

Procurement Update

Supply Chain Issues, Force Majeure



Supply Chain Issues

- Computer Chip Shortages
- Other supply factors and commodity shortages
- Plants have been idled intermittently at the different manufacturers. This may be a long term problem (+2 years) to unwind.
- OEM Manufacturers are eliminating or reducing Govt Price Concessions. Certain product lines (Dodge in particular) are outright cancelling the “basic” models the industry uses to convert into shuttles, driving up costs.
- Bottom line-delivery delays and cost implications.

Price Changes

Rolling stock contracts are “Fixed Firm Price” contracts,

Price Changes are possible for PPI increases in the contract, Changes in Technology, Changes in Law and.....***Force Majeure***.

Force Majeure

“Unforeseeable or extraordinary circumstances that prevent someone from fulfilling a contract”

- Dealers representing the manufacturers have requested relief from the supply chain issues for both price and delivery constraints.
- **“Commercial Impracticability”** *unforeseen event renders a party to a contract unable to perform. Case law compels us to consider the contractors claims.*

PROCESS

- Cost Data from mid 2021 and at present has been requested to analyze and determine if a Force Majeure condition for price exists.
- FTA requires **Cost Analysis** to support change orders. Once an extraordinary circumstance has been determined, a method of applying cost adjustments that is consistent with principles of cost sharing must be applied. Only documented costs that are attributable to the “unforeseen condition” are to be considered.
- MBTA Engaged Raul Bravo and Associates (RVBA) to receive confidential supplier data and assist with cost analysis on ALL awarded items.

Challenges

- Majority of State DOT's have granted significant price increases with minimal documentation. (State DOT's are not held to the circular requirements in the same way as transit agencies)
- “Push back” and lack of technical capacity from dealers and manufacturers. This is the first time in recent memory the industry has experienced this.
- Sheer size of Cooperative Procurement. 5 Dealers, 15 manufacturers, 140 different line items
- **“Privity of Contract”** is with dealers not manufacturers

Status

- Cost Analysis is completed.
- Amendments to contract are complete and approved by MBTA's Counsel. Dealers have already executed and can quote vehicles.
- In light of PPI inflation being 19.5% plus chassis costs and GPC elimination, we believe price adjustments are supported
- Price Schedule is being built

Some Possible Strategies

- Be more open to other brands, dealers. Prices vary significantly. Availability will vary with time of order and configuration.
- Consider other vehicle types if service allows.
- MBTA to discuss with FTA and Caltrans technical adjustments to alleviate the supply issue. (allow alternate chassis, flexibility in the grantmaking process to change vehicle types)