a separate section about the agency's diversity program, which describes the role of, and contact information for, the Diversity Program Office staff. The telephone number for the Diversity Program Office is 260-398-5057 or you may contact Leslie Jones, the DPO manager at leslie.jones@soundtransit.org.

For example, Sound Transit will frequently incorporate into the pre-bid or pre-proposal meetings, opportunity for companies wanting to be awarded the contract as a prime contractor to meet and network with, companies who want work as a subcontractor. If you are a potential prime contractor participation in these sessions is important as it establishes you as a willing partner in Sound Transit's social responsibility efforts. Plus, Sound Transit often requires that you demonstrate "good faith efforts" to comply with the social responsibility requirements. Attending these outreach sessions counts as a "good faith effort".

If you are a smaller company, you need to attend because it is a great opportunity to make yourself known to people who are in position to give you work as a subcontractor or supplier.

If you are interested in being certified as a DBE, MBE or WBE, contact Sound Transit's DPO. Its staff will help you get the resources you need. Or, go to the website for the Washington State Office of Minority and Women Business Enterprises at 1-866-208-1064 or www.omwbe.wa.gov for more information about whether you qualify and the application process

There is no certification process for small businesses who are not DBEs, MBEs or WBEs. You may self-certify as a small business if you believe you meet the size standards set by the Small Business Administration. You can find these standards at www.sba.gov.

- **Sound Transit contracts are often subject to federal requirements**

Sound Transit's major capital projects will probably have federal funding. Even one dollar of federal funding requires that the project meet all federal provisions. The procurement documents will specify if federal funding is involved and if so, the federal requirements will be included in the procurement. As a general rule, a federal requirement trumps a state or local requirement. Some of the more challenging federal requirements are as follows:

- a. **Buy America Act.** This only applies to construction contracts. It is a federal statute, which says that where the Federal Transit Administration ("FTA") is providing some of the money to pay for the project, then certain products used in the project must be of American origin. Generally, these products include: iron, steel, manufactured goods or rolling stock. (Rolling stock includes buses, trains, cars, and other vehicles.) Generally, compliance is required for contracts exceeding

\$100,000. However, there are certain exemptions and you can apply for waivers in certain instances.

This is a very complicated statute and if you interpret it wrong, there can be serious consequences. If a product under your control is determined to be non-complying, you can be required to remove the product from the project at your own expense and on your own time. This could make or break, not only the job, but your company.

The procurement documents will contain specific language if your work is covered by Buy America Act. Be on the alert for this! If you see reference to the Buy America Act, make an appointment with Sound Transit's contract staff and discuss how it might apply to you. Generally, Sound Transit staff knows what you have to do to achieve compliance because this is standard practice for them – they've been down this road before many times. They want you to comply as much as you want to comply. Use them as a resource. They will give you helpful information if you are respectful and ask nicely. Do not be shy about doing this as the consequences of getting it wrong are very high!

- b. **Federal Audit Requirements.** This applies to all contracts. Vendors who submit cost proposals to Sound Transit, for change orders or when negotiating competitive proposal contracts, for federally –funded work, are subject to more stringent audit requirements to document overhead and other indirect costs. Large projects, over \$5 million, must submit audit information verified by the federal Defense Contract Audit Agency or similar agency or an accounting firm approved by the federal government. For contracts under \$5 million, the audit may be done by a certified public accountant, published in your annual shareholder's report or accepted by another government agency within the last 6 months.

You need to be aware of what an “allowable” cost and an “unallowable” cost. It is not always obvious or intuitive. For example, the costs of marketing would normally be considered part of a business' overhead, however, under the federal rules for computing overhead, the costs of marketing are “unallowable” costs. If you fail to understand the difference between an “allowable” cost and an “unallowable costs, you could compute your overhead improperly and when the mistake is corrected during an audit, you could be forced to move some costs into the “unallowable” column and in so doing, lose your profit margin.

Even if you are a small business doing work as a subcontractor, it is likely that these audit requirements will “flow down” to you. Be aware of them. There is little room for forgiveness – failure to comply can mean you don't get the contract or you don't get paid.

- c. **Other special federal requirements.** Vendors working on work funded by the Federal Transit Administration must comply with FTA Circular 4220.1F (Third Party Contracting Guidance). There is a link to this document on Sound Transit's website. Generally, these provisions “flow

down” to all tiers; if you have any subcontractors, you are required to flow these provisions down to all subcontractors.

- **Sound Transit has a policy against conflicts of interest.**

Sound Transit’s conflict of interest policy prohibits its director, officers, employees and agencies from accepting gifts, entertainments, gratuities, favors or anything of monetary value from contractors, consultants, potential contractors or consultants, or parties to sub-agreements. Do not embarrass yourself by offering anything of value, lunch, marketing promotion, baseball ticket and the like to any Sound Transit official or employee, whether or not you are in an active procurement. If you do so in the context of an active procurement, you could be disqualified. Most of Sound Transit’s procurements require you to submit a statement that there is no conflict of interest. If you intentionally misrepresent the facts, you could be subject to contractual and civil penalties. If you misrepresent the facts on a federally-funded job, you could be subject to criminal penalties.

Sound Transit also has a policy against organizational conflicts of interest. An organizational conflict of interest is one where your company has an unfair competitive advantage. You will be required to disclose these and describe how you are going to guard against the conflict of interest. For example, it would be an unfair competitive advantage if you hired a former Sound Transit employee who had performed substantive work on the project you are now competing for. You are required to disclose the fact that you hired this person and as mitigation, you should say that you are not going to use this person to perform work on the project. Sound Transit handles organizational conflicts of interest on a case-by-case basis. Further, to some extent, determinations are subject to negotiations. I recommend that you be liberal in your disclosures and conservative in developing your mitigation. Sound Transit’s contract staff and legal staff can help you address this issue. Engage them in respectful discussion about this, as soon as you suspect that a conflict may exist.

Further, be proactive when managing organizational conflicts of interest. If you are involved with an element of work and you know there will be follow-on work that you want to be involved in, try to negotiate some kind of arrangement so that the potential conflict of interest can be mitigated. You might need to limit the scope of your effort in the initial effort in order to be able to participate in the follow-on work. Sound Transit is open to this, if you approach it respectfully and in a timely manner.

- **Communications during an active procurement**

Sound Transit does not allow you to communicate with anyone during an active procurement process, except the individuals specifically identified in the procurement documents. Follow this rule! If you don’t, you could be disqualified. Make sure your staff knows who the authorized people are. Better yet, appoint one person from your company to be the point person for communications with Sound Transit. Generally, they ask you to do this because they don’t want to be getting communications from a bunch of

different people. They want a single point of contact. So, the arrangement will be this – your single point of contact will be the only person who communicates with Sound Transit’s single point of contact.

- **Miscellaneous**

- a. All purchase orders or contracts over \$3000 must have a Purchase Order Number or Contract Number in order to be paid. Make sure you know yours. Put it on all correspondence, invoices and other documents related to your contract.
- b. Sound Transit’s on-line brochure about doing business with the agency says that invoices should be sent to the following address:

Sound Transit
Accounts Payable
401 S. Jackson St.
Seattle, WA 98104

It also says that if you send the invoice to any other department, there may be a delay in getting payment.

The problem with this direction is that, while it is true the Accounts Payable department must get a copy of the invoice, it is also a fact that for any kind of construction or consultant service, the project manager will need to review and approve your invoice. Sound Transit’s consultant and construction contracts both require this approval. I recommend that before you are required to submit your Invoice, you have a meeting with the project manager and discuss the invoice. The purpose of this meeting is to work out any differences of opinion about how much money you are owed. This gives you an opportunity to work out any issues, before you officially submit the invoice.

After your meeting, if you have agreement, then, formally submit the invoice to whomever your contract says you should submit it to. It may be the Accounts Payable department, but it may be the project manager. The time frames for review and approval of your invoice will be defined in your contract. You need to understand what the contract says you are to do and do it.

- **Summary**

Sound Transit has an active capital projects program, which provides many opportunities to large and small businesses, particularly construction contractors and engineering consultants. Further, since Sound Transit operates three separate lines of public transportation businesses, there are opportunities for a wide variety of maintenance, repair and renovation type contracts available.

Many of Sound Transit's contracts are funded all or in part, with federal money. As such, a wide variety of federal requirements apply.

Sound Transit has traditionally been friendly to small businesses. It supports a variety of technical assistance programs and employs several different types of procurement methods that are particularly conducive to small businesses.

As a special purpose agency, Sound Transit can focus its attention to fulfilling its mission to develop and operate public transportation, with few distractions. This enables the agency to attract high caliber staff, create best practices, and build legacy projects. These features make the agency a customer of choice.

- **Special Reports and Services available about Sound Transit**
 - **Special report containing a Risk Analysis of Sound Transit's Standard General Provisions for Construction Contracts.** This report would go through Sound Transit's standard General Provisions for its construction contracts section by section, identifying the risks to you and offering recommendations for ways to mitigate the risks. You will take away the insights you need to make a knowledgeable "go or no go" decision and what you need to do to protect yourself if you decide to "go".
 - **Special report containing a Risk Analysis of Sound Transit's Standard Terms and Conditions for Consultant Contracts.** This report would go through Sound Transit's standard General Provisions for its consultant contracts section by section, identifying the risks to you and offering recommendations for ways to mitigate the risks. You will take away the insights you need to make a knowledgeable "go or no go" decision and what you need to do to protect yourself if you decide to "go".
 - **One-on-one consultation to help you develop a general Sound Transit marketing initiative.** You will take away an action plan to help develop and keep Sound Transit as a key customer.
 - **One-one-one coaching session to help you develop a project-specific Sound Transit marketing strategy.** You take away an action plan to help win and perform work on a specific Sound Transit contract.