



# Procurement Policy and Procedure Manual

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## INTRODUCTION

The Central Texas Council of Governments (CTCOG) is the regional organization through which local governments consider issues and cooperate in solving area wide problems. Through CTCOG, local governments also initiate efforts in anticipating and preventing problems, thus saving public funds. The 7-county service region is growing, becoming more diverse, and constantly changing. In order to address the needs of citizens and businesses, local governments are providing leadership to guide regional development wisely and manage change constructively.

The Councils of Governments (COGs) are political subdivisions of the State of Texas. A COG may purchase goods or a service only if the COG complies with the same provisions for purchasing goods or a service that are equivalent to the provisions, including Chapter 252, Local Government Code and Chapter 2254, Texas Government Code, applying to a local government. COGs must also comply with certain federal requirements when procurement involves the expenditure of federal funds.

### **Overview of Purchasing Authority**

Texas law provides that a COG may enter into a contract for the expenditure of more than \$50,000.00 only if it complies with certain procurement procedures. The options include competitive sealed bidding, competitive sealed proposals, Interlocal agreements, and other more specialized contracting vehicles. This manual covers those procurement methods in detail.

Texas state law does, however, provide a number of exceptions to procurement requirements. For example, the Professional Services Procurement Act sets out a special process for selecting architects, engineers, and land surveyors (Tex. Gov. Code Ch. 2254).

This manual also discusses guidelines for purchases under \$50,000.00 as well as those subject to competitive procurement exceptions, although Texas state law does not mandate a set process.

This manual is intended to serve as the primary reference for all procurements conducted within CTCOG, and a resource for anyone who is interested in doing business with CTCOG. This manual demonstrates the commitment CTCOG has to ensuring consistency in its procurement practices, transparency in the process, and the fair and equitable treatment of those who participate in procurements with CTCOG.

## **PREFACE**

Procurement happens at varied levels within the Central Texas Council of Governments and it is recognized that in order for the day to day business operations of the agency to flow continually, there are times when it may be necessary to decentralize the procurement process. In these instances, procurement authority can be delegated to the various departments within CTCOG as determined by the Executive Director.

All personnel with delegated purchasing authority shall be responsible for using that authority in conformance with the Central Texas Council of Governments procurement policies and procedures.

Even if prior procurement authority has been delegated, certain steps of the procurement process require the mandatory involvement of the Procurement Administrator, and are listed below:

Request for Proposal Development:

1. Planning of the RFP
2. Scope Development
3. Scoring Criteria Development
4. Evaluation Process/Final Candidate Selection

**ARTICLE I**  
**GENERAL PROVISIONS**

## ARTICLE I GENERAL PROVISIONS

### **PART A: Purpose**

- 1.0** The purpose of CTCOG’s Procurement Manual is to provide a resource of procurement best practices for CTCOG departments so that they may buy goods and services for CTCOG in accordance with these principles.

### **PART B: Objectives, Construction and Application**

- 1.1 Objective:** The objective of the Procurement Policy is to provide the Central Texas Council of Governments herein after referred to as “CTCOG” with the requisite parameters for procuring goods and services under applicable state and federal guidelines. The policies and procedures outlined herein are intended to comply with the requirements of Chapter 252 of the Texas Local Government Code as well as the requirements of OMB Uniform Grant Guidance Super Circular 2 CFR 200 (Oct. 2015), Circular A-102 and A-87 and the Texas Uniform Grant and Contract Management Standards. More specifically, the underlying purposes and policies of this Procurement Policy are:

- to simplify, clarify, and reflect the law governing procurement by CTCOG;
- to permit the continued development of uniform procurement policies and best practices; with regard to applicable procurement laws;
- to increase public confidence in public procurement;
- to ensure the fair and equitable treatment of all persons who participate in the procurement process;
- to provide increased economy and efficiency in procurement activities by avoiding unnecessary, unwarranted and duplicative procurements;
- to foster free and open competition;
- to provide safeguards for the maintenance of a procurement system of quality and integrity; and
- to ensure that full accounting is available and given for all procurements.

- 1.2 Interpretation:** This Procurement Policy shall be construed and applied to promote its underlying purposes and policies. The guidelines set forth herein are intended to comply with all applicable state, local, federal and grantor agency rules, regulations, policies and procedures. Detailed operating procedures, which incorporate this Procurement Policy, are to be maintained by the Administration Department of CTCOG.



**1.3 Grantor Agency Policies and Procedures**

At no time are these policies intended to be less stringent than required by the grantor agency from which CTCOG receives specific funds. The written procurement procedures prepared by the source-granting agency shall be followed when funds are expended for the operation of a specific program.

**1.4 Standard Terms and Conditions**

The Administration Department is responsible for maintaining the Standard Terms and Conditions for all contracts and purchase orders.

**1.5 Gender Neutral**

All personal pronouns used in this Procurement Policy, whether used in the masculine, feminine or neuter gender, shall mean to include all genders.

**1.6 Singular-Plural**

Words in the singular include the plural and vice versa.

**1.7 Headings**

The headings contained in this Procurement Policy are for reference purposes only and shall not in any way affect the meaning or interpretation of this Policy.

**1.8 Conflicts**

In the event of a conflict between the terms of this Procurement Policy and any applicable state, local or federal statute, code or regulation, or the procurement procedures of the applicable grantor agency, the applicable statute, code, regulation or grantor procurement policy shall control.

**1.9 Severability**

Invalidation of any one of these provisions by judgment, court order, statute, regulation or code shall in no way affect any other provision, which shall continue to remain in full force and effect.

**1.10 Free and Open Competition**

All procurement transactions, regardless of dollar value, shall be conducted in a manner so as to provide maximum free and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors who develop or draft specifications and other requirements for solicitation instruments (RFPs, ITBs, etc.) will be excluded from competing for such procurements.

**1.11 Supplementary General Principles of Law**

Unless in conflict with particular provisions of the Procurement Policy, principles of law and equity, including the Uniform Commercial Code, contracts, agency, fraud, misrepresentation, duress, coercion and mistake shall supplement this Policy.

**1.12 Good Faith**

The Procurement Policy requires that all parties involved in the negotiation, performance and administration of contracts act in good faith.

**1.13 Effective Date**

The Procurement Policy applies only to contracts solicited or entered into after the effective date of this Policy, July 1, 2020.

**1.14 Adoption by CTCOG**

The Procurement Policy is adopted in whole by CTCOG.

**1.15 Public Access to Procurement Information**

Procurement information shall be a public record to the extent provided by the Texas Open Records Act and the Freedom of Information Act, as applicable, and shall be available to the public as provided therein. If a proposal contains information that the bidder considers proprietary and does not want disclosed to the public or used for any purpose other than the evaluation of the offer, all such information must be indicated and clearly marked on each page of the proprietary or confidential document(s).

## **PART C: Definition of Terms**

**“Best Value”** an assessment of the return which can be achieved based on the total life cycle cost of the item. Includes cost/benefit analysis to define the best combinations of quality, services, time, and cost over the useful life of the acquired item.

**“Best Value Bid”** a procurement method that emphasizes value over price. The best value might not be the lowest price; generally achieved through the Request for Proposal (RFP) method.

**"Bidder"** any person that submits a bid in response to an Invitation to Bid ("ITB")

**"Bidder's List"** the pre-qualified list of sources used in acquiring good and services.

**“Bid Splitting”** the intentional splitting of a single purchase into smaller purchases to avoid formal bidding as required by the Texas Local Government Code. Using several purchase orders during a fiscal year to procure goods/services equal to or greater than the State bid law requirement, for items that should be combined in a single purchase. The code defines three bid-splitting practices; see Component Purchases, Separate Purchases, and Sequential Purchases.

**“Buyer”** or **“Procurement Administrator”** agency personnel designated responsible for all procurement activity within CTCOG.

**“Competitive Sealed Proposals”** the procurement method whereby CTCOG prepares Requests for Proposal, sends them to interested offerors and/or publishes an announcement in local periodicals. To be considered, proposals must conform to the RFP. The award of a contract is not generally made at the time proposals are opened; rather, after evaluation, the award is made to the offeror whose proposal is determined to be the most advantageous to CTCOG, considering the relative importance of price and the other evaluation factors set forth in the RFP.

**“Component Purchases”** means purchases of the component parts of an item that in normal purchasing practices would be purchased in a whole.

**"Construction"** the process of utilizing labor to build, alter, repair, improve or demolish any structure, building, or other public improvement. It does not include the routine operation, repair or maintenance of existing structures, buildings or real property.

**"Contract"** (except as used in the definitions of "grant" and "subgrant") a legally binding agreement between CTCOG and a vendor or contractor; or a legally binding agreement between a contractor and a subcontractor. Also refers to purchase orders.

**"Contractor"** any person, vendor, or entity having a contract with CTCOG.

**“Contract Administrator”** a buyer or program manager responsible for the administration of a particular contract.

**"Cooperative Purchasing"** procurement conducted by, or on behalf of, more than one public

procurement entity including, but not limited to, any county, city, town and other corporate or political entity organized under state entities. Efforts may result in contracts that other entities may “piggyback”. Also includes the General Services Commission.

**"Councils of Government (COG)"** the Central Texas Council of Governments created under Chapter 391 of the Texas Local Government Code; a political subdivision of the State of Texas.

**"Designated Authorizing Party"** the CTCOG representative designated to authorize and approve purchases based upon dollar amount and internal organizational structure.

**"Disadvantaged Business Enterprise" ("DBE")** a for-profit corporation in which at least 51% of all classes of the shares of stock is owned by one or more persons who are economically and socially disadvantaged because of their identification as members of certain groups, including but not limited to African Americans, Hispanic Americans and women, as determined and classified by the Small Business Administration (SBA) and/or State of Texas.

**"Equipment"** tangible, non-expendable property that is fixed in position in prescribed places and does not lose identity or become integral parts of other items or installations.

**"Federal financial assistance"** assistance provided by a federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance or direct appropriations; but does not include direct federal cash assistance to individuals. Includes awards received directly from federal agencies, or indirectly through other units of state and local governments.

**"Grant" or "Grant-in-aid"** an award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance, paid or furnished by the state or federal government to CTCOG or other eligible grantee to support a program authorized by law that provides financial assistance through grant or contractual arrangements. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services or construction; a contract resulting from such an award is not a grant, but a procurement contract. The term does not include technical assistance programs which provide services instead of money or other assistance in the form of general revenue sharing, loans, loan guarantees, insurance or contracts which are entered into and administered under procurement laws and regulations.

**"Historically Underutilized Business"** ("HUB") a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities is owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians, who have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control; a sole proprietorship formed for the purpose of making a profit that is 100 percent owned, operated and controlled by a person described in Paragraph (A);

- a partnership formed for the purpose of making a profit in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A). Those persons must have proportionate interest in the control, operation, and management of the partnership's affairs;
- a joint venture in which each entity in the joint venture is a historically underutilized business under this subdivision; or
- a supplier contract between a historically underutilized business under this subdivision and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of supplies or materials or otherwise warehouses and ships the supplies.

**"Inter-local Contract/Agreement"** an agreement between CTCOG and an eligible participating government under the Inter-local Cooperation Act, V.T.C.A. Government Code Chapter 791, by which the parties agree to jointly perform procurement functions.

**"Invitation to Bid"** ("ITB") all documents, whether attached or incorporated by reference, utilized in soliciting competitive or multi-step sealed bids.

**"Micro-Purchase"** means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold of \$10,000.00 in order to expedite the completion of its lowest-dollar small purchase transactions to minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1, and can be periodically adjusted for inflation.

**"Minority Business Enterprise"** ("MBE") a small business concern wherein at least 51% is owned or controlled in management and daily operations by women or minorities, including but not limited to, "blacks, Hispanics, Asian-Americans, American Indians and Alaska natives."

**"Negotiated Procurement"** a process similar to the competitive sealed bidding procurements except that offerors and CTCOG discuss or negotiate aspects of the proposal, such as price. Negotiations are held with all offerors in the competitive range, in the order of ranking, based upon the evaluation factors set out in the RFP.

**"Offeror"** a person that submits a proposal in response to a Request for Proposal (RFP).

**"Person"** any business, individual, group of individuals, union, committee, club, organization, vendor, contractor or entity.

**"Procurement"** the buying, purchasing, renting, leasing, acquiring of any supplies, equipment or services. It also includes all activities that relate to obtaining any supplies, equipment or services, including but not limited to the description of requirements, selection and solicitation of sources, preparation and award of contracts, issuance of purchase orders, and all phases of contract administration.

**"Procurement Instrument"** the document(s) used to create a legal, binding purchase commitment/contract between CTCOG and a vendor or contractor. This document may be a purchase order, blanket purchase order or a contract depending on the procurement method.

**"Purchase Order"** ("P.O.") a type of procurement contract and is a legally binding agreement between CTCOG and a vendor.

**"Request for Proposal"** ("RFP") the document used to solicit proposals from potential providers for goods and services. Price usually not a primary factor; provides for the negotiation of all terms, including price prior to contract award.

**"Purchase Requisition"** an internal document created by a requestor authorizing the commencement of a purchasing transaction and typically will include a detailed description of the need and other information that is relative to the transaction; may be submitted via eProcurement software.

**"Responsible Bidder/Offeror"** that the bidder or offeror has the capability to meet all of the requirements of the solicitation and the subsequent contract in all respects, including financial, to fully perform the contract requirements; must be able to fully document the ability to demonstrate integrity and reliability to provide good faith performance.

**"Responsive Bidder/Offeror"** a bidder or offeror that has submitted a bid or response that fully conforms in all material respects in all requirements to the ITB or RFP, including all form and substance.

**"Scope of Work"** a detailed, written description of the conceptual requirements for the project contained within a Request for Proposal. The scope of work should establish a clear understanding of what is required by the entity.

**“Separate Purchases”** purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

**“Sequential Purchases”** purchases made over a period of time that in normal purchasing practices would be purchased in one purchase.

**"Services"** the furnishing of labor, time or effort by a contractor, not involving the delivery of a specific, tangible end product other than reports which are merely incidental to the required performance. The term shall not include employment agreements or collective bargaining agreements. (See Personal, Planning or Professional Services)

**"Small Business Enterprise"** a business concern, including affiliates, which is independently owned and operated and which is not dominant in its field of operation, and meets the size standard requirements of 13 CFR Part 121.

**"Specifications"** a precise description of the physical or functional characteristics, or the nature of a product, good, service or construction item. A description of what the purchaser seeks to buy and what a bidder must be responsive to in order to be considered for award of a contract. Specifications generally fall under the following categories: design, performance, combination (design and performance), brand name or approved equal, qualified products list and samples.

**"Sub-grant"** an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible sub-grantee. The term includes financial assistance when provided by contract, but does not include procurements or any form of assistance which is excluded from the definition of "grant" in this section.

**"Sub-recipient"** any entity that receives federal assistance passed through from a prime recipient or another sub recipient to carry out or administer a program.

**"Supplies"** all tangible personal property other than "equipment" as defined in this part.

**"Vendor"** an entity that is responsible for providing generally required supplies, equipment or services to be used by CTCOG in a particular program, either by the recipient, sub recipient or the participants. The procurement agreement may either be in the form of a purchase order or a contract.

**"Women-Owned Business"** a small business concern wherein at least 51 percent of the small business concern is owned by one or more women, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women and the management and daily business operations of the small business concern are controlled by one or more women.

## **ARTICLE II**

### **PROCUREMENT ORGANIZATION**

**This article covers the role and responsibilities relative to procurement within CTCOG and outlines specific areas of procurement approvals needed at various levels.**

**ARTICLE II**  
**PROCUREMENT ORGANIZATION**

**PART A: Organization and Contract Administration**

**2.0 Executive Director**

Establishes CTCOG Procurement Policy

**2.1 Director of Administration**

Shall be responsible for compliance with and implementation of these policies

**2.2 Procurement Committee**

- Shall consist of, at a minimum, the Director of Administration and the Senior Accountant.
- Shall be responsible for the administration of these policies and recommends policy changes to the Executive Director.
- Shall be responsible for the compliance and implementation of these policies.
- Shall review and approve certain procurement actions to avoid unnecessary or duplicative purchases.
- Shall analyze lease and purchase alternatives to determine the most economical and practical procurement.

**2.3 Procurement Administrator**

Shall be responsible for:

- processing procurement requests;
- classification of purchases;
- identification, solicitation and selection of vendors or contractors;
- maintaining and updating the Bidders' List;
- negotiating and executing purchase orders and contracts;
- monitoring the terms and conditions of the purchase orders and contracts;
- ensuring the complete and accurate documentation of all procurements;
- maintaining all procurement files and records; and
- all other responsibilities assigned by the Executive Director or Director of Administration.

**2.4 Authorization of Purchases**

The Procurement Instrument should contain the following approvals to correspond to the total cost:

Program Manager	\$0.01 - \$3,000.00
Assistant Director*	\$3,000.01-\$8,000.00
Department Director	\$3,000.01 - \$10,000.00
Senior Accountant	\$10,000.01 - \$50,000.00
Director of Administration	\$50,000.01 and over

\*Applies only to those Departments with the position of Assistant Director

**2.5 Pre-commitment Documents**

Pre-commitment documents are electronic purchase requisitions and contract action notices, Interlocal agreements, and are used to initiate procurement transactions. These documents provide a system of authorization and documentation, and should contain the following information:

- date of request;
- department, including contact person;
- date required;
- quantity;
- description of goods and/or services requested;
- authorized signature(s);
- actual or estimated cost;
- project code(s); and
- delivery destination.

**2.6 Procurement Instrument**

Procurement instruments include purchase orders, Interlocal agreements, and contracts. Each procurement instrument must contain the approval of the, Procurement Administrator or Program Management which will certify that the purchase satisfies the appropriate bid procedures, applicable grant requirements or restrictions, that adequate funds have been authorized and that appropriate approval(s) have been granted. In the case of contracts, the Contract Action Notice will be the authorizing document for all Agency contracts.

## **2.7 Monitoring of Programs**

Program Management and the Administration Department shall have the responsibility to monitor grant, sub grant funded programs, and all procurements. The monitoring system shall:

- ensure adherence to the system established for the award and monitoring of contracts
- ensure accountability;
- ensure that contract goals and obligations are established in unambiguous terms;
- require audits to be conducted at regular intervals;
- require prompt corrective action upon evidence of any violations; and
- identify in writing all problems, corrective actions and plans.

## **2.8 Restrictive Competition Practices Prohibited**

Prohibited restrictive practices include but are not limited to:

- requiring unnecessary experience and excessive bonding;
- placing unreasonable requirements on firms in order to qualify to do business;
- organizational conflicts of interest;
- non-competitive pricing practices between firms;
- non-competitive awards to consultants that are on retainer contracts;
- "brand name" specifications;
- overly restrictive specifications; and
- arbitrary action in the procurement process.

## **ARTICLE III**

### **PURCHASES OF \$50,000 and UNDER**

#### **Non-Competitive and Competitive**

**Bidding limits are established by law to ensure that sizeable purchases are subjected to fair competition among available, responsible contractors and suppliers and that CTCOG obtains the best value possible. Even though certain purchases are exempt from the statutory requirements for bids, there still be adequate controls and competition. This article describes these varied categories of purchases.**

**ARTICLE III**  
**PURCHASES OF \$50,000.00 and UNDER**

**PARTA: Non-Competitive and Competitive Purchases**

**3.0** A non-competitive purchase is defined as the procurement of supplies, equipment, services, or other property, that does not cost more than \$50,000 in the aggregate. If the expenditure for a purchase is for less than \$50,000 (“bid limit”), CTCOG may proceed in one of three ways:

**3.0.1 Non-Competitive Micro-Purchase** – If the price is less than \$10,000.00, the purchase may be made on a non-competitive basis, meaning that only one (1) written price quotation is required for purchase over \$1,000.00, but less than \$10,000.00. The selection of the supplier can be made to the convenience of the department without contacting additional suppliers; however, purchases must be distributed evenly among qualified suppliers.

**3.0.2 Competitive Small Purchase** – If the price is more than \$10,000.00, but less than \$50,000.00, price quotations should be solicited from three (3) or more qualified contractors/suppliers to ensure the price is fair and in line with the current market. The quotation must be in writing and can be obtained via mail, fax, or e-mail. The procurement administrator may negotiate the price as appropriate, or source for additional suppliers, as required.

**3.0.3 Competitive Formal Sealed Bid** - If the amount of the purchase is nearly \$50,000, CTCOG may still ask for a sealed bid. This approach gives several advantages, for example, if later purchases cause the total purchase price to exceed the bid limit, the competitive bidding requirement is satisfied. Provisions allowing later purchases on the same terms might be written into the original contract. In addition, bids may be more competitive with a sealed bid. And lastly, conflicts of interest between contractor or supplier and the procuring department are minimized.

**Purchases may not be split to circumvent the competitive requirements or the bid limit.**

**3.1 Selecting the Supplier/Contractor and Making the Purchase**

**3.1.1** After price quotations are obtained for purchases below the bid limit, the procuring department selects a supplier/contractor and makes the purchase. The supplier with the lowest and best offer meeting the price expectation, reliability, and quality of the product should be used as a basis for selecting the supplier.

**3.1.2** After the supplier/contractor has been selected, the request and all associated documentation will then be submitted into the procurement system and routed for proper electronic approvals. The Procurement Administrator will then authorize final approval and issue the Purchase Order.

**3.2** **Departments do not have the authority to place an order with the supplier directly. A Purchase Order is a type of procurement contract and is a legally binding agreement with between CTCOG and a vendor. The Purchase Order is the notice to proceed with the order and contains provisions that are enforceable under contract law. Items ordered without a proper purchase order will be returned upon receipt. Ordering without a purchase order could result in disciplinary action as determined by CTCOG management.**

## **ARTICLE IV**

### **PURCHASES OF \$50,000 and OVER FORMAL SEALED BID**

#### **Invitation to Bid**

**The use of formal sealed bids is a method for contracting goods and non-professional services that includes competitive bids, public opening of bids, and awards. CTCOG solicits formal sealed bids using an Invitation to Bid for contracts over \$50,000. The purpose of this article is to explain the laws, policies, and procedures regarding the formal sealed bid process.**

**Most formal bids are awarded on the basis of lowest responsible bid, with variations on formal bids including reverse auction and best value procurements. Best value procurements allow for the award decision to be determined by factors other than price. These approaches still follow the standard process, but vary in how the award of the procurement is decided.**

**ARTICLE IV**  
**PURCHASES OF \$50,000.00 and OVER**

**PART A: Invitation to Bid**

**4.0 Elements of an Invitation to Bid (ITB)**

Formal sealed bidding is to be used when the conditions in Chapter 252 of the Texas Local Government Code are applicable and when CTCOG will award a contract to the lowest responsive and responsible bidder whose bid meets the terms and conditions of the Invitation to Bid. All ITB's must clearly state whether the contract will be awarded to the lowest responsive and responsible bidder or whether the contract will be awarded on the basis of best value, otherwise the default award will be made to the lowest bid meeting the defined specifications. When using sealed bidding as a method of procurement the following steps are usually involved:

- Preparation of the ITB;
- Advertising the ITB;
- Receiving the bids;
- Opening the bids;
- Evaluating the bids;
- Award of the contract.

**4.1 Preparing the ITB**

The invitation to bid must describe the requirements of the requesting department clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements might limit the number of bidders and is prohibited. Specifications should not be written to favor a particular vendor. "Brand name or equal" descriptions may be used as a means to define the performance or pertinent other requirements of the procurement. When used, the specific features of the name brand to be met by the bidder(s) must be clearly specified. The ITB also includes all documents (included or referenced) and are furnished to prospective bidders for the purpose of submitting a bid.

**4.2 Reasonable Bidding Time**

To avoid restricting competition, or paying higher than necessary prices, department personnel must consider establishing advance planning mechanisms to ensure a reasonable bidding time. In cases of limited bidding time, potential vendors may be excluded from bidding and others may be forced to include contingencies for amounts that with proper time could have been eliminated. Other factors to consider when developing the ITB include:

- Degree of urgency
- Complexity;
- Extent of subcontracting
- Notice times See 5.4: Advertising and Publicizing the ITB

- Geographic locations of bidders
- Internal processing times

#### **4.3 Final Review of ITB**

Each ITB must be thoroughly reviewed before issuance to detect and correct possible discrepancies or ambiguities that could limit competition or result in non-responsive bids. The Department Subject Matter Experts (SME's), the Procurement Administrator, and the Director of Administration are responsible for reviewing the ITB documents.

CTCOG may reject any or all bids when there are sound, documented business reasons in the best interest of the program.

#### **4.4 Advertising and Publicizing the ITB**

Section 252.041 of the Texas Local Government Code sets the general rules for the solicitation of bids. A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all ITB's.

- A short summary of the ITB shall be published in the local newspaper or a newspaper of general circulation under Legal Notices. The notice must include a description of the item or where the specifications may be obtained, the time and place for receiving and opening bids, name and address of person to receive bids, basis for bid, either lump-sum or unit pricing; method of payment and any bond requirements.
- Notice of the time and place at which the bids/proposals will be publicly opened must be published at least once a week for two consecutive weeks. The date of the first publication must be before the 14th day from the date of public opening.
- The solicitation package should be sent to all qualified persons on the Bidders' List **after the first newspaper publication**. Potential bidders may not be precluded from qualifying during the solicitation period.
- All ITBs will also be posted on the CTCOG website.

#### **4.5 Record Keeping in ITB Files**

For each Invitation to Bid issued by CTCOG the following information will be maintained to show the distribution that was made: the date the ITB was issued and the names and e-mail address of prospective bidders who have been alerted about the ITB, a copy of the ITB that was advertised, and a copy of the notice that was advertised in the local newspaper. All other items relevant to the solicitation should also be maintained as part of the ITB file. The Department is responsible for keeping bid documents, including, time-stamped documents that provide evidence of receipt until the procurement is finalized, and then all procurement related documents must be sent to the Procurement Administrator for record keeping.

#### **4.6 The Pre-Bid Conference**

A pre-bid conference may be used as a means of briefing prospective bidders and explaining or clarifying specifications and requirements contained in the ITB as early as possible after the ITB has been issued, but BEFORE the bids have been opened. Verbal responses to questions asked during the pre-bid conferences shall not supersede written material. Any changes to the ITB must be made in writing and posted as Letter(s) of Clarification.

#### **4.7 Letter(s) of Clarification**

If it becomes necessary to make any material changes in quantity, specifications, delivery schedules, opening dates, or to correct a defective or ambiguous ITB, the changes should be made in writing and posted to the CTCOG website via Letter(s) of Clarification.

Before the issuance of any Letter(s) of Clarification, the period of time remaining before the bid opening shall be considered to determine the need to extend the bid opening date, if necessary.

#### **4.8 Cancellation of an ITB (before Bid Opening)**

An ITB involves money, time, and effort for CTCOG and prospective bidders and should not be cancelled unless deemed in the best interest of the public, meaning that there is no longer a need for the supplies or services, or when there is a substantial amount of Letter(s) of Clarification, where a new and comprehensive ITB is the best solution. If an ITB is cancelled it shall be removed from the CTCOG website and notice sent to the Director of Administration.

The notice of cancellation shall: (a) identify the project number and a description of the ITB, (b) justification of the cancellation, and (c) indicate if there will be a re-solicitation or need in the future for the type of services or supplies involved.

#### **4.9 Submission of Bids**

To be considered for an award, a bid must be responsive-this means that the bid must comply with the material aspects of the ITB. Bids should be filled out and submitted in accordance with the instructions outlined in the ITB. Bids must also be received in the designated office outlined in the ITB not later than the exact date and time set forth for the opening of the bids. All bids must be date and time stamped by the Procurement Administrator, or department designee, to maintain the integrity of the sealed bidding process.

#### **4.10 Withdrawal of Bids**

A bid may not be withdrawn or canceled by the bidder, without the permission of CTCOG.

#### 4.11 Modification of Bids

Bids may not be altered or amended after the submission deadline. A non-material omission or error may be waived by the buyer if the omission or error:

- relates to a matter of form, not substance;
- has merely a negligible effect on price, quality, quantity, delivery or other contractual conditions; and
- does not otherwise prejudice the other bidders

#### 4.12 Opening of Bids

All Bids (any modifications) received before the time set for the opening shall be kept secure and shall not be opened or viewed and should be kept in a secured area. If an ITB has been cancelled the bids shall be returned to the bidders.

Bids must be received by and opened on the date and time specified by the ITB. The Bid opening is open to the public; and if no member of the public attends, a member of another office shall act as a witness.

Late submissions will **not** be considered for award. Bids shall be date/time stamped upon receipt. Incomplete bids must be considered non-responsive, and may not be considered for award unless due to a non-material omission.

- If the incomplete proposal is due to a non-material omission the buyer may seek to obtain the additional information or waive/correct the non-material omission.
- a non-material omission relates to a matter of form, not substance, or an insignificant mistake that may be waived or corrected without prejudicing the other bidders i.e., the effect on price, quality, quantity, delivery or other contractual conditions is negligible.

All bids must be sealed with the identification number clearly marked on the outside. Only one bid/proposal may be submitted per envelope. An unmarked envelope may be opened to establish it contains a bid, and then resealed; and the unmarked bid will not automatically be eliminated; however, it does violate the integrity of the process.

Opened bids shall be kept on file and available for inspection, except to the extent properly designated as proprietary or trade secret. The department is responsible for keeping bid documents, including, time-stamped documents that provide evidence of receipt until the procurement is finalized, and then all procurement related documents must be sent to the Procurement Administrator for record keeping.

#### **4.13 Rejection of Bids**

A bid that fails to conform to the essential requirements of the ITB shall be rejected.

A bid that fails to conform to the delivery schedule, or permissible alternates stated in the ITB, shall be rejected.

A bid shall be rejected when the bidder makes exceptions or imposes conditions that would modify requirements of the ITB or limit the bidder's liability to CTCOG, since to allow the bidder to impose such conditions would be prejudicial to other bidders.

A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not concern the substance – as distinguished from the form – of the bid, or work an injustice on other bidders. A condition concerns the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

A bid may be rejected if the prices for any line items or sub-line items are materially unbalanced.

Bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date shall be rejected.

Low bids received from bidders determined to be not responsible shall be rejected. When a bid bond or guarantee is required and a bidder fails to furnish the bond or guarantee in accordance with the requirements of the ITB, the bid shall be rejected.

The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition. After submitting a bid, if all of a bidder's assets or, those parts related to the bid, are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Accordingly, CTCOG shall reject the bid unless the transfer is effected by merger or operation of law.

#### **4.14 Disqualification of Bids**

The following occurrences require disqualification of the bid/proposals:

- Unsigned or unauthorized signatures on bids/proposals;
- Bids received after the date and time for opening; or
- Bids where prices are conditional on award of another bid or are subject to unlimited escalation.

CTCOG may refuse to award a contract to or enter into a transaction with an apparent low bidder if that that bidder is indebted to CTCOG.

#### **4.15 Evaluation of Bids**

The Procurement Administrator, or department designee, will review the bids to determine the lowest responsive and responsible bidder. Evaluations are based on the criteria included below.

ITBs must clearly state the contract will be awarded to the lowest responsive and responsible bidder, otherwise the default award will be made to the lowest bid meeting the defined specifications.

#### **4.16 Minor Informalities or Irregularities**

A minor informality or irregularity is one that is a matter of form, not substance and also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the ITB that can be corrected or waived and are not prejudicial to the other bidders. The defect or variation is immaterial when the effect on price, quantity, delivery, or other area is negligible when compared to the overall cost or requirements of the supplies or services being acquired. CTCOG may give the bidder the opportunity, if deemed in the best interest of CTCOG, to cure any resulting deficiency. Examples include:

- Returning the number of duplicate copies required by the ITB
- Furnish all required forms (except signature page and price)

#### **4.17 Mistakes in Bids**

Current law prohibits corrections in bids after they are opened. If a mistake is purely clerical in nature and would create an undue hardship the bidder may withdraw its bid. The only exception is when a bidder miscalculates the total price based on a unit price multiplied by quantity. In this case, the unit cost shall be presumed correct and the total price will be recalculated.

#### **4.18 Responsible Bidder**

The Procurement Administrator, or department designee, must determine that a prospective bidder is responsible and that the prices offered are reasonable before making an award recommendation. Personnel may use the price analysis techniques (see Article XI) as guidelines in making this determination. If the price is deemed unreasonable after a thorough price analysis has been conducted, the Procurement Administrator, or department designee, must recommend rejecting all bids.

#### 4.19 Award

After bids are opened and reviewed by the Procurement Administrator or department designee, the appropriate CTCOG personnel will make a recommendation for award to the lowest responsive and responsible bidder. CTCOG's Executive Director may approve and make the award to the recommended bidder or it may reject all bids.

Standards for Award:

- CTCOG reserves the right to award to one or multiple bidders.
- Tie Bids: CTCOG may award a contract by applying preference to a contractor who is a resident in the CTCOG area. If all identical bidders are residents, or if none are residents, the contract must be awarded by drawing lots. If time permits the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three (3) persons and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing. When an award is made by drawing by lot after receipt of equal low bids, the Procurement Administrator, or department designee shall describe how the tie was broken by providing a written statement that the contract award was made in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot. This does not prohibit CTCOG from rejecting all bids.

Other Preferences (this language must be included in the solicitation):

**Recycled Products**—CTCOG is required to comply with Section 361.426, Texas Health and Safety Code, by giving preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. CTCOG must regularly review its procurement procedures to ensure that the procedures: (1) do not explicitly discriminate against products made of recycled materials; (2) encourage the use of products made of recycled materials; and (3) allow CTCOG, to the maximum extent economically feasible, to purchase products that may be recycled when they have served their intended use.

**Environmental Standards\***—CTCOG may give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality, or require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

\*The environmental standards preference may be given only if the cost to the governmental agency for the goods or services would not exceed 105% of the cost of the goods or services provided by a vendor who does not meet the standards.

#### **4.20 Notification of Award**

Once the contract has been approved the selected bidders will be issued a Contract Action Notice to move forward.

## **ARTICLE V**

### **PURCHASES OF \$50,000 and OVER FORMAL SEALED BID**

#### **Best Value Bid**

**A Best Value Bid “BVB” is a combination of competitive procedures designed to obtain the benefits of a sealed bid in combination with the establishment of evaluation selection criteria.**

**A sealed Best Value Bid may be used when the low bid price is not the sole factor.**

**This type of procurement method involves the submission of sealed bids which are then evaluated by a pre-selected evaluation committee, with a minimum of three (3) members, using definitive criteria other than the lowest price.**

**ARTICLE V**  
**PURCHASES OF \$50,000.00 and OVER**

**PART A: Best Value Bid**

**5.0** The Best Value bidding process is a sealed bidding process and all sealed bidding procedures previously mentioned for the ITB procedure. In addition the procedures outlined in this section are used.

The lowest cost is not always the best value for certain procurements. Departments must think strategically when considering their procurement needs and not make the mistake of obtaining enough just to meet their immediate need. The considerations should be “What is the desired outcome of the procurement?” and “What is the best way to achieve this outcome?”

An example of a best value purchase might be the purchase of a heating and air conditioning unit. Departments should consider the total cost of ownership (“TCO”) when purchasing these units. The average life span of the unit, electricity consumption, maintenance record of the unit, and parts availability are a few considerations when looking at the TCO. In addition, departments might consider the qualifications and availability of the service technicians and the proposer’s performance history.

**5.1 Receiving the Best Value Bid**

The Procurement Administrator, or department designee, shall safeguard the BVB against disclosure to unauthorized persons other than the evaluation committee. Then conduct a responsiveness verification to ensure that all required information was provided, and remove any references to price or cost.

**5.2 Evaluating the Best Value Bid**

Contracts to be awarded on the basis of best value are typically evaluated based on the criteria below, including, but not limited to:

- the purchase price;
- life cycle cost;
- the reputation of the bidder;
- delivery terms
- the quality of the bidder's goods or services;
- proposer’s financial resources;
- installation costs;
- the extent to which the goods or services meet CTCOG's needs;
- the bidder's past relationship with CTCOG;
- the impact on the ability of CTCOG to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- the total long-term cost to CTCOG to acquire the bidder's goods or services;

- other relevant criteria specifically listed in the ITB. These factors may include any of those listed as evaluation factors for an RFP.

The Procurement Administrator, or department designee, shall establish a time period for evaluating the BVB. The period may vary with the complexity and number of Best Value Bids involved. However, the evaluation should be completed in an expeditious manner.

Evaluations shall be based on the criteria specified in the BVB. The Procurement Administrator or department designee will categorize each Best Value Bid as “acceptable”; “reasonably acceptable”; or “unacceptable”. Any bid that modifies or fails to conform to the essential requirements or specifications of the solicitation shall be considered nonresponsive and categorized as unacceptable. When a BVB is found unacceptable (either initially or after clarification) the Procurement Administrator, or department designee, shall score the evaluation criteria of that BVB with zero or minimal points.

The Procurement Administrator or department designee may proceed if, in his or her discretion, there are sufficient acceptable BVBs to ensure adequate competition. If there are not, the Procurement Administrator, or department designee, shall request bidders whose BVBs may be made acceptable to submit additional clarifying or supplementing information.

In initiating requests for clarification or additional information, the Procurement Administrator, or department designee, shall determine an appropriate time for bidders to submit all additional information, and incorporate such additional information as part of their BVBs submitted. Such time may be extended at the discretion of the Procurement Administrator, or department designee. If the additional information incorporated as part of a BVB establishes that the BVB is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

### **5.3 Clarifications and Award without Bidder Discussions**

Letters of Clarification are limited exchanges between the CTCOG and bidders that may occur when an award without discussions is contemplated. If award will be made without conducting discussions, bidders may be given the opportunity to clarify certain aspects of their BVB (e.g., the relevance of the bidder’s positive or negative past performance to which the bidder has not previously had an opportunity to respond) or to resolve minor or clerical errors. Award recommendation may be made by the BVB evaluation committee members without engaging in oral discussions with the bidder.

### **5.4 Clarifications and Award with Bidder Discussions**

Oral presentations by bidders requested by the CTCOG may augment written information. Oral presentations may occur at any time in the evaluation process, and are subject to the same restrictions as written information, regarding timing and content. They provide an opportunity for dialogue among the parties. Pre-recorded videotaped presentations that lack real-time interactive dialogue are not considered oral presentations, although they may be included in bidder submissions, when appropriate.

A BVB solicitation may require bidders to submit part of their bids through oral presentations. Information pertaining to areas such as a bidder's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks (or other types of tests) may be suitable for oral presentations. In considering the costs of oral presentations, the Procurement Administrator, or department designee, and the BVB evaluation committee should consider alternatives to on-site oral presentations, such as telephone or video conferencing.

When oral presentations are used, the BVB must provide bidders with sufficient information to prepare the presentations. Accordingly, the BVB may describe:

- The types of information to be presented orally and the associated evaluation factors that will be used;
- The qualifications for personnel that will be required to provide the oral presentations;
- The requirements for – and any limitations or prohibitions on – the use of written material or other media to supplement the oral presentations;
- The location, date, and time for the oral presentations;
- The restrictions governing the time permitted for each oral presentation;
- The scope and content of exchanges that may occur between CTCOG's participants and the bidder's representatives as part of the oral presentations

## **5.5 Certifications/Statements**

CTCOG requires that interested proposers comply with the certifications listed below:

1. Executive Orders 12549 and 12689, Debarment and Suspension, 29 CFR Part 98.510 and part 180, certification requirement;
  - No award may be made, at any tier, to a party who is debarred, suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.
2. Prohibition Against Lobbying with Appropriated Funds, 31 U.S.C. § 1352 (West Supp. 1994)
  - No appropriated funds may be expended by the recipient of a federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in the awarding, making, entering into, extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. Each person who requests or receives a federal contract, grant, loan or cooperative agreement must file a declaration affirming the above.
  - Certify that they have not made a prohibited payment:

- upon submission of any request for consideration for award of a federal contract, grant, loan or cooperative agreement;
  - upon receipt of such federal monies unless such a certification was previously filed; and
  - at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in said declaration.
- Any person receiving a sub grant must make such a certification.
3. Certification Regarding Drug-Free Workplace Requirements
  4. Funding Agencies may require additional certifications and will be included as required

## **5.6 Award**

The Procurement Administrator, or department designee, shall compile the total scores based on the individual evaluation committee members' final score matrices. Based on these scores, the BVB evaluation committee selects the highest ranked bidder as the best respondent to the BVB. The appropriate CTCOG personnel will make a recommendation for award. The CTCOG Executive Director may approve and make the award to the recommended bidder or it may reject all bids.

## **5.7 Notification of Award**

Once the contract has been approved the selected bidders will be issued a Contract Action Notice to move forward.

## **5.8 Protest Procedures (See Article X for full language)**

Protest procedures must contain:

- contact person;
- time period for submission of protests;
- trigger events for submission, responses and replies to protests; and
- statements regarding right to reject any and all bids, right to recall all or portions of the BVB and right to terminate contract for convenience.

## **ARTICLE VI**

### **PURCHASES OF \$50,000 and OVER FORMAL SEALED BID**

#### **Request for Proposal**

**A Request for Proposal “RFP” is a competitive process appropriate for procuring high technology goods and services and certain professional services that are not governed under the Professional Services Procurement Act, which has different rules for professional services such as architecture and engineering.**

**RFP’s are appropriate for other goods and services where the best value may not be the cheapest item, but rather a combination of price and other factors as well.**

**This type of procurement method involves the submission of sealed bids which are then evaluated by a pre-selected evaluation committee, with a minimum of three (3) members, using definitive criteria other than the lowest price.**

**\*\*The Workforce Solutions contracts have their own guidelines.**

## **ARTICLE VI**

### **PURCHASES OF \$50,000.00 and OVER**

#### **PART A: Request for Proposal**

##### **6.0 Using the Request for Proposal**

The RFP process is complex and will often take longer than the other procurement methods mentioned. Requests for Proposals are often used for the following goods or services:

- Certain professional services such as consulting services, software design, and other services not covered by the Professional Services Procurement Act (Texas Government Code Chapter 2254).
- Data processing equipment and software;
- Telecommunication equipment and radio and microwave systems;
- Electronic distribution control systems, building energy management systems, and technical services related to those items;
- Creation or modification of software systems; and

When using the RFP as the procurement method the department must specify all the criteria, including price, which will be considered in determining which proposal represents the overall best value to CTCOG. Criteria that is objective (measurable) and subjective may be used to evaluate, although cost is not the primary factor, it should be a significant consideration when evaluating a proposal.

*Advance Planning for the RFP Evaluation Process: The first step is to engage the Procurement Administrator to ensure proper guidance through the RFP process. As part of the early stages of the RFP development, departments must appoint evaluation committee members with a minimum of 3 to 5 people with the expertise for the product or service required. There is no maximum number of evaluators, however the evaluation will become more complex and time consuming with larger numbers of people to coordinate. The evaluation committee should be comprised of members that bring as much knowledge as possible to ensure the best proposal is selected.*

##### **6.1 Final Review of RFP**

Each RFP must be thoroughly reviewed before issuance to detect and correct possible discrepancies or ambiguities that could limit competition or result in non-responsive proposals. The Department Subject Matter Experts (SME's), the Procurement Administrator and the Director of Administration are responsible for reviewing the RFP documents.

CTCOG may reject any and all proposals.

## The RFP Process

Generally, the steps listed below are part of the RFP process, and can be applied as applicable to the type of goods or services being procured.

- Department identifies the need and selects a lead for the solicitation
- RFP Document produced, reviewed, and approved as required
- Public Advertisement of the RFP
- Pre-Proposal Conference
- Submission of the proposals
- Evaluation of the proposals by CTCOG
- Selection of two or more proposals rated most advantageous to CTCOG ;
- Oral presentations from selected proposers (optional);
- Invitation to selected proposers to make Best and Final Offer (“BAFO”);
- Evaluation of BAFOs;
- Contract negotiations with one or more parties whose BAFOs are selected; and
- Staff recommendation of most advantageous proposal;
- Award of contract by CTCOG Executive Director.

### 6.3 Elements of the RFP:

The RFP may consist of the many sections listed below; however, the Procurement Administrator, or department designee, may delete, add or reorganize these sections to meet the proposal requirements upon approval by the Director of Administration.

- RFP cover page;
- General Information;
- Defined terms;
- Overview of work;
- Instructions for proposing;
- Proposer qualifications;
- Evaluation criteria;
- \*Available funds and source of funds (except for TxDOT);
- \*Requisition number
- \*Identification number
- \*Requirement for information regarding
  - Background/experience
  - Accounting system
  - Audit/monitoring results
  - Program proposal
  - Detailed budget

- Participant schedule/performance
- Contract term and/or terms to extend contract;
- Statement of Work;
- Technical specifications, if relevant;
- Engineering standards, drawings and artwork, if relevant;
- Pricing schedule (price list(s) or line-item pricing, hourly);
- Contingent pricing (overtime and emergency work);
- Shipping and Freight requirements;
- General terms and conditions;
- DBE requirements;
- Grantor agency requirements
- General information;
- Packaging requirements;
- Guaranty or warranty;
- Bonding requirements;
- Safety requirements;
- Regulation, license, or permit requirements;
- Attachments;
- Exhibits;
- On-site testing & inspections; and
- Protest procedures

#### 6.4 Preparing the RFP

The request for proposal is better constructed when using a standard structure and it is useful to divide the core sections of the RFP into categories, and should, at a minimum, include the following:

**Cover Page:** A one page summary of the main events to the RFP and includes the RFP Name and Project Number, Department name, opening date, pre-proposal conference information, CTCOG contact name, number of copies to submit, address to submit or deliver proposal, and other details or instructions pertinent to the RFP.

**Objective:** A simple statement summarizing what CTCOG intends to accomplish

**Background:** A brief narrative providing historical information relative to the events driving the need for the RFP, and should be limited to information declared necessary to help proposers understand the requirements.

**Statement of Work/Scope of Work:** *The most important part of any RFP is this section.* This part contains the technical specifications, deliverables, and performance requirements of the goods or services being procured, and provides a general description of the answers to the questions-what, when, where, and how.

What does the department want? When is it needed? Where does the department want it? How many or how much does the department need? The purpose of writing an SOW is to assure that the proposer delivers what the user wants it to deliver. For this reason, the SOW should specify the performance requirements of the deliverables being requested, not merely describe them. The scope of work should provide a description of the following:

- A description of the services or products
- Specified drawings/schematics, diagrams, if any
- Pricing methods (unit price, time & materials, lump sum, etc.
- Schedule—when deliverables are required.
- Contract term—the approximate contract start and completion dates.
- Level of experience—the level of experience in the type of work to be performed
- Qualifications—the minimum qualifications required from proposer

**Submission Requirements/Proposal Contents:** Lists the specific instructions for the proposer to construct their response and the format for submission.

**Contractual Requirements:** Contains those contract clauses that are not scope related, but are required to minimize risk to CTCOG, ensure that CTCOG receives what it has bargained for, and clarifies the rights and remedies available to both parties. Includes, but not limited to:

- Insurance;
- Liquidated damage provisions;
- Contract changes;
- Contract administration;
- Payment schedules;
- Warranty;
- Bonding requirements (if applicable)

**Special Conditions:** This section tells the proposer what information should be submitted with the proposal and any special conditions related to the competitive proposal process itself, such as:

- Title VI Requirements;
- Equal Employment Opportunity;
- DBE Goal (if applicable);
- Debarment Certification Statement;
- Conflict of Interest;
- Compliance with Federal Regulations;
- Compliance with Grantor Agency Requirements;

SOW, requirements and contract clauses should not be placed in this section. Only the word “proposer” should be used to describe the person(s) doing the proposing. Such words as “contractor, vendor, supplier, consultant,” etc., should not be used.

**Exhibits:** Additional forms necessary for the proposal process and to standardize submissions by all proposers. This might include:

- Conflict of Interest Form;
- Debarment Certification Statement
- Pricing Structure Form;
- References list;
- Other forms (as required) for standardization

**Attachments:** Used to incorporate information or requirements related to the scope of work such as diagrams, installation site plans, statistical data, equipment layout, architectural drawings, special regulations, etc.

**Evaluation Criteria:** The RFP must specify the area in which the proposals will be evaluated and should include the related weights given or listed in the order of importance.

## 6.5 Advertising and Publicizing the RFP

Section 252.041 of the Texas Local Government Code sets the general rules for the solicitation of bids. A reasonable time for interested proposers to prepare and submit proposals shall be allowed in all RFP’s.

- A short summary of the RFP shall be published in the local newspaper or a newspaper of general circulation under Legal Notices. The notice must include a description of the item or where the solicitation package may be obtained, the time and place for receiving and opening proposals, name and address of person to receive proposals.
- Notice of the time and place at which the proposals will be publicly opened must be published at least once a week for two consecutive weeks. The date of the first publication must be before the 14th day from public opening.
- The solicitation package should be sent to all qualified persons on the Bidders' List **after the first newspaper publication.**
- All RFPs will also be posted on the CTCOG website.

## **6.6 Record Keeping in RFP Files**

For each Request for Proposal issued by CTCOG the following information will be maintained, by the Procurement Administrator, or department designee, to show the distribution that was made: the date the RFP was issued and the names and e-mail address of interested proposers who have been alerted about the RFP, a copy of the RFP that was advertised, and a copy of the notice that was advertised in the local newspaper. All other items relevant to the solicitation should also be maintained as part of the RFP file.

## **6.7 Letter(s) of Clarification**

If it becomes necessary to make any material changes in delivery schedules, opening dates, or to correct a defective or ambiguous RFP, the changes should be made in writing and posted to the CTCOG website via Letter(s) of Clarification.

Before the issuance of any Letter(s) of Clarification, the period of time remaining before the proposal opening shall be considered to determine the need to extend the proposal opening date, if necessary.

## **6.8 Cancellation of an RFP (before Bid Opening)**

An RFP involves money, time, and effort for CTCOG and interested proposers and should not be cancelled unless deemed in the best interest of the public, meaning that there is no longer a need for the goods or services, or when there is a substantial amount of Letter(s) of Clarification, that a new and comprehensive RFP is the best solution. If an RFP is cancelled it shall be removed from the CTCOG website and notice sent to the Director of Administration..

The notice of cancellation shall: (a) identify the project number and a description of the RFP, (b) justification of the cancellation, and (c) if there will be a re-solicitation or need in the future for the type of services or goods involved.

## **6.9 Submission of Proposals**

To be considered for an award, a proposal must be responsive-this means that the proposal must comply with the material aspects of the RFP. Proposals should be filled out and submitted in accordance with the instructions outlined in the RFP. Proposals must also be received in the designated office outlined in the RFP not later than the exact date and time set forth for the opening of the proposals. All proposals must be date and time stamped by the Procurement Administrator, or department designee, to maintain the integrity of the competitive sealed process.

## **6.10 Withdrawal of Proposals**

A proposal may not be withdrawn or canceled by the offeror, without the permission of CTCOG.

## 6.11 Modification of Proposals

Proposals may not be altered or amended after the submission deadline. A non-material omission or error may be waived by the buyer if the omission or error:

- relates to a matter of form, not substance;
- has merely a negligible effect on price, quality, quantity, delivery or other contractual conditions; and
- does not otherwise prejudice the other offerors

## 6.12 Opening of Proposals

All proposals (and any modifications) received before the time set for the opening shall be kept secure and shall not be opened or viewed and should be kept in a secured area. If an RFP has been cancelled the proposals shall be returned to the offerors.

Proposals must be received by and opened on the date and time specified by the RFP. The response opening is open to the public; and if no member of the public attends, a member of another office shall act as a witness. **The person who opens the proposal should only read the name of the firms who have submitted an RFP if requested by an interested party; no other information is revealed at that time, as the contents of the offers must remain confidential until the date of contract award.** The department is responsible for keeping proposal documents, including, time-stamped documents that provide evidence of receipt until the procurement is finalized, and then all procurement related documents must be sent to the Procurement Administrator for record keeping.

Late submissions will **not** be considered for award. Proposals shall be date/time stamped upon receipt. Incomplete proposals must be considered non-responsive, and may not be considered for award unless due to a non-material omission.

- If the incomplete proposal is due to a non-material omission the buyer may seek to obtain the additional information or waive/correct the non-material omission.
- a non-material omission relates to a matter of form, not substance, or an insignificant mistake that may be waived or corrected without prejudicing the other bidders i.e., the effect on price, quality, quantity, delivery or other contractual conditions is negligible.

All proposals must be sealed with the identification number marked outside the envelope. Only one proposal may be submitted per envelope. An unmarked submission may be opened to establish it contains a proposal, resealed; the unmarked proposal will not automatically be eliminated; however, it does violate the integrity of the process.

Opened proposals shall be kept on file and available for inspection, except to the extent properly designated as proprietary or trade secret. The Department is responsible for keeping proposal documents, including, time-stamped documents that provide evidence of receipt until the procurement is finalized, and then all procurement related documents must be sent to the Procurement Administrator for record keeping.

### **6.13 Rejection of Proposals**

A proposal that fails to conform to the essential requirements of the RFP shall be rejected.

A proposal shall be rejected when the offeror makes exceptions or imposes conditions that would modify requirements of the RFP or limit the offerors liability to CTCOG, since to allow the offeror to impose such conditions would be prejudicial to other offerors.

Proposals received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the proposal opening date shall be rejected.

Proposals received from offerors determined to be not responsible shall be rejected. When a bid bond or guarantee is required and an offeror fails to furnish the bond or guarantee in accordance with the requirements of the RFP, the proposal shall be rejected.

The originals of all rejected proposals, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition. After submitting a proposal, if all of an offerors assets or, those parts related to the proposal, are transferred during the period between the proposal opening and the award, the transferee may not be able to take over the proposal. Accordingly, CTCOG shall reject the proposal unless the transfer is effected by merger or operation of law.

### **6.14 Disqualification of Proposals**

The following occurrences require disqualification of the proposals:

- Unsigned or unauthorized signatures on proposals;
- Proposals received after the date and time for opening; or
- Proposals conditional on award of other proposals

CTCOG may refuse to award a contract to or enter into a transaction with a proposer that is indebted to CTCOG.

### 6.15 Evaluating the Proposal

The evaluation team will determine how the proposal will be evaluated using the criteria specified in the RFP and an evaluation matrix will be developed to score the individual proposals by each member of the evaluation committee. The scoring matrix is the scoring worksheet and will become part of the RFP file. The scoring matrix should be completely developed prior to the release of the RFP as many times the development of this worksheet drives the need for adjustments or additions needed within the RFP document. **At the very least the matrix must be developed prior to the opening of the proposals.**

Criteria not included in the RFP cannot be used in the scoring matrix and cannot be used to rank a proposal. The scoring matrix can be included in the RFP if desired, but it is not required.

Cost is typically the most significant evaluation factor, but there are many procurements where skills and relevant experience may be more important than cost and the scoring matrix should identify these critical areas with the appropriate ratings and should be assigned higher weights than the other criteria. The table below is an example of a simple matrix in which cost is the most critical factor:

<b>Evaluation Criteria (Example)</b>	<b>Weight (Example)</b>
Cost	40%
Proposed Methodology	40%
Qualifications of Firm/Staff	15%
Financial Stability	5%

Evaluations may be conducted using any rating method or combination thereof including numerical weights and points (percent of), and ordinal methods of scale (1 to 5, etc.). The relevant strengths and weaknesses must be documented on the evaluation matrix. Each evaluation should minimally consist of:

- **Cost:** Competition sets the reasonableness of price, therefore comparing the prices of the all the proposals gives the evaluators a point of reference in determining if the proposed cost satisfies the requirements of the RFP.
- **Qualifications/Experience:** This is the proposer’s ability to perform successfully. Also, take into account past performance information, proposed key personnel, subcontractors, etc.
- **Strategy or Implementation Plan:** This is the area that reflects the overall plan or strategy that the proposer will use to meet the requirements of CTCOG. Consider the project timeline, training, equipment, implementation, or solution by the proposer to meet CTCOG’s overall objective.

- **Financial Stability:** This indicates the proposer’s ability to financially support the project. Consider the length of time the company has been in business, annual revenues and expenditures, current projects, and other factors that can impact the available finances of the company.

Scoring sheets shall be completed, signed and dated by the reviewing party and shall be maintained by the Procurement Administrator, or department designee, as part of the procurement record.

#### **6.16 Communications with Proposers (After the RFP release)**

The RFP should advise proposers that they must channel all communications concerning the RFP through the Procurement Administrator, or department designee, and to no other person or member of CTCOG Board of Directors. All communications should be in writing and should be responded to by a letter of clarification with copies to all proposers on the mailing list and posted to the CTCOG website. Failure to observe this rule, including but not limited to attempts to contact CTCOG Board members directly in regard to the RFP, may be justification for rejection of the violator’s proposal.

#### **6.17 The Pre-Proposal Conference**

The pre-proposal conference can be mandatory or optional and is a meeting of the department, end-user(s), and interested proposers and is generally used for reviewing the requirements of the RFP with the interested proposers and end-users and to ensure that all interested proposers have a clear understanding of the requirements of CTCOG, as well as, promoting competition. Pre-proposals often times uncover the market conditions that the end-user may not be aware of and could drive the need for letters of clarification to be issued.

The pre-proposal conference should take place no earlier than ten (10) days after the release of the RFP to maximize attendance and ensure that all the interested proposers have had adequate time to thoroughly read the RFP and prepare substantial questions.

#### **6.18 Pre-Proposal Site Visits**

Some projects will necessitate a site visit by proposers, such as those with installation requirements. The point of contact for arranging a site visit should be included in the RFP cover. A general site orientation “walk through” may be discussed during the pre-proposal conference with a site visit scheduled that day or at a later date.

#### **6.19 Interviews/Oral Presentation**

Interviews/Oral presentations provide an opportunity for respondents to highlight the strengths and unique aspects of their proposal and to provide answers to questions the department may have regarding the proposal. Demonstrations of product functionality are recommended when appropriate, such as for information technology procurements or solution-based procurements.

The selected proposers should each be given the same amount of time to make their interviews/oral presentations to the evaluation team. During the presentation, evaluation team members may ask questions about the proposal or product. When in person presentations or demonstrations are not possible, the presentation may be made by telephone or on-line conference.

## **6.20 Best and Final Offers**

After the interviews/oral presentations, if any, or after all original proposals are evaluated, proposers judged by the committee to have made the most advantageous offers may be invited to submit a Best and Final Offer (“BAFO”).

The Procurement Administrator, or department designee, shall clearly notify the selected Proposers in writing that they are being invited to submit a BAFO and that they have the opportunity to:

- Modify the initial offer;
- Update or lower pricing based on any changes the department has made;
- Include any added inducements that will improve the overall score in accordance with the RFP’s evaluation plan.

Upon receipt of the BAFOs, the evaluation team will revise its original evaluation(s) based on the information submitted in the BAFO and select the top or the top two or more proposers recommended for an award.

## **6.21 Award**

A recommendation will be presented to the Executive Director and the Director of Administration for the approval to negotiate, and execute, a contract with the ranked Firms in descending order. However, the Final approval and selection of award lies with the Executive Director and the Director of Administration. CTCOG reserves the right to delay that date as needed and to reject any and all proposals as deemed in its interest.

## **6.22 Certifications/Statements**

CTCOG requires that interested proposers comply with the certifications listed below:

- 6.22.1 Executive Orders 12549 and 12689, Debarment and Suspension, 29 CFR Part 98.510 and part 180, certification requirement;

- No award may be made, at any tier, to a party who is debarred, suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

6.22.2 Prohibition Against Lobbying with Appropriated Funds, 31 U.S.C. § 1352 (West Supp. 1994)

- No appropriated funds may be expended by the recipient of a federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in the awarding, making, entering into, extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. Each person who requests or receives a federal contract, grant, loan or cooperative agreement must file a declaration affirming the above.
- Certify that they have not made a prohibited payment:
  - upon submission of any request for consideration for award of a federal contract, grant, loan or cooperative agreement;
  - upon receipt of such federal monies unless such a certification was previously filed; and
  - at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in said declaration.
- Any person receiving a subgrant must make such a certification.

6.22.3 Certification Regarding Drug-Free Workplace Requirements

6.22.4 Funding Agencies may require additional certifications and will be included as required

**6.23 Contract Negotiation**

Negotiations (written/oral) shall be conducted with all responsible, responsive offerors deemed to be in the competitive range, i.e., have a reasonable chance of being selected for award.

- The competitive range is determined by a technical evaluation of proposals received based upon the evaluation factors;
  - The review and rating of proposals must be consistently applied to assure equal treatment and arms-length transaction;

- Data collected in the cost reasonableness review should be used to outline strengths and weaknesses of the proposed budget; and
- All changes resulting from negotiation should be documented.
- Types of contracts: cost reimbursement, fixed-unit price and fixed-unit price/performance based contracts.
- Award the contract to the offeror whose proposal is determined to be the most advantageous to CTCOG, considering the relative importance of price and the other evaluation set forth in the request for proposals.
- Notify all unsuccessful offerors of the award in writing.

#### **6.24 Debriefing**

Requests for a debriefing must be made within one week of notification of non-selection. CTCOG reserves the right to not conduct debriefings if requests are made after that time.

#### **6.25 Notification of Award**

Once the contract has been approved the selected proposer will be issued a Contract Action Notice to move forward.

#### **6.26 Protest Procedures (See Article X)**

Protest procedures must contain:

- contact person;
- time period for submission of protests;
- trigger events for submission, responses and replies to protests; and
- statements regarding right to reject any and all proposals, right to recall all or portions of the RFP and right to terminate contract for convenience.

## **ARTICLE VII**

### **DEPARTMENT CARD PURCHASES**

**Department Cards are a convenient way for CTCOG departments to make incidental purchases of supplies and services in amounts that will not reach the bid limit within the fiscal year.**

**Each Department will maintain a department card(s) with a single-transaction limit and a monthly transaction limit pre-determined by Finance. All cards have a maximum card amount determined by the user function.**

**ARTICLE VII**  
**DEPARTMENT CARD PURCHASES**

**PART A: Department Card Purchases**

**7.0 Using a Department Card**

The need to use a Department Card is established when the purchase of goods or services is for official CTCOG business. Once issued the card holder will ensure that the use of the card does not violate established CTCOG spending limits.

All purchases under \$2,000.00 are allowed to be charged to the Department Card with the exception of Office Supplies.

**7.1 Procedure (P-Card): Purchases Under \$2,000.00**

- Unless required by the Department Director, managerial approval is not required. The cardholder responsible for all purchases.
- P-Cards can be used for purchases under \$2,000 when the vendor will not invoice for goods and services.
- Each cardholder is responsible for the documentation and submission of receipts and reconciliation of charges. All charges must be reasonable and allowable.
- Administration will provide cardholder's, with a copy to the Department's Admin, a monthly credit card statements to reconcile purchases.
- The Department's Admin will process the credit card statement and all backup documentation using the same process as preparing a Request for Payment for Accounts Payable.
- Cardholders and Department Admins will verify all documentation for credit card charges are reasonable, allowable, and accounted for.
- Once reconciled, Department Admins will submit their Request for Payment, with all supporting backup documentation and credit card statement attached, by the 10<sup>th</sup> day of the month.

**\* In the event of any planned extended absence, cardholders will be required to surrender their P-Card to the Senior Accountant.**

## **7.2 Procedure: Purchases Over \$2,000.00**

- The Department Director's credit card must be used for all single purchases over \$2,000.00.
- Before a purchase is made a Small Purchase Quotation Form should be completed and approved.
- Backup documentation is needed for each transaction (purchase receipt, purchase confirmation) confirming the purchase.
- Administration Department will provide the Department Director's monthly credit card statement to reconcile purchases at the end of the month.

## **7.3 Purchases that may be made with a Department/P-Card**

Department cards may be used to purchase goods or services not prohibited in this policy or in violation of their funding agreements. The total purchased with the department card must not exceed the limits associated with each card type. Finance may authorize purchases in excess of the pre-determined limit and the formal bid limit established by the State of Texas during incidents which may include, but are not limited to: emergency preparedness, inclement weather, disasters, or any other conditions that may affect Health and Safety of the region.

## **7.4 Purchases that may NOT be made with a Department Card/AA Card**

Prohibited purchases include, but are not limited to, the following:

- Cash Advances;
- Personal Expenditures;
- Restocking Inventory;
- Office Supplies;
- Technology (without prior written approval from Data Services-see Article XVIII- Supplements for full list of items requiring approval);
- Online Gaming/Betting;
- Escort Services;
- Jewelry;
- Gambling
- Utilities

## **7.5 Individual Responsibility**

Card holders are responsible for the security of their cards; the cards should be treated with the same level of care as that would be used with their own personal credit or debit cards. Unsolicited requests for account information should be verified before any credit card information is released. In addition to securing the card, card holders **MUST** retain all receipts for all purchases.

If a receipt is lost, the card holder must obtain a copy from the bank or supplier. Faxed or

computer-generated invoices are acceptable. The first eight digits of the card number should be blocked from a receipt showing the entire 16-digit card number.

## **7.6 Declined Transactions**

Occasionally a supplier may receive a “decline” response from bank after attempting to complete a card transaction. The decline could be for multiple reasons: exceeds spending limit; incorrect expiration date; billing address incorrect; or a purchase outside of the correct spending profile. The card holder should contact the Senior Accountant for resolution if the transaction is declined.

## **7.7 Returns of item(s) purchased with the Department/P-Card Card**

Upon the return of any merchandise purchased with a department card to a supplier, the card holder is responsible for obtaining a credit memo from the supplier. The credited amount is then re-applied to the card, or the vendor can refund the amount to CTCOG via a reimbursement check. **Cash refunds are prohibited.**

## **7.8 Lost or Stolen Cards**

If a card has been lost or stolen, the card holder must immediately notify Administration Department.

## **7.9 Unauthorized Use of a Department Card/P-Card**

Purchases that a department’s management or the Accounting Coordinator deem inappropriate will be referred back to the Card holder for justification. If unauthorized charges appear in the Monthly Statement:

- The Accounting Coordinator must investigate all circumstances surrounding the alleged misuse and in such cases where there is evidence substantiating a violation of procedure or policy, refer than information to the appropriate authority for investigation and/or disciplinary action
- In those cases where there is evidence of negligence in the use of a card, but no fraudulent acts have been committed, the card holder must surrender the card, and may be subject to disciplinary action.

Any employee having knowledge of violations of this procedure or policy governing the use of the department card shall immediately report violations to the Accounting Coordinator. Card holders suspected or accused of misuse, fraud, or theft will have their card suspended or terminated. Further disciplinary actions, if necessary, will be administered in accordance with CTCOG policies and procedures.

### **7.10 Disputed Department Card Purchases**

Card holders are responsible for immediately resolving any disputes between themselves and the supplier on the item(s) purchased. Cardholders should advise the Finance Department of any disputes and the agreed upon resolution to avoid inappropriate charges to grants.

### **7.11 Revocation of Department/P-Card Use**

The use of a Department/P-Card will be revoked when:

- A Department Manager or Accounting Coordinator issues a request to the Director of Administration.
- A card holder violates the approved policies and procedures regarding the use of department cards
- A card holder is no longer employed by CTCOG. Finance will recover issued cards based upon the signed credit card authorization form that is documented in the employee file in Human Resources.
- The card holder fails to provide proper documentation for expenditures.

## **ARTICLE VIII**

### **SPECIAL CASES AND EXCEPTIONS**

**In some instances, procurement can be made with exception to bid limits and State Law requirements. This section describes the following special cases, and exceptions:**

- Emergency Procurements**
- Sole Source Procurements**
- Procurements through Cooperative Purchasing Agreements**
- Professional, Planning, Personal and Pass-thru Services**
- Micro-Purchases**

**ARTICLE VIII**  
**SPECIAL CASES AND EXCEPTIONS**

**PART A: Special Cases and Exceptions**

CTCOG may, but is not obligated to, use any competitive procurement process it deems desirable for the procurements listed below, unless the use of competitive procurement is other restricted.

Unless otherwise specified by law or program requirements, all contracts and/or purchase orders shall be awarded by competitive sealed bidding Invitation for Bid (ITB) process pursuant to applicable federal and state laws, rules and regulations

**8.1 Emergency Procurements**

Emergency procurements should be made as competitively as possible under the circumstances. Emergency purchases are those purchases necessary because:

- public calamity that requires the immediate appropriation of money
- unforeseen damage to public machinery, equipment or property

Procedures for Emergency purchases are as follows:

1. A written determination of the basis for the emergency and for the selection of a particular contractor or vendor shall be required prior to issuing an emergency purchase order.
2. As soon as practicable, a record of each emergency procurement shall be made and shall include the contractor's name, the amount and type of the contract, and a listing of the items procured under the contract.
3. All documentation must then be submitted to the Director of Administration for the appropriate approvals as soon as possible.

**8.2 Public Health and Safety**

Procurement necessary to preserve or protect public health or safety is not required to be competitively bid. Purchases to protect health and public safety do not need to be made in connection with a public calamity in order to be exempt. This exemption includes contracts for solid waste disposal.

Procedures for Public Health and Safety:

- 8.2.1 A written determination of the basis for the public health and safety provision and for the selection of a particular contractor or vendor shall be required prior to

justify the purchase under the provision.

8.2.2 All documentation must then be submitted to the Director of Administration for approval.

### 8.3 Sole Source Procurement

Sole Source procurements are procurements of goods or services that are available from just one vendor. **A sole source purchase is not to be used to avoid competition.** Sole source purchases above \$50,000.00 must be approved by the CTCOG's Director of Administration.

Sole source procurement is limited to the following:

- There is no other product or service available that can perform the equivalent functions to the sole source product or service;
- The product is only available from a regulated or natural monopoly;
- Patent or Copyright prohibits other sources from distribution
- Maintenance or repair functions call for the Original Equipment Manufacturer "OEM" parts. This means that no other entity except the OEM is able to maintain, repair, or replace for parts or services.

Items that are only available from one source "single source" are not automatically considered a sole source item. Often, the manufacturer may have distributors that resell their products as "authorized distributors". It should be verified that the manufacturer does not have authorized distributors, if it is determined that distributors exist, competition should be sought from each distributor.

If, after soliciting a number of sources, competition is deemed inadequate;

- CTCOG must have demonstrated a "good faith effort" that it has solicited qualified providers through the small purchase, sealed bids or competitive proposal processes.
- is authorized by the grantor agency, if applicable.
- All documentation (sole source forms) must then be submitted to the Director of Administration for approval.

Procedures for Sole Source Procurement:

- The process may be initiated with an ITB, RFP, RFQ or the Informal Solicitation process.
- A written determination of the basis for the public health and safety provision and for the selection of a particular contractor or vendor shall be required prior to justify the purchase under the provision.

- The sole source contractor is required to submit a “Sole Source Certification Statement” that certifies the entity as the manufacturer of the item, provider of the service (as applicable), and there are no authorized resellers or distributors.
- The sole source contractor is required to submit complete bid/proposal documentation, including a description of the work to be accomplished and a proposed price.
- Negotiations should be conducted with the sole source to obtain the best possible price since the lack of competition may lead to a vendor or contractor to charge unreasonable high prices.
- The negotiations should be documented and retained in the procurement file along with the sole source justification.

Approval of Grantor Agency (if applicable)

- CTCOG must receive prior written concurrence from grantor agency for any sole source procurement expected to exceed \$50,000.00.
- If specifications and conditions of a solicitation have been drawn to describe a product which is proprietary to one vendor, without language which permits an equivalent product to be supplied, written justification of the requested specifications or conditions must be submitted.

#### **8.4 Cooperative and Interlocal Agreements**

Under Texas Law, CTCOG may participate in a cooperative purchasing program with another local government or a local cooperative organization (as defined by Texas Local Government Code Chapter 271), to include state and federal contracts, provided that CTCOG purchases the goods and services in accordance with the cooperative purchasing requirements, then CTCOG is deemed to have satisfied state bid laws for the purchase of the goods or services. Examples of Cooperative Agreements CTCOG can utilize to procure goods and services are:

- Department of Information Resources (DIR)
- Texas Multiple Award Schedule (TXMAS)
- National Intergovernmental Purchasing Alliance (National IPA)
- National Cooperative Purchasing Alliance (NCPA)
- The Cooperative Purchasing Network (TCPN)

CTCOG must determine that the cooperative agreement program being used to procure the goods or services satisfies the requirements of the State of Texas competitive bid law of the Texas Local Government Code Chapter 252.

CTCOG operates and administers its own cooperative purchasing program which any of the departments have the option to utilize.

## **8.5 U.S. General Services Administration (GSA) Contract Purchases**

CTCOG may also make certain purchases by taking advantage of the U.S. General Services Administration contracts with vendors. GSA is the purchasing agent for the Federal Government and offers a cooperative purchasing program for local governments and eligible entities to make purchases through two specific GSA schedules:

- Schedule 70 (Information Technology) - Features a wide variety of information technology products and services including mobile device and mobile application management (MDM/MAM) tools, automated data processing equipment (firmware), software, cloud computing services, hardware, support equipment, and professional services
- Schedule 84 (Security/Law Enforcement Equipment) - Features alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services.

Procedures for Cooperative Agreements follow the same procedures for small purchases, but only require **one written quote**. Any amount over \$50,000.00 requires CTCOG's Director of Administration approval.

## **8.6 Professional, Planning and Personal and Pass-thru Services**

### **8.6.1 Professional Services (See RFQ Supplement-Article XVII)**

Professional services under Chapter 2254 are: accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, and bond counsel services. Competitive bidding is also prohibited for the employment of a person who is licensed or registered as: a CPA, an architect, a landscape architect, a land surveyor, a physician, an optometrist, a professional engineer, a real estate appraiser or a registered nurse.

Other professional services, such as general legal services, are exempt from competitive bidding or competitive proposal requirements, but are not under Chapter 2254. Professional services are defined as services that involve "predominately mental or intellectual, rather than physical or manual, skills" and that require "special knowledge or attainment and a high order of learning, skill and intelligence."

- Chapter 2254, Texas Government Code, requires that a contract/purchase order for the purchase for professional services be awarded on the basis of

demonstrated competence and qualifications to perform the services for a fair and reasonable price. In procuring services, CTCOG is also subject to State and Federal procurement requirements contained in the Uniform Grant Management Standards (UGMS).

- In the case of architectural, engineering or land surveying services, Chapter 2254 requires that CTCOG first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications and then attempt to negotiate with that provider a contract at a fair and reasonable price.
- A contract for professional services as described in Chapter 2254, may NOT be awarded on the basis of competitive bids.

### **8.6.2 Selection Methods for Professional Services**

- In order to comply with UGMS, CTCOG will procure professional services using a Request for Qualifications (RFQ). Contract award must be based on demonstrated competence and qualifications to perform the services for a fair and reasonable price. The solicitation should include: a statement of qualifications;
- public notice; and
- the RFQ must describe the services required and outline in detail the information and data required of each provider.
- Selection of architectural, engineering, or land surveying services must be based on selection of the most highly qualified provider based on demonstrated competence and qualifications (RFQ); provided CTCOG can negotiate a fair and reasonable price. If a satisfactory agreement cannot be negotiated with the most highly qualified provider, CTCOG must end negotiations with that provider and select the next most highly qualified provider to negotiate a contract at a fair and reasonable price. Selection of other professional services may be made (at CTCOG option) by RFQ, RFP.

### **8.6.3 Planning Services**

Planning services are those services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan or regional councils.

By policy and to comply with UGMS, CTCOG will use the Request for Proposal (RFP) process for the procurement of planning services.

### **8.6.4 Personal Services**

Personal services involve a contract in which the contractor himself is required to perform the service.

By policy and to comply with UGMS, CTCOG will use the Request for Proposal (RFP) process for procurement of personal services.

### **8.7 Selection Methods for Planning and Personal Services**

Selection of personal or planning services will be made using a Request for Proposal (RFP).

- Contract must be awarded to the offeror whose proposal is determined to be the most advantageous to CTCOG, considering the relative importance of price and the other evaluation factors set forth in the request for proposals.
- Selection of personal or planning services may (at CTCOG's option) be made based on competitive bid to the lowest responsible bidder or to the bidder providing best value to CTCOG.
- A Request for Qualifications (RFQ) or other selection methods may also be used under Texas state procurement law; other restrictions may apply.

### **8.8 Pass-Through Services**

The procurement of pass-through services from private and non-profit services providers will be completed through the Request for Proposal (RFP) process.

### **8.9 Other exemptions**

CTCOG may (but is not obligated to) use any competitive procurement process it deems desirable i.e. ITB, RFP or RFQ for the procurements listed below, unless the use of competitive procurement is otherwise prohibited.

- Contracts for work that is performed and paid for by the day as the work is in progress.
- Contracts for paving, drainage, street widening and other public improvements if at least 1/3 of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements.
- Purchase of land or a right-of-way.
- A public improvement project already in progress authorized by the voters of a municipality for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by voters.
- Payment under a contract in which the developer participates in the construction of a public improvement as provided by the Texas Local

Government Code chapter pertaining to municipal regulation of subdivisions and property development.

- The purchase of electricity.
- Services performed by the blind or severely disabled.
- Goods purchased for subsequent resale.
- Purchase of rare books, papers or other library materials for a public library.
- The purchase of personal property sold at an auction by a state licensed auctioneer at a going out of business sale meeting certain requirements, by a political subdivision, state entity or an entity of the federal government, or under an interlocal contract for cooperative purchasing administered by a regional planning commission.
- Bonds or warrants issued in connection with the construction of a seawall.

### **8.10 Unsolicited Offers or Proposals**

An unsolicited offer/proposal is any offer/proposal other than one submitted in response to an ITB, RFP or RFQ. To be considered by the buyer, the unsolicited offer/proposal must:

- not be for an item required by law to be competitively bid or proposed;
- be in writing; and
- shall be evaluated by the buyer to determine its utility and benefit to CTCOG.

### **8.11 Lease/Purchase Agreements**

The leasing of property and/or equipment is encouraged in lieu of purchasing where leasing is the most economical procurement approach.

### **8.12 Federal Excess or Surplus Property**

CTCOG is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and/or property whenever feasible and for the purpose of reducing procurement costs.

## **ARTICLE IX**

### **CONSTRUCTION RELATED CONTRACTS**

ARTICLE IX  
CONSTRUCTION RELATED CONTRACTS

**PART A: Construction Related Contracts**

**CTCOG Construction Contracts must be compliant with the Davis-Bacon Act WH Publication 1246 (Revised April 2009). Section 1 Title 40 of the United States Code, Subsections 3141-3144, 3146, and 3147 of this title by Pub. L. 107-217, Secs. 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, and 1304.**

**9.0 Facility Construction**

When entering into a contract for the construction of a facility, CTCOG may use any of the following methods that provide the best value under Chapter 271 of the Texas Local Government Code:

- Competitive Sealed Bidding;
  - CTCOG must award a competitively bid contract to for construction services to the bidder offering the best value based on the criteria set forth below. The contract is not required to be awarded strictly to the lowest responsible bidder.
- Competitive Negotiation;
- a design-build contract;
- a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager; or
- a job order contract for the minor repair, rehabilitation, or alteration of a facility.

A “facility” includes buildings the design and construction of which are governed by accepted building codes.

A facility does not include: highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

CTCOG must determine which method it will use prior to advertising. If CTCOG is not using competitive bidding, it must select the method which provides it with the best value.

CTCOG must publish in the request for bids, proposals, or qualifications all the criteria that will be used to evaluate the bidder/offerors and the relative weights given to the criteria. In awarding a contract, CTCOG may consider the following:

- purchase price;
- reputation of the bidder and of the bidder's goods or services;
- the quality of the bidder's goods or services;
- extent to which the goods or services meet CTCOG's needs;
- bidder's past relationship with CTCOG;
- impact on the ability of CTCOG to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- total long-term cost to CTCOG to acquire the bidder's goods or services; and
- other relevant criteria specifically listed in the ITB, RFP or RFQ.

A construction contract using competitive bidding or competitive proposals must be awarded to the bidder/offeror who offers the best value to CTCOG based on the published selection criteria and on its ranking evaluation. CTCOG must document the basis for its decision regarding the contract award.

## **ARTICLE X**

### **PROTEST and DEBRIEFING**

**A response to an Invitation to Bid or a Request for Proposal requires an entity expend a significant amount of time and effort. CTCOG must make an effort to respond to all of those who submit responses to bids and proposals to inform them of the outcome of the solicitation.**

**This article covers the process in the event of a protest or a request for debriefing by a bidder/offeror.**

**ARTICLE X**  
**PROTEST and DEBRIEFING**

**PART A: Protest and Debriefing**

Providing responses to the outcome of a solicitation can help to alleviate the potential for bid protest. It is CTCOG's goal to provide responding entities with full information and explanation regarding its procurement process and intends to give the contracting entity a fair and open opportunity to compete for CTCOG's business consistent with the guidelines established in this manual.

**10.0 Requests for Debriefing**

Requests for a debriefing must be made within one week of notification of non-selection. CTCOG reserves the right to not conduct debriefings if requests are made after that time.

**10.1 Procedures for Debriefing**

A bidder or proposer shall, upon written request, be debriefed and furnished the basis for the selection decision and contract award. Debriefings of successful and unsuccessful respondents will be done orally. The Department Director should normally chair any debriefing session. Individuals who conducted the evaluations shall provide supporting documentation. At a minimum, the debriefing information shall include:

- The overall evaluated cost or price and technical rating, if applicable, of the debriefed respondent, and past performance information on the debriefed respondent;
- The overall ranking of all respondents; and
- A summary of the rationale for award.

The debriefing shall **NOT** include point-by-point comparisons of the debriefed respondent's proposal with those of other respondents. Moreover, the debriefing shall not reveal any information prohibited from disclosure or exempt from release. Such information may include, but is not limited to:

- Trade secrets;
- Proprietary information;
- Privileged or confidential manufacturing processes and techniques;
- Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
- The names of individuals providing reference information about a respondent's past performance.

## 10.2 Resolution of Protested Solicitations and Awards

The following language should be included where appropriate in all CTCOG solicitations:

Any Proposer who is aggrieved in connection with a purchase transaction may file a grievance. The grievance may be filed at any phase of the procurement, and up to five (5) days after the CTCOG's public agenda is posted for action regarding the questioned item. Grievances filed more than five (5) working days after action by the CTCOG's Executive Director will not be deemed timely and will not be considered. In order for a Proposer to enter the grievance process, a written complaint must be sent to the Director of Administration of CTCOG by certified mail and sent to P.O. Box 729, Belton, Texas 76513, which includes the following:

1. Name, mailing address and business phone number of the complainant.
2. Appropriate identification of the procurement being questioned.
3. A precise statement of the reasons for the protest.
4. Supporting exhibits, evidence or documents to substantiate any claims.

The grievance must be based on an alleged violation of CTCOG's Procurement Procedures, a violation of State or Federal Law (if applicable), or a violation of applicable grant or contract agreements to which CTCOG is a party. Failure to receive a procurement award from CTCOG in and of itself does not constitute a valid grievance. Upon receipt of grievance, the Director of Administration will initiate the informal resolution process.

The Procurement Administrator or Department Director responsible for the solicitation shall contact the complainant and all interested parties and attempt to resolve the allegations informally within ten (10) working days from the date of complaint. If the allegations are successfully resolved by mutual agreement, documentation will be forwarded to the Director of Administration of the resolution with specifics on each point addressed in the original complaint.

If the Procurement Administrator or Department Director is not successful in resolving the allegations, the complaint, along with the comments, will be forwarded to the Director of Administration immediately. The Director of Administration will review all documentation. All interested parties will be given written notice of the date, time, and place of hearing and an opportunity to present evidence. A written decision will be issued within five (5) working days after the hearing along with notice of appeal rights.

The complainant may appeal the Director of Administration's decision by submitting a written appeal, within five (5) working days, to the Executive Director of CTCOG. The Executive Director, upon receipt of a written notice of appeal, shall contact the complainant and schedule a hearing within ten (10) working days. The Executive Director of CTCOG has the option of appointing a Hearing Officer to preside over the hearing. If appointed, the Hearing Officer shall conduct a hearing and forward a summary and recommended resolution to the Executive Director.

The decision reached by the Executive Director or his designee shall be final and conclusive. This decision will be forwarded to the complainant in writing within thirty (30) working days.

The Proposer may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction.

## **ARTICLE XI**

### **COST/PRICE ANALYSIS**

**Before undertaking any procurement activity, a cost analysis or price analysis should be performed. The end result of price analysis is to ensure fair and reasonable pricing of a product or service.**

**ARTICLE XI**  
**COST/PRICE ANALYSIS**

**PART A: Independent Cost/Price Analysis**

Independent cost or price analysis may be performed prior to every procurement action, including contract modifications to assist in the evaluation of the procurement. An independent cost estimate is required when:

- the offeror must submit the elements of his estimated cost (for professional, consulting and architectural/engineering services contracts); and
- when adequate price competition is lacking, such as sole source procurements, change orders or contract modifications.

A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

**11.0 Procedure:**

11.0.1 Obtain an independent cost or price analysis from

- informational solicitations from more than one dependable vendor or source;
- catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation; or
- historical data.

11.0.2 A cost reasonableness review is conducted, which includes, but is not limited to reviewing:

- prior experience and effectiveness;
- line item budget analysis;
- profit/program income;
- the amount of the total budget;
- the amount of the administrative budget;
- all cost items and salaries;
- all cost items with respect to relevancy and appropriateness in accomplishing the services provided;
- travel reimbursement policies;
- cost per positive termination, entered employment in relation to similar training, length of time and quality; and
- cost per contract hour.

## 11.1 Purpose

The purpose of the cost reasonableness review is to

- assure that all costs are properly allocated and classified;
- list any high or questionable costs;
- assure that an organization-wide cost allocation plan is provided where the bidder has multiple sources of funding.
- list any questionable issues of purchase or lease;
- assure that the cost of audit is covered;
- review staffing sources and salaries to assure budgetary limitations;
- assure that staff salaries are properly allocated to administration or training;
- determine adequacy of staffing for particular activities;
- list high or questionable staff salaries and benefits;
- list low cost or unreasonable staffing; and
- perform a comparative analysis including a comparison of activities and services to be offered, staffing patterns and costs proposed. This analysis may be used to assess the reasonableness of costs through competition, and the reasonableness of proposed cost may be established by performing a comparative analysis of an item or service that is currently available in the local service delivery area, including comparisons with current market rates.

11.1.0 A price analysis may be conducted by comparing price quotations submitted or by comparing price quotations with current market prices, considering any discounts. The analysis includes a comparison of prices paid for the same or similar products in the past, as well as the current market rate, including consideration of quantities, production and delivery rates. In-house estimates of cost may also be used.

## 11.2 Elements of the Cost Analysis

A cost analysis shall include a review, evaluation and verification of each element of cost submitted in the line item budget to determine whether costs are reasonable, necessary and allowable under applicable cost principles. Each cost contributes to the total price. The cost and pricing data is used to evaluate:

- specific cost elements;
- the necessity of specific costs;
- reasonableness of amounts estimated for the necessary costs;
- reasonableness of allowances for contingencies;
- basis for allocation of indirect costs;
- appropriateness of allocation of indirect costs to the proposed contract; and
- reasonableness of the total price.

### **11.3 Record Keeping of the Cost Analysis**

The independent cost or price analysis must be kept as part of the procurement record, even if only included as a memorandum to the file. Acceptable documentation reflects:

- RFP solicitation procedures;
- ITB solicitation procedures;
- small purchase method;
- catalog pricing, i.e., for tuition;
- recent past pricing for similar goods or services, either by CTCOG or others in the vicinity;
- "yardsticks" developed from models designed to identify and price the mix of resources considered necessary for achievement of delivery within the expected performance range; and
- cost/price analyses conducted to test and compare the valuation of each element listed in the budget with a cost considered reasonable in the current environment.

### **11.4 Cost and/or Pricing Documentation**

- copy of line item budget;
- lease agreements and calculations of space and costs allocated to Workforce Solutions;
- cost allocation plans for costs prorated between different funding sources;
- contractor-approved wage and benefit schedules for funded positions;
- travel reimbursement policies;
- calculations, bids and/or documentation used to determine start-up, equipment and supply costs;
- cost determination of training courses and week-cost considerations;
- other funding sources which directly or indirectly impact Workforce Solutions services proposed;
- records certifying name(s) of individuals who performed/approved the cost reasonableness review; and
- records showing differences in quality or service or output.

## **ARTICLE XII**

### **CONTRACT ADMINISTRATION**

**Following the award of a contract, the management actions that must be taken to assure full compliance with all of the terms and conditions contained within the contract document, including price. Action steps that assure that the contractor is in full compliance with the entire contract. Contract administration activities include payment, monitoring of progress, inspection and acceptance, quality assurance, monitoring and surveillance, modifications, negotiations, contract closeout, and other activities.**

## ARTICLE XII CONTRACT ADMINISTRATION

### PART A: Contract Administration

#### 12.0 Contract Types

The procurement instrument shall be in accordance with specific grantor procurement standards. The instrument, contract, or purchase order, shall be appropriate for the particular procurement and for promoting the best interest of the Agency and the grant program involved.

- Fixed price contracts or purchase orders;
- Cost reimbursement contracts or purchase orders; and
- Incentive contracts
- Time and Materials (T&M) contracts
- **A Cost plus a Percentage of Cost or Percentage of Construction Cost shall not be used.**

#### 12.1 Payment

- Lump Sum upon completion of contract; or
- Unit Price; or
- Percent of completion (construction contracts only)

#### 12.2 Contract Execution and Approval Procedures

A contract is a legal agreement and commitment from CTCOG, which under terms and conditions, requires a contractor or vendor to carry-out specific tasks or provide specific goods and services. Competitive bid procedures will be adhered to in accordance with purchasing Procedures, Article III. Contract approvals will be obtained in accordance with Article II. All contract administration action, i.e. contract authorization, contract approval, contract amendment, and contract closure must be accompanied with and transmitted by a Contract Action Notice. The procedures as follows, describe contract administration requirements for all CTCOG contracts:

- Department
1. Receives authorization from a funding agency in the form of grant award or contract document or action by CTCOG's Director of Administration to incur costs against project or program.
  2. Prepares the proposed work program and budget.
  3. Recommends contractor or vendor to provide tasks, goods, and services in accordance with terms and conditions of the approved grant or program and Source Selection and Contract Formulation, Article III.
  4. Negotiates and prepares contract agreement utilizing the appropriate General Contract Provisions.

5. Prepares and approves Contract Action Notice.
6. Notifies the accounting department to establish the contract in CTCOG's accounts and to accept charges incurred as of the contract effective date.
7. Obtains required approval authorizations in accordance with Article II Of the Procurement Policy. This process is documented on the Contract Action Notice.
8. The Procurement Administrator shall maintain the original copy of all contract documents in its files, and each department shall maintain a copy in its files. Administration files will be the official records file for all procurement and contract documents.

**12.3 Contract Amendment Procedures** – See also Article IV, Modification and Termination of Contracts.

- |            |   |
|------------|---|
| Department | 1. Initiates a contract amendment whenever expenditures and/or scope of work vary from approved budget amounts and contract terms. See Article IV, Modification and Termination of Contracts.                         |
|            | 2. Prepares description of Amendment and Contract Action Notice.  |
| Finance    | 3. Assists Department with program/project budget worksheets. Approves Contract Action Notice.  |
| Department | 4. Obtains approval on Contract Action Notice in accordance with established approval authorities' requirements. See Article II. Distributes contract amendments in accordance with contract distribution procedures. |

**12.4 Contract Closure Procedures**

No charges should be made to contracts which have ended, except for costs which were incurred during the contract period. In addition, all costs incurred in the authorized period should be submitted to CTCOG no later than 70 days after contract end, or sooner if required by the Funding Agency. Contract closure procedures to be used are as follows:

- |            |   |
|------------|---|
| Department | 1. Not later than 80 days after contract end, submit a Contract   |
|            | 2. Includes closeout documents, final billings, etc. as appropriate   |
|            | 3. Approves Contract Action Notice and sends notice and documentation to Finance Department.  |
| Finance    | 4. Finance Department will not accept or make any additional charges to the contract upon receipt of this notice. Finance will then designate the contract inactive and remove it from the active accounts. |

## **12.5 Contract Administration**

The Administration Department shall maintain the original copy of all contract documents. Each department will send the executed original copy of the contract and supporting documentation to the Procurement Administrator which will be the official records file for all procurement, financial and/or legal documents.

## **ARTICLE XIII**

### **MODIFICATION and TERMINATION OF CONTRACTS**

**ARTICLE XIII**  
**MODIFICATION AND TERMINATION OF CONTRACTS**

**13.0 Definitions**

"**Change Order**" means a written order signed by the buyer, directing the contractor to make changes.

"**Modification**" means any written alteration in specifications, delivery point, rate of delivery, period of performance, quantity, or other provisions of the contract as well as any associated price adjustments, accomplished by mutual action of the parties to the contract.

**13.1 Modifications**

If changes in plans or specifications are necessary after the performance of the contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, CTCOG may approve change orders or modifications to make the changes. All changes or modifications to the contract must adhere to the following guidelines:

- The total contract price may not be increased because of the change order or modification unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants.
- If a change order or modification involves a decrease or an increase of \$50,000 or less, CTCOG's Executive Director may delegate general authority to an administrative official to approve the change orders.
- The original contract price may not be increased by a change order or modification under Section 252.048, Texas Local Government Code, by more than 25%. The original contract price may not be decreased by change orders by more than 25% without the consent of the contractor.

**13.2 Requirements to Re-compete**

CTCOG must re-compete where the modification results in the procurement of supplies, equipment or services that:

- are substantially and materially different from that for which competition was held;
- result in a change in the terms or conditions of a contract that interferes with or defeats the purpose of competitive procurements; or
- is tantamount to an unjustified sole source procurement.

### 13.3 Improper Justifications for Modification

- on-site contractor, familiar with existing conditions, provides greater assurance of satisfying the agency's needs; or
- making an award with the intent to change contract specifications by a subsequent modification

### 13.4 Termination of Contracts

Termination for Convenience:

#### General

13.4.1 For contracts in excess of \$10,000, a contract may be terminated because of circumstances beyond the contractor's control, for cause and for convenience.

13.4.2 The termination for convenience clause must include the termination procedures and the basis for settlement.

#### Process

13.4.3 CTCOG may terminate a contract, in whole or in part, for the convenience of CTCOG by providing the contractor with thirty (30) calendar days advance notice in writing, specifying the part of the contract to be terminated and when the termination becomes effective.

13.4.4 The contractor shall cancel, withdraw or otherwise terminate any outstanding orders or subcontractors related to the performance of the contract, or the part of the contract to be terminated, and shall cease to incur costs hereunder. CTCOG shall not be liable to the contractor, subcontractor or any creditor for costs incurred after the date of termination. The contractor shall settle all liabilities and claims arising out of the termination of subcontracts and orders connected to the terminated work. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

13.4.5 A grant contract may only be terminated for convenience as follows:

- By the grantor agency with the consent of CTCOG in which case the parties shall agree upon the termination conditions, including:
  - the effective date; and
  - in case of a partial termination, the portion to be terminated.

- By CTCOG upon written notification to the grantor agency, stating:
  - the reasons for such termination;
  - the effective date; and
  - for partial terminations, the portion to be terminated. In the event of a partial termination, if the grantor agency determines that the remaining portion will not accomplish the purposes for which the award was made, the grantor agency may terminate the award in its entirety.

13.4.6 The Contract Administrator may require the contractor to transfer title and deliver to CTCOG in the manner and to the extent directed by the buyer:

- any completed materials and/or supplies/equipment; and
- such partially completed supplies/equipment and/or construction materials, including but not limited to supplies, materials, tools, parts, drawings, plans, information and contract rights as the contractor has specifically produced or specifically acquired for the performance of the terminated part of this contract.
- The contractor shall protect and preserve the property in the possession of the contractor in which CTCOG has an interest. If CTCOG does not exercise this right, the contractor shall use its best efforts to sell such materials, supplies and/or equipment in accordance with the pertinent standards of the Uniform Commercial Code. *The exercise of the Termination for Convenience clause in no way implies that CTCOG has breached the contract.*

## 13.5 Compensation

- The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with any cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within one (1) year from the effective date of termination, the buyer may pay the contractor, if at all, an amount set in accordance with subparagraph (13.5.3) below.
- The Contract Administrator and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost and pricing data and that the settlement does not exceed the total contract price plus settlement costs reduced by amounts previously paid by CTCOG and less any lawful offsets or credits due, including but not limited to the proceeds of any sales of construction materials, supplies and/or equipment and the contract price of the work not terminated.

- Absent complete agreement under subparagraph (13.5.2) above, the buyer shall pay the contractor the following amounts, not to exceed the total contract price plus the reasonable settlement costs reduced by any lawful offsets or credits:
  - the cost of such work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract had been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - costs of settling and paying claims arising out of the termination of subcontracts or orders; and
  - reasonable settlement costs of the contractor reasonably necessary for the preparation of settlement claims and supporting data.

### **13.6 Termination for Default**

CTCOG may terminate a contract, in whole or in part, when it has determined that the contractor has substantially violated any provision of this contract.

13.6.1 CTCOG may terminate a contract in whole or in part when it has determined that a contractor, subcontractor, or sub-grantee has violated specific provisions of the grantor agency regulations and directed corrective action has not been taken. Grounds for default include, but are not limited to:

- failure to perform pursuant to the terms and conditions of the contract; and
- violations of grantor agency rules or regulations.

13.6.2 Termination for Default Clause must be included in all grant contracts in excess of \$25,000.00.

13.6.3 Notwithstanding the termination of the contract and subject to the buyer's directions, the contractor shall take timely, reasonable and necessary action to protect and preserve property, equipment and/or supplies in possession of the contractor in which CTCOG has an interest.

13.6.4 Payment for completed supplies, equipment or services delivered and accepted by CTCOG shall be at the contract price. Payment for the protection and preservation of property, equipment and/or supplies shall be in an amount agreed to by the parties. CTCOG may withhold from amounts due to the contract amounts deemed necessary by the Contractor Administrator to protect CTCOG against loss because of outstanding liens or claims of former lien holders and to reimburse CTCOG for the excess costs incurred in procuring similar supplies, equipment and services.

13.6.5 The rights and remedies provided are in addition to any other rights and remedies provided by law, under CTCOG procurement policy or under this grant or contract.

### **13.7 Resolution of contract disputes**

- Upon breach or default, CTCOG shall give the contractor written notice of default. If the default is not remedied to the satisfaction and approval of CTCOG, default will be declared.
- Upon breach of contract or default, CTCOG may exercise any and all of its rights afforded by law, including but not limited to those referenced in the General Contract Provisions.

### **13.8 Solicitations or Awards in Violation of the Law**

Contracts awarded in violation of the competitive process or otherwise in violation of the law are voidable by CTCOG.

## **ARTICLE XIV**

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

## ARTICLE XIV

### DISADVANTAGED BUSINESS ENTERPRISE (DBE)

#### PART A: Policies

##### 14.0 Policy Statement:

It shall be the policy of CTCOG to assist small, DBE, MBE, women-owned businesses and HUBs in learning how to do business with CTCOG. It shall be a further policy CTCOG that these sources shall have the maximum feasible opportunity to compete.

##### 14.1 Bidder/Offeror Statement:

It shall be a mandatory provision of every solicitation that a bidder or offeror include a statement that said bidder or offeror will comply with this policy.

##### 14.2 Recommended Approach

To ensure that CTCOG's policy to assure that small, MBEs, DBEs, women-owned businesses, and HUBs are utilized, the following affirmative steps are recommended to be taken, including the contractor and subcontractor:

- Include qualified small, MBEs, DBEs, women-owned businesses, and HUBs on the Bidders' List. State lists may be utilized to locate such businesses, such as the Texas Certified Disadvantaged Business Directory (a/k/a HUB Directory) or the Texas Department of Commerce "Texas Market Place" bulletin board;
- Assure that small, MBEs, DBEs, women-owned businesses, and HUBs are solicited whenever they may be potential sources. In this regard, the buyer should investigate new sources and advertise when feasible in minority publications;
- When economically feasible, and where not in contravention of competitive bidding requirements, CTCOG should divide the total requirements into smaller tasks or quantities so as to permit maximum small, MBE, DBE, women-owned businesses and HUB participation;
- Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce, the Minority Business Development Agency in the Department of Labor, the Texas General Services Administration and other similar agencies for locating such businesses;
- Require that prime contractors take affirmative and meaningful steps towards retaining small, MBE, DBE, women-owned businesses and HUB subcontractors;
- Procure goods and services from labor surplus areas;

- If the requirement permits, establish delivery schedules that encourage small, MBEs, DBEs, women-owned businesses, and HUBs to participate; and
- Advertise, at least annually, in a newspaper of general circulation for small, MBEs, DBEs, women-owned businesses and HUBs to be added to the Bidders' List.

### **14.3 Buyer Responsibility**

For such affirmative steps to be meaningful, the buyer should review all solicitations, offers and bids to confirm such affirmative actions, including the execution of the Bidder/Offeror Statement. In addition, steps should be taken to ensure that once a contract is awarded to a small, MBE, DBE, women-owned business, and/or HUB, or that the award is given to a contractor with such a subcontractor, that such business is retained during the entire performance of the contract.

### **14.4 Prime Contractor Effort**

Failure of a contractor to take meaningful affirmative steps at soliciting and retaining small, MBEs, DBEs, women-owned businesses and HUBs may be considered as a factor in evaluating future bids under non-compliance with public policies.

### **14.5 Expenditure Amount Required to Solicit DBE Participation**

In making expenditures of more than \$3,000.00 and less than \$50,000.00, CTCOG must contact at least 2 HUBs on a rotating basis, based on information provided by the Texas General Services Commission. If the list fails to identify a historically underutilized business in the area, then CTCOG is exempt from this section.

### **14.6 The Workforce Solutions Requirements**

Contractors must be able to document that they have made a good faith effort to award at least thirty percent (30%) of the total value of all subcontracts and supplier contracts to HUBs. HUBs which are locally based and considered disadvantaged shall be considered in the procurement process. Treatment of such subcontractors shall occur by choosing the HUB in the event of tie bids and setting up conditions under which such awards shall be made.

# **ARTICLE XV**

## **ETHICS**

ARTICLE XV  
ETHICS

**PART A: Standard of Conduct**

**15.0 Elected Officials and Chief Executive Officers**

Chapter 176 of the Local Government Code, outlines conflict disclosure filing requirements for elected officials and chief executive officers of Texas political subdivisions, including regional councils. There are also disclosure requirements for those seeking to do business with CTCOG.

▪ **Conflict Disclosure Filing**

Board members and the Executive Director are required to file a conflicts disclosure statement when the official becomes aware that CTCOG has a contractual or business relationship or is considering such a relationship and:

- The person has business or employment relationship with the official; or
- The person has a business or employment relationship with a family member of the official, within the first degree of consanguinity; or
- The person has given the official or the official's family a gift, excluding food, lodging, transportation or entertainment, with an aggregate value of \$250 or more within the preceding twelve months.

▪ **Vendor and Consultant Disclosure**

All vendors or consultants contracting or seeking to contract with CTCOG for the sale or purchase of property, goods, or services exceeding \$50,000.00 must file a conflict of interest questionnaire with CTCOG within seven (7) days of submitting (a) bid, RFP, proposal or other document relating to a potential agreement with CTCOG or (b) entering into contract negotiations with CTCOG.

**15.1 Conflict of Interest Questionnaire**

**15.1.1 Specification/Proposal required language**

Texas House Bill 914, codified as Chapter 176 of the Local Government Code, requires vendors and consultants contracting or seeking to do business with CTCOG to file a conflict of interest questionnaire (CIQ). The required questionnaire is located at the Texas Ethics Commission website [www.ethics.state.tx.us/forms/CIQ-New-2015.pdf](http://www.ethics.state.tx.us/forms/CIQ-New-2015.pdf) and a copy is included with this bid/proposal request. It may also be found, along with a list of CTCOG officers subject to HB 914 disclosure requirements, on CTCOG's website, <http://www.CTCOG.org>. The CIQ must be completed and filed with the bid/proposal response. Vendors and consultants that do not include the form with the response, and fail to timely provide it, may be disqualified from consideration by CTCOG.

**15.1.2 Records Administrator**

The Procurement Administrator is the records administrator for purposes of filing required disclosures.

**15.1.3 Penalties and Defense to Prosecution**

Knowing violation of this law is a Class C misdemeanor. Filing of the required disclosure no later than the seventh day after receiving notice of violation is a defense to prosecution.

**15.2 Employee and Agents**

No employee or agent of CTCOG shall participate in the negotiation, evaluation, selection, discussion, award or administration of a contract or procurement supported by public funds if a conflict of interest, either real or apparent, would be involved. An employee or agent of CTCOG shall at all times avoid the appearance of impropriety.

- A conflict arises when a CTCOG employee or agent, or any member of his/her immediate family, a partner or a person or an organization which employs or may employ in the near future any of these individuals, has a financial or other substantial interest in any entity which may be considered for the award.
  - "Immediate family" means to refer to any person related within the second degree of affinity (marriage) or within the third degree of consanguinity (blood) to the party involved.
  - "Substantial interest" for purposes of this section, means the person
    - owns 10% or more of the voting stock or shares of the entity; or
    - 10% or more or \$5,000.00 or more of the fair market value of the entity; or
    - received funds from the entity in excess of 10% of the person's gross income for the previous year; or
    - is related to an employee or agent in the first degree of consanguinity or affinity.

No employee or agent of CTCOG shall demand, agree, accept or solicit gratuities, favors or anything of monetary value from contractors, potential contractors, bidders, offerors or parties to sub-agreements. No contractor, bidder, offeror or party to a sub-agreement shall offer or tender anything of monetary value to any employee or agent of CTCOG.

**15.3 Course of Conduct in the Event of a Conflict**

In the event of a real or apparent conflict of interest, as set forth above, the affected employee or agent must adhere to the following procedures:

- 15.3.1 Sign a declaration of a possible conflict of interest. A declaration must also be made on the record where:

- the agent, employee or immediate family member is a board member of a bidder, offeror or proposer;
- the agent or employee is voting on an indirect affirmation of a contract relationship, such as on the job training plan; or
- the agent or employee is voting on a rival proposal, though there is no direct competition.

15.3.2 If applicable, abstain from voting on any procurement action:

- where the employee or agent directly represents an organization or may receive a direct financial benefit; or
- where the employee or agent is in direct competition with a proposal or bid which would provide a direct financial benefit.

15.3.3 Abstain from participating in the procurement process, which includes but is not limited to discussions, lobbying, rating, scoring, recommending, explaining or assisting in the design or approval of the procurement process:

- on contracts with the organization he/she represents or from which he/she receives a direct financial benefit; or
- on contracts with organizations in which a family member might realize a direct financial benefit.

## **15.4 Violations and Remedies**

Violations of the provisions of this Article constitute misconduct, subjecting the violator to any and all penalties prescribed by law.

Penalties, sanctions or other disciplinary actions, to the extent permitted by state or local law, rules or regulations, shall be imposed for violations of the code of conduct/conflict of interest standards, by CTCOG employees or agents or by persons, contractors or their agents, when the procurement involves state or federal programs and/or funds.

Appropriate sanctions, penalties or disciplinary actions shall be applied for violations. Violations of state or federal law shall be referred to the proper authority having jurisdiction over same.

# **ARTICLE XVI**

## **RECORDS RETENTION**

## ARTICLE XVI RECORDS RETENTION

### PART A: Records Retention

**Although each agency may have its own requirements for records retention, CTCOG is focused on retaining records under one policy, and if possible urges departments to maintain electronic copies when possible.**

#### 16.0 Policy

All procurement-related records must be maintained by CTCOG for a period of six (6) years after the procurement. CTCOG uses a records retention schedule approved by the Texas State Library and Archives Commission. This schedule establishes mandatory minimum retention periods for records that are usually found in local governments, regardless of type. To obtain a copy or for questions on the retention period of a record, please contact CTCOG's Custodian of Records at 254-770-2226 or [michael.irvine@CTCOG.org](mailto:michael.irvine@CTCOG.org).

If there is litigation, a claim, or if the audit report covering the contract has not been accepted, then the records shall be retained until the resolution of such litigation, claim or audit. At a minimum, records retained shall include but are not limited to:

- correspondence, notes and memoranda relating to the procurement, including RFPs, ITBs, bids and proposals received and any other procurement form and notes on verbal transactions and telephone or facsimile quotations;
- notes comparing quotations and relating to the basis for the award, including all negotiations;
- notes and correspondence relating to the acceptance or rejection of bids, proposals or quotations;
- any and all documents reflecting the rationale for the method of procurement, selection of contract type, contractor selection or rejection, rating criteria, cost/price analysis forms, cost reasonableness determination and the basis for contract price;
- any and all documentation reflecting the basis for sole source procurements, citing the authorizing authority and the basis for selection of the particular vendor;
- a copy of public media advertisements;
- decision letters, notice of award and/or non-selection, fully executed contracts, including amendments/modifications, contract performance evaluations, progress reports, signature authorities, cost or pricing data, payment processing justifications, property and equipment records;
- copies of required insurance policies;

- monitoring/audit reports and any other required reports and financial reconciliations; and
- all contract closeout documents and records.

### **16.1 Records Retention for Negotiated Procurements (RFP)**

Records or files for purchases in amounts in excess of \$50,000.00 shall reflect, at a minimum:

- justification for use of negotiation in lieu of competitive sealed bidding;
- the basis for contractor selection;
- the basis for the cost or price negotiation; and
- record of any action taken by the Executive Director.

### **16.2 Records Retention for Competitive Sealed Bidding (ITB/BVB)**

Records or files for purchases shall reflect, at a minimum:

- the basis for contractor selection, including the evaluation of best value criteria, if
- best value is the basis for contract award; and
- the record of any action taken by the Executive Director.

## **ARTICLE XVII**

### **SUPPLEMENTS**

**Supplement:** Guide to the Request for Qualifications (RFQ)

**Supplement:** Guide to the Request for Information (RFI)

**Supplement:** The Proposal Evaluators Handbook

**Supplement:** Department Card Policy-Technology Items Requiring Data Services Approval

**Supplement:** Check Request Policy

\*Supplements are only intended for reference and can be added or removed as appropriate

## Supplement: Guide to the Request for Qualifications (RFQ)

### PART A: Request for Qualifications

#### 1.0 When to use an RFQ

**1.0.1 A Known Opportunity:** When there is the potential for significant interest in a specific contract opportunity, the RFQ process can be used to pre-qualify proponents who will then compete on the opportunity at the RFP stage. This can make the solicitation process more efficient as there will be fewer responses and all of them will be qualified.

**1.0.2 An Unknown Opportunity:** An RFQ process can also be used to create a pre-qualified list for a future opportunity. This pre-qualification list can add value when similar services will be required for multiple contracting opportunities and allows for the quick selection of a qualified proposer when the next opportunity arises.

**1.0.3 As a Selection Process for an Uncomplicated Task:** An RFQ can be used as the sole selection process for a specialist contractor where the task is very specific, uncomplicated and requires a very specific skill set (i.e. engineering services)

#### 2.0 Procedure

##### 2.0.1 Define the Objective:

Preparation is the key to a successful procurement process. It is important to prepare the RFQ document so that it solicits the precise information needed to make a decision. In order to do so, first define exactly what you are asking for. Providing detailed information in the RFQ document will not only solicit better and more accurate responses from interested proposers, but it will make it easier for the selection committee to make an informed decision regarding which respondents should be short-listed.

### **2.0.2 Draft the RFQ Document:**

Once the requirements are fully defined, the RFQ document may be drafted and the evaluation criteria may be determined. RFQs generally follow the same set-up as RFPs. Be sure that the RFQ provides enough information to allow proponents to understand the nature of the opportunity, as well as the information and qualifications that you are looking for. The RFQ should also explain important submission information and deadlines, the pre-qualification process, including key terms and conditions, the anticipated schedule for the pre-qualification process, as well as the evaluation criteria. Make sure that the criteria are relevant to your needs. For example, if certain skills are critical to the success of the project, be sure to rate those required skills as a strong priority. Also be sure to clearly define the evaluation criteria in the RFQ and to stick to the specified criteria when evaluating the responses.

### **2.0.3 Issue the RFQ:**

The RFQ will be posted to the CTCOG website and also issued through any department distribution or contact lists. For specialist services (engineers, building contractors, architects, business consultants, etc.) the RFQ may also be issued through partnering agencies to increase the ability to circulate the RFQ document to a broad range of potential proponents. The RFQ must include a deadline similar to an RFP.

### **2.0.4 Evaluate and Select:**

Once the responses are received, the Procurement Administrator, or department designee, presents the proposals to the evaluation committee for assessment. Evaluate the responses based upon the evaluation criteria defined in the RFQ. Responses should then be classified as either qualified, or not qualified.

If the RFQ is being utilized for selection purposes, candidates should be invited to interview. The interview will be helpful for the evaluation committee, and will follow the same process as the RFP interview or oral presentations.

If the RFQ is being utilized for pre-qualification purposes, once the successful candidates have been selected, keep a record of their information and inform those proposers that they have been added to the shortlist for possible future use.

## **Supplement: Guide to the Request for Information (RFI)**

### **PART B: Request for Information**

#### **1.0 When to use an RFI**

**1.0.1** Use an RFI when you have a lot of potential suppliers and/or you do not have the information you need about them. The RFI generally include elements of an RFQ, but also contains questions for the potential supplier to answer. This allows for a formal reply from potential suppliers

#### **2.0 Procedure**

##### **2.0.1 Define the Objective and the Questions:**

The RFI should contain a description on why the information is requested and a specification to what information that actually is requested. The number of suppliers that are available could be huge, and the RFI creates a structured process to narrowing down the long list of suppliers to a smaller number of interesting suppliers. The questions developed should ask how the supplier would like to design or choose the component or create the service.

##### **2.0.2 Draft the RFI Document:**

Once the objective and questions are fully defined, the RFI document may be drafted. RFIs generally follow the same set-up as RFPs. Be sure that the RFI provides enough information to allow respondents to understand the nature of the opportunity, as well as the information that you are looking for. The RFI should also explain important submission information and deadlines, including key terms and conditions, and the anticipated schedule for the process. The next section provides some suggestions in what should be included in the RFI document.

##### **2.0.3 What to Include in the RFI:**

- Introduction and purpose
- Background
- Statement of Need
- Scope of the Project
- Context of Use
- Requirements
- Qualifications
- Questions or Information Requested
- How to deliver the answer
- Evaluation Criteria
- Timelines
- Contacts for Questions
- Conditions (terms for future RFPs or RFQs)

#### **2.0.4 Issue the RFI:**

The RFI will be posted to the CTCOG website and also issued through any department distribution or contact lists. For specialist services (engineers, building contractors, architects, business consultants, etc.) the RFI may also be issued through partnering agencies to increase the ability to circulate the RFI document to a broad range of potential proponents. The RFI must include a deadline similar to an RFP.

#### **2.0.5 Evaluate:**

Once the responses are received, the Procurement Administrator, or department designee, presents the responses to the evaluation committee for assessment. Evaluate the responses based upon the information received and the criteria outlined in the RFI and develop a short list of potential suppliers.

Considerations for Evaluation:

- Understanding of the requirements
- Company Ownership
- Company details of operations
- Supplier experience
- Submission of creative approach/ideas
- Financial Information
- Acceptance of Terms and Conditions

Once the successful candidates have been short listed, keep a record of their information and inform those respondents that they have been added to the shortlist for possible future opportunity.

## **Supplement: The Proposal Evaluators Handbook**

### **PART C: Proposal Evaluators Handbook**

#### **1.0 Introduction**

You have been chosen to serve as an evaluator on an evaluation committee for the CTCOG procurement process because of your expertise and understanding of the community values, diversity, neighborhood concerns or impact of the project on the community; your service is critical to the selection process. As a member of the committee, you will participate in awarding points and ranking proposals so that CTCOG can receive the best value in its procurements in a fair and competitive public process.

Your attendance is required at all Evaluation Committee Meetings. Please review the specific proposal evaluation process established by the Request for Proposals solicitation. Typically, there is an orientation meeting or email to outline and clarify the expectations of the proposal evaluation process

Please read this handbook carefully and fully. It outlines your responsibilities as an evaluator for CTCOG and provides general information regarding CTCOG's evaluation process for proposals. Should you have any questions, please contact the designated procurement representative listed on the cover page of the RFP for which you are evaluating.

#### **2.0 General Information**

##### **2.0.1 General Communication Regarding the Solicitation**

Once you have agreed to be an evaluator for a solicitation, you should not have any communication with anyone (except the Procurement Administrator, the department designee) regarding the solicitation until the evaluation process is complete. All inquiries regarding the solicitation should be referred to the Procurement Administrator, or department designee.

##### **2.0.2 Procurement Rules**

CTCOG conducts all procurements of goods and services in accordance with State Law and other established policies and procedures. The Procurement Administrator, or department designee, will be your guide throughout the process and are responsible for seeing that these procurement rules and the corresponding procedures are followed precisely.

### **2.0.3 Evaluation Committee Member Commitment**

As an evaluator, it is important to understand the commitment and complete the evaluation as a fully participating member of the committee, including attending all scheduled meetings in a timely manner. If unable to attend to complete your assignment on the evaluation committee, an important procurement may be delayed, potentially canceled, or challenged. If a member determines that he/she is unable to complete the evaluation process due to time constraints or scheduling commitments, it is best to replace that member at the onset.

It is essential that all stages of the evaluation process be completed by all of the committee members. Committee operations are short-term, highly focused, and often tightly scheduled. If any member misses a single meeting, the evaluation work of the entire committee may be rendered invalid, and it is possible that the evaluation process will have to be repeated. After reading this handbook, please carefully consider your availability and let the Procurement Administrator, or department designee know if you have concerns before you start.

### **2.0.4 Confidentiality**

During the evaluation period, committee members must maintain the utmost confidentiality to protect the integrity of the procurement process. All proposals are considered confidential until the Contract Action Notice has been issued.

### **2.0.5 Conflict of Interest and Other Ethical Concerns**

You have been entrusted with an essential part of an important public decision. As this is a public process, conflicts of interest and other ethical concerns must be identified and addressed as soon as they arise. All committee members are required to sign the Evaluation Committee Member Confidentiality & Conflict of Interest Disclosure Statement (Article VXII-Forms and Templates) and return the signed Statement to the Procurement Administrator, or department designee, at the beginning of the scoring meeting. The signed statements will be retained in the procurement file and become public information. If you become aware of a real or potential conflict of interest or ethical concern at any point in the evaluation process, it is critical that you notify the Procurement Administrator, or department designee, immediately.

An evaluator has a conflict of interest whenever an evaluator or a member of an evaluator's immediate family 1) has been, or is currently, an employee of or on the board of directors of a firm or 2) has a financial interest in a proposer or the award of the contract. An evaluator has a potential conflict of interest when an evaluator or a member of an evaluator's immediate family has, or has had, an association with a proposer or a key employee of the proposed that a disinterested observer could reasonably expect would result in bias or prejudice either for or against the proposer.

Proposer includes any person or entity who will participate in performance of the contract if it is awarded. A CTCOG employee does not have a conflict of interest simply by reason of having worked with a proposer as part of the employee's job duties.

If you have a conflict of interest or believe you have a potential conflict of interest, you must disclose this on the Conflict of Interest Disclosure Statement. You must disclose conflicts and potential conflicts at the earliest possible time. A conflict of interest will disqualify you from serving as an evaluator. A potential conflict of interest may disqualify you depending on the circumstances. It is CTCOG's intention to avoid the appearance of impropriety as well as actual conflicts so that the process is and appears to be fair and objective to all competitors. For this reason, you may be asked not to serve as an evaluator even if you believe you could be fair and impartial. An undisclosed conflict of interest could result in the procurement process being disrupted, costing valuable time and resources and possibly delaying the delivery of vital services. If at any time you are in doubt as to whether you have an actual or potential conflict of interest, you should immediately notify the Procurement Administrator or department designee.

#### **2.0.6 Independent Judgment**

CTCOG's evaluation process requires individual, independent judgment in scoring proposals based on the criteria given in the solicitation document. Each committee member is expected to exercise independent judgment as they review and evaluate each proposal. You may seek to increase your knowledge before awarding points by asking questions or seeking to understand pertinent information. However, the main requirement is that you exercise your judgment in a manner that is not dependent on anyone else's judgment, wishes, or demands.

The exercise of independent judgment applies not only to possible influences from outside the evaluation committee, but also to influences from within the committee. It is normal and acceptable that there may be discussion within the evaluation committee about how well a proposal meets the established evaluation criteria.

As an independent evaluator you may be swayed by the discussion in making your judgment about how many points you wish to award. However, evaluators should not act in a concerted way to either favor or disfavor a particular proposal or group of proposals.

Attempts by anyone, including colleagues, subordinates, or superiors, to influence you to improperly favor or disfavor a particular proposer, such as awarding or withholding points in a manner that might affect the outcome of the evaluation, must be reported to the Procurement Administrator, or department designee immediately.

### **2.0.7 Communications with Proposers**

Any communication between the proposers and the evaluation committee must be arranged by the Procurement Administrator, or department designee, and it must be communicated to the entire evaluation committee so that all members can benefit from this communication at the same time.

During the evaluation process, it is not appropriate for you to have any communication with any proposer outside the formal in-session communications. Any attempt by any proposer to have direct or indirect communication with you outside of a committee meeting should be avoided and reported to the Procurement Administrator or department designee.

## **3.0 The Scoring Process**

### **3.0.1 RFP Review**

Please read the entire RFP issued and pay careful attention to the requirements, goals and project specifications. You should have a clear understanding objectives related to this procurement before you begin the individual proposal evaluations. If you have questions or need clarifications, please contact the Procurement Administrator or department designee.

### **3.0.2 Proposal Review**

It is the Evaluator's responsibility to read and evaluate all proposals to assess completeness and quality of content. Evaluation of complex or technical proposals can be an intense, time-consuming, and difficult task, often within a short period of time. Evaluating the proposals includes reviewing the information provided in the proposal in direct relation to the evaluation criteria and information requested by the solicitation document. Is the proposal responsive to the RFP requirements and criteria? You must carefully measure the merits of the proposal and its shortcomings against the requirements and criteria stated in the RFP.

### **3.0.3 The Evaluation Scoring**

Scores and directly relevant comments should be recorded on the provided score sheets, which have been developed in accordance with the evaluation criteria and scoring methodology established by the RFP. Evaluators may provide brief written explanations of the individual scores as appropriate. These brief comments can provide insight as to why an Evaluator awarded or withheld points based on the established RFP evaluation criteria for a particular item.

Proposers reviewing these comments may find the information helpful for future submissions. Comments must be professional and specific in nature. Keep in mind that all scores and comments become a part of the RFP file, and following the notice of intent to award, will be considered public information. Evaluators should always have a reasonable, rational, and consistent basis for their scores and comments, as they may be required to explain in the event of a protest.

**Do not compare proposals;** each proposal must be evaluated and scored using the criteria set forth in the RFP. Each Evaluator should evaluate individual proposals independent of the other committee members as well as other proposals.

### **3.0.4 Clarification of Proposals**

During the evaluation process, clarification of certain points within a proposal may be necessary. The evaluation committee member(s) will notify the Procurement Administrator or department designee regarding the matter in question. Then the Procurement Administrator or department designee will contact the proposer for clarification. This will minimize confusion and ensure that all clarification statements are posed in the same manner so as to maintain a fair and equitable process for all proposers. No other people either from the evaluation committee or CTCOG will contact the proposer or request information from any of the proposers.

All questions posed, as well as responses received, from this clarification process will be documented and provided to all evaluation committee members. While clarification is being requested, no other changes, modifications or substitutions will be allowed to the proposals. All records become public information following the Contract Action Notice and are subject to public review.

The Procurement Administrator or department designee will establish the guidelines and monitor all evaluation committee meetings as well as any meetings with the proposers. In some instances, they may also facilitate the meetings. The Procurement Administrator or department designee is present at all meetings to ensure that Evaluators (and in some instances, proposers) follow the procedures, evaluation criteria, ranking and weighting considerations identified in the RFP.

### **3.0.5 Scoring Meeting**

To assist in preventing a comparison of proposals, score sheets are submitted to the Procurement Administrator, or department designee, once the committee members have finished scoring the proposals. Finally, at the close of the meeting, copies of proposals may be returned to the Procurement Administrator, or department designee, to be shredded. Once the scores are checked by the Procurement Administrator, or department designee, the Department will receive a score summary and will indicate whether or not there is agreement on the selected proposal to move forward with contractor selection.

### 3.0.6 Protests and Appeals

Following the Contract Action Notice issued by CTCOG, the public may view the proposals, as well as all evaluation committee scores and comments. At this time, unsuccessful proposers may seek additional clarification or debriefing, request time to review the selection procedures or discuss the scoring methods utilized by the evaluation committee. The individual evaluation committee members will normally not be involved in this process but may be contacted for clarification. (Refer to Article X for information regarding Protest and Debriefing).

While it is important to know proposers do have this right, it is also important to know that proposers may appeal only deviation from laws, rules, regulations or procedures; **disagreement with the scoring by evaluators may not be appealed.**

## 4.0 How to Evaluate

### 4.0.1 Evaluating in General

Evaluation is the fundamental and most visible effort to grant the community a fair and open process to Proposers seeking funding and work. Errors in the evaluation process undermine the community's faith and confidence in a fair and open process and must be minimized.

For formal solicitations, the Procurement Administrator, or department designee, will oversee the actual evaluation process to ensure that the rules and processes that have been developed are observed and maintained throughout the process.

The outcome of an evaluation process can and often does have significant impacts on the Proposers and their employees – a failed bid or RFP non-selection may have ramifications that can, at its most extreme, cause the failure of the Proposers organization, reduction of employees, or withdrawal from a specific service segment. The Evaluators must always conduct themselves in a manner that is ethical and can withstand public scrutiny.

Evaluators are expected to base their scoring on the extensive criteria identified in the solicitation. Consistency with your approach is important but it may be necessary, at times, to tailor your evaluation approach to the specific attributes of a particular solicitation. As with all aspects of the evaluation process, Evaluators should not be comparing responses against each other. Rather, Evaluators should compare the responses against the criteria identified in the solicitation.

If you have questions about how to evaluate or score, do not hesitate to contact the assigned Procurement Administrator, or department designee.

#### **4.0.2 Evaluating Cost**

The area of evaluation that introduces the most confusion is cost. This area can be complex and some evaluators do not have in depth expertise with costing models and related topics. Relatively few solicitations employ a specified cost evaluation model or cost equation to be used to determine cost points. For solicitations with no cost evaluation model or cost equation to be used to determine cost points (mostly complex acquisitions) the committee may ask a financial professional to review the cost areas and provide guidance/feedback to the evaluators prior to scoring. Some solicitations offered by CTCOG express the total amount of available funding up front and ask Proposers to cost out their offered solutions, while not exceeding the specified cost limits. In these cases, Evaluators can provide a value added service by:

- Making sure the total proposed costs do not exceed the specified amount available
- Confirming Budgets, if requested, are provided
- Reviewing the budget elements to make sure a key element has not been left out or does not match what the proposal offered. Examples would include talking about driving to clients' residences but not including transportation/fuel costs in the budget, or offering to provide six full time counselors in the proposal but only budgeting for two FTE in the budget. These types of errors can lead us to question the overall creditability of the proposed budget; and
- Ensuring the proposer did not include items in the budget that do not appear to be related to the proposed solution. For example, listing the cost for a new van for a service that will be conducted at the Contractor's location and does not involve travel.

#### **4.0.3 Oral Interviews**

If it is in the best interest of CTCOG and provided for in the RFP solicitation, oral interviews may be scheduled. Oral interviews typically involve the highest scoring proposers being invited to meet with CTCOG to answer clarifying questions about their proposals or give answers to specific oral interview questions provided in the RFP.

Clarifying questions are frequently developed by evaluators after the written evaluation with guidance from Procurement Administrator, or department designee, and from the Program Manager. The Procurement Administrator, or department designee, will send the clarifying questions to the proposers prior to the interviews.

However, at any time including during the oral interviews, **no additions, deletions or substitutions may be made to the proposals that cannot be viewed as clarification. Proposers are not allowed to hand out any new material to the Evaluation committee.**

Each proposer will be allowed an equal amount of time for their interviews. All evaluation committee members must participate in and evaluate all interviews. The same score sheets for the written proposals will be used for evaluating the oral interviews, usually with the same evaluation criteria and weighting as previously identified within the RFP. Again, each evaluator should evaluate the oral interviews independently. Oral score sheets will be turned in after each interview and scoring is done for that interview.

#### **4.0.4 Product Demonstrations**

Product demonstrations (demos) are frequently used in software procurements but can apply to any purchase where seeing the proposed solution “in action” is useful for determining the most advantageous solution. Demos are a good tool for validating a proposer’s claims about the proposed solution in their written proposal.

If a demo is being used, the RFP will specify whether it is remote or on-site (i.e. conducted over the internet without the proposer actually being present or conducted here at CTCOG with the proposer giving the presentation).

During the demo, evaluators and technical advisors will have an opportunity to observe the solution in action and ask any clarifying questions they may have along the way. Clarifying questions are limited to only those areas covered in the demo.

As an Evaluator attending a demo, it is important to attend the demo in its entirety. Breaks can be scheduled into the agenda for longer demos and if for some reason you need to leave the demo, it’s important to let the Procurement Administrator, or department designee, know that you are leaving and give them an idea of how long you will be absent. They can then determine if they need to stop the demo until all evaluators are present.

During the demo, typically the Procurement Administrator, or department designee, will introduce the proposers and explain the expectations for the demo for the proposers, evaluators and technical advisors. It is also important to refrain from discussing the proposal, the demo and/or the procurement process with the proposers during breaks and to keep your interactions with them brief and professional. Refer them to the Procurement Administrator, or department designee, if they have questions.

This may seem unnecessarily strict but with good reason. Demos open up a wider door for risk to the procurement process because of the interaction between proposers and non-Purchasing staff. Our procurement rules and policies are complex. Something said innocently to a proposer may create a risk to the procurement that could lead to CTCOG being protested, sued or needing to cancel the procurement and start over.

After the demo, you will have an opportunity to then finalize your scores prior to turning in your score sheets to the Procurement Administrator, or department designee.

#### **4.0.5 Site Visits**

Site visits involve evaluators, technical advisors and the Procurement Administrator, or department designee, traveling to a location where the proposer's solution is being used. This could be anything from implemented software at another agency to a tour of a data center.

When used, the RFP will spell out what the site visit will entail and what topics will be discussed with the proposer and/or its customers or clients. Because site visits involve travel they are only recommended when absolutely necessary to identify the most advantageous solution. Evaluators must take the same kind of care they would take in a demo, conducting themselves professionally and avoiding inappropriate conversations with the proposers.

As with all other steps in a procurement, you will have an opportunity to consider the visit before finalizing your scores and turning in your score sheets.

#### **4.0.6 Best and Final Offer (BAFO)**

The BAFO process allows CTCOG to solicit revised proposals from proposers within competitive range. CTCOG may not use BAFO often, but it is an important tool especially when what is learned during the process of a procurement has impacted CTCOG's understanding of the scope of work and concept of what the most advantageous solution would look like.

In BAFO, the originating Department – in partnership with the Procurement Administrator, or department designee, and the evaluators – identifies any changes that are desirable in the RFP's scope of services and any changes desirable in the proposals still under consideration. A list of changes to specifications is combined with a list of items specific to each proposal that CTCOG wants revised.

These lists are included in a letter sent to the proposer. After proposers have had an opportunity to discuss their lists in person or by teleconference in an optional meeting, the Purchasing representative releases a Request for Best and Final Offer, usually giving the proposers two weeks to submit their revised proposals. The BAFO request will include the new due date, any re-weighting of the score categories, and the list of items for revision and other helpful instructions for proposers.

Once all proposals have been received and the due date has passed, evaluators will independently evaluate each revised proposal against the revised criteria identified in the BAFO. When evaluating a BAFO, evaluators are encouraged to use everything they have learned in the procurement process so far – including all steps – and they will also have access to their past scores. However, evaluators are not required to score any category in the same manner as it was previously scored, even if it is a portion of the proposal that has not been revised.

When the evaluators have finished scoring the revised proposals independently, they will then meet with the Procurement Administrator, or department designee, to turn in their score sheets.

## **5.0 Conclusion**

Serving on an CTCOG procurement evaluation committee is a very important role. Your commitment of time, along with the proposers' and CTCOG's commitment of time and resources, is sizable. At the end of this process, CTCOG is able to fulfill its mission as a steward of the public trust to purchase the needed goods or services in a fair and equitable way. CTCOG could not do this work without evaluators like you. Thank you for participating in this process and if you have any questions or feedback, please contact the Procurement Administrator, or department designee, identified on the cover page of the RFP document.

**Supplement: Department Card Policy-Technology Items Requiring Data Services  
Approval**

**(Article VII – Department Card Purchases)**

The following is a list of technology items that must be approved by Data Services prior to purchase.

\*This list is not all inclusive and can be modified as required by Data Services.

- Printer
- Scanner
- Monitor
- Storage media (i.e. large capacity external hard disk drives)
- Software
- Networking equipment (wireless router, wireless access point, network switch & hub)
- A/V equipment
- UPS
- Smartphone, tablet, wireless hotspot
- All cloud based technology services: any software as a service (SaaS), web hosting, cloud storage, domain name registration, Go-To meetings, etc.

**Supplement: Check Request Policy**

A check request should be reserved for limited situations and should be the exception. The majority of purchases in CTCOG should be handled by generating a standard requisition for a purchase order.

The following are the instances when a Check Request should be generated:

- Phone bills or other items with costs that fluctuate from month to month
- Vendor cannot accept a purchase order
- Internal tracking/approval of department card purchases
- Reimbursement

Please direct inquiry to the Finance Coordinator or Procurement Administrator to determine the appropriate method.

## **ARTICLE XVIII**

### FORMS and TEMPLATES

**Supplement:** Conflict of Interest Form

**Supplement:** Statement of Certification Regarding Debarment

**Supplement:** Statement of Certification Regarding Title VI

**Supplement:** Request for Quote Form

**Supplement:** Sole Source Questionnaire and Certification

**Supplement:** RFP Template

\*Supplements are only intended for reference and can be added or removed as appropriate

**Supplement: Conflict of Interest Form**

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b>		<b>FORM CIQ</b>
<b>For vendor doing business with local governmental entity</b>		<b>OFFICE USE ONLY</b>
<p><small>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</small></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<p style="text-align: center;"><small>Date Received</small></p>	
<p><b>1</b> Name of vendor who has a business relationship with local governmental entity.</p>		
<p><b>2</b> <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p style="font-size: small;">(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p><b>3</b> Name of local government officer about whom the information in this section is being disclosed.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p> <p style="font-size: small;">This section (item 3 including subparts A, B, C, &amp; D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="text-align: center;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more?</p> <p style="text-align: center;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p>D. Describe each employment or business and family relationship with the local government officer named in this section.</p>		
<p><b>4</b></p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature of vendor doing business with the governmental entity</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Date</p>		

Adopted 8/7/2015

**Supplement: Statement of Certification Regarding Debarment**

**CERTIFICATION  
REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
AND VOLUNTARY EXCLUSION FOR COVERED CONTRACTS**

Federal Executive Order 12549 requires the Houston-Galveston Area Council (H-GAC) to screen each covered potential contractor to determine whether each has a right to obtain a contract in accordance with federal regulations on debarment, suspension, ineligibility, and voluntary exclusion. Each covered contractor must also screen each of its covered subcontractors/providers.

In this certification "contractor" refers to both contractor and subcontractor; "contract" refers to both contract and subcontract.

**By signing and submitting this certification the potential contractor accepts the following terms:**

1. The certification herein below is a material representation of fact upon which reliance was placed when this contract was entered into. If it is later determined that the potential contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the Houston-Galveston Area Council or other federal department or agency, may pursue available remedies, including suspension and/or debarment.
2. The potential contractor shall provide immediate written notice to the person to whom this certification is submitted if at any time the potential contractor learns that the certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The words "covered contract," "debarred," "suspended," "ineligible," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this certification have meanings based upon materials in the Definitions and Coverage sections of federal rules implementing Executive Order 12549. Usage is as defined in the attachment.
4. The potential contractor agrees by submitting this certification that, should the proposed covered contract be entered into, it shall not knowingly enter into any subcontract with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Houston-Galveston Area Council or other federal department or agency, as applicable.

**Do you have or do you anticipate having subcontractors under this proposed contract? \_\_\_\_ YES \_\_\_\_ NO**

5. The potential contractor further agrees by submitting this certification that it will include this certification titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion for Covered Contracts " without modification, in all covered subcontracts and in solicitations for all covered subcontracts.
6. A contractor may rely upon a certification of a potential subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless it knows that the certification is erroneous. A contractor must, at a minimum, obtain certifications from its covered subcontractors upon each subcontract's initiation and upon each renewal.
7. Nothing contained in all the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this certification document. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for contracts authorized under paragraph 4 of these terms, if a contractor in a covered contract knowingly enters into a covered subcontract with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in the transaction, in addition to other remedies available to the federal government, Houston-Galveston Area Council, or other federal department or agency, as applicable, may pursue available remedies, including suspension and/or debarment.

---

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION FOR COVERED CONTRACTS**

Indicate which statement applies to the covered potential contractor:

- \_\_\_\_ The potential contractor certifies, by submission of this certification, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or agency or by the State of Texas.
- \_\_\_\_ The potential contractor is unable to certify to one or more of the terms in this certification. In this instance, the potential contractor must attach an explanation for each of the above terms to which he is unable to make certification. Attach the explanation(s) to this certification.

NAME OF POTENTIAL CONTRACTOR \_\_\_\_\_

VENDOR ID NO. /FEDERAL EMPLOYER ID NO. \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Printed/Typed Name of Authorized Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Authorized Representative

**INSTRUCTIONS FOR CERTIFICATION**

- 2 -

1. By signing and submitting this proposal, the prospective contractor is providing the certification set out below.
2. The inability of a contractor to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective contractor shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective contractor to furnish a certification or an explanation shall disqualify such contractor from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If is later determined that the prospective contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective contractor shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations (13 CFR Part 145).
6. The prospective contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective contractor further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions," "provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the ineligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Supplement: Statement of Certification Regarding Title VI**

\_\_\_\_\_, certifies that it is fully in compliance with all requirements imposed by Title VI of the Civil Rights Act of 1964 (49 U.S.C. Section 2000d), the Regulations of DOT issued thereunder (49 C.F.R. part 21), and the assurances by CTCOG thereto.

\_\_\_\_\_ affirms the truthfulness and accuracy of the contents of the statements submitted on this certification.

\_\_\_\_\_  
Authorized Official

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Date



**Supplement: Sole Source Questionnaire and Certification**

This questionnaire has been designed to assist departments in relating information required in the processing of requests for sole source/proprietary purchases in accordance with policies and procedures. Please complete attach to your files or forward to Program Operations with associated procurement documents. If more space is needed, please attach additional page(s).

Requisition Number: \_\_\_\_\_

When the purchase of a product or service exceeds \$3,000.00 and an equivalent product or service is not available or limited to one manufacturer, product, or service provider, a written justification must be provided and must include the following information:

1. Explanation of Need:

Identify and explain the need for the unique feature(s) or characteristic(s), applications and circumstances that apply to the specified good or service. The explanation of need **“MUST”** address the critical importance of the unique feature(s) or characteristic(s) as it applies to its intended use in department operations).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Reason Why Competing Products are not Satisfactory:

Provide a brief statement in reference to the identification of other sources that have been reviewed (include the name, model number and manufacturer of the unacceptable product(s) that have been investigated) and state the reason why competing product(s) are not satisfactory and will not meet the needs for its intended use in department operations.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Specific impact on Department:

Provide a statement regarding the specific impact on the Department if the goods or services were procured elsewhere.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PART/ITEM NUMBER		DESCRIPTION OF ITEM
MANUFACTURER PART/ITEM NUMBER	VENDOR NAME	
VENDOR ID	VENDOR ADDRESS	<input type="checkbox"/> DBE <input type="checkbox"/> NON- DBE
VENDOR TELEPHONE	VENDOR CONTACT	

**SOLE SOURCE** – Procurements where the functional needs of H-GAC can be satisfied by only one source. (Ref. – Texas Local Government Code Section 252.022)

Check the appropriate reason the above item, material or service has no substitute and can be obtained only from the indicated vendor.

- Item is patented. Vendor has exclusive supplier rights.
- Item is copyrighted. Vendor has exclusive supplier rights.
- Item is a  Book  Manuscript  Film and available only from the above vendor
- Item is a Product/Service provided by a Legal Monopoly.
- Item is a Captive Replacement Part and must be ordered because of **one** of the following reasons: (Check One)
  - Use of a generic substitute will void the warranty. Vendor is the only local supplier of acceptable parts.
  - Captive replacement parts are available only from the above Vendor who is the original manufacturer of the item being replaced.
  - Use of generic substitute parts will require extensive modification of equipment. Modification would not be cost effective (attach Cost Analysis). Above Vendor is the only supplier of the acceptable part.
  - Captive replacement parts are available only from the above Vendor who is the sole authorized distributor for the manufacturer and no other Vendor is authorized to sell these items to the City of Houston.
- Other: (Please specify)

\_\_\_\_\_

\_\_\_\_\_

ORIGINATOR'S STATEMENT:  
 I CERTIFY THAT THE ABOVE ITEM,  
 MATERIALS OR SERVICE IS A SOLE  
 SOURCE ITEM FOR THE REASON  
 INDICATED ABOVE.

\_\_\_\_\_  
 Originator's Signature | Date

\_\_\_\_\_  
 Originating Department | Authorized Approval | Date

**Supplement: RFP Template**  
**REQUEST FOR PROPOSAL (RFP)**  
**Project Name**

**Project No.: XX-XXX-YEAR-MONTH-DAY**

**DATE ISSUED:** Day of Week, Month 00, Year

**PRE-PROPOSAL  
CONFERENCE:** Day of Week, Month 00, Year

**PRE-PROPOSAL  
QUESTIONS  
DEADLINE:** Day of Week, Month 00, Year

**CLOSING DATE:** Day of Week, Month 00, Year @ 0:00 P.M., CST

**FORMAT:** One (1) hard copies

**SUBMIT TO:** Name  
Title  
Houston-Galveston Area Council

**Mailing address**  
P.O. Box 22777  
Houston, TX 77227-2777

**Physical/delivery**  
3555 Timmons Lane, Suite 120  
Houston, TX 77027  
Main number: (713) 627-3200

**CONTACT:** Name  
Title  
Desk: (713) XXX-XXXX  
Fax: (713) XXX-XXXX  
Email: [email@h-gac.com](mailto:email@h-gac.com)

Those responding to this solicitation may elect to either mail or personally deliver their proposals to H-GAC offices. Failure to submit the required number of copies as stated above may result in disqualification from the proposal process. H-GAC will not accept any proposals delivered by telephonic, electronic or facsimile means.

The deadline for the submittal of proposals is no later than **0:00 P.M., CST on Month XX, YEAR**. H-GAC shall date-stamp all proposals upon receipt. Proposals received after this date and time will not be accepted. Respondents may submit their proposal to the H-GAC office any time prior to the deadline.

Submission of a proposal will constitute acknowledgement and acceptance of all the terms and conditions contained in this RFP. Proposers, their authorized representative, and their agents are responsible for obtaining, and will be deemed to have, full knowledge of the conditions, requirements, and specifications of this RFP at the time a proposal is submitted to H-GAC.

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**PART I – GENERAL INFORMATION**

**A. Organization Background (Optional)**

The Central Texas Council of Governments (CTCOG) is the region-wide voluntary association of 133 local governments and local elected officials in the 13-county Gulf Coast Planning region of Texas. Local elected officials organized CTCOG in 1966 after authorization by State enabling legislation. Its service area is 12,500 square miles and includes approximately 5.4 million citizens. CTCOG is governed by a 35 member Board of Directors composed of local elected officials, who serve on the governing bodies of member local governments. All CTCOG programs are carried out under the policy direction of its Board of Directors. CTCOG’s mission is to serve as the instrument of local government cooperation, promoting the region’s orderly development and the safety and welfare of its citizens. CTCOG is the regional organization through which local governments consider issues and cooperate in solving area-wide problems. CTCOG conducts perhaps the broadest inter-governmental service program of any regional council organization. Agency programs emphasize local government concerns, such as transportation, air and water quality, criminal justice, demographic analysis, mapping programs, and intergovernmental purchasing. CTCOG also serves its citizens through workforce development programs, services to the aging and elderly, and small business finance programs.

**B. Background**

Give specifics about the project and how you arrived at determining the need for an RFP.

**C. Current challenges: (Optional)**

Outline any current challenges faced and the areas of concern you would like the proposer to address

**D. Objectives**

List the objectives of the RFP

**E. Solicitation Schedule**

EVENT	DATE
Date of RFP Issued	
Pre-Proposal Conference	
Questions from Proposers due to CTCOG	
Proposals Due	
Contract Start Date (estimated)	

**F. Budget**

List budget or allocated funding

**G. Current Environment (Optional)**

List current operating environment (i.e. current software, etc.)

**PART II – SCOPE OF WORK**

Here you will plug in your determined Scope of Work.

▪ **Deliverables**

List any expected deliverable here.

▪ **Requirements**

List any special requirements here.

▪ **Optional Custom Functions (Optional)**

Please provide a quote for these optional requirements as separate items:

- List requested options

▪ **Warranty and Copyright**

Proposals must include all warranty information, including items covered, items excluded, duration, and renewability. Proposal must include proof of licensing if you are using third party code for programming.

**PART III – SUBMISSION OF PROPOSAL**

**A:Instructions for Submission**

Number of Copies – Please submit one (1) copy(ies) of the Proposal, including one (1) printed original signed in BLUE ink, and submitted in a sealed envelope bearing the assigned Project Number, located on the first page of the RFP. Those responding to this solicitation may elect to either mail, email, or personally deliver the proposals to CTCOG offices.

Submission by Mail  
Respondents may mail proposals to:  
Central Texas Council of Governments

Attn: Name, Title  
P.O. Box 729  
Belton, TX 76513-0729

**Submission by Hand Deliver**

Proposals may be delivered by hand to CTCOG's office, Monday through Friday, 8:00 A.M. to 5:00 P.M., CST.

Central Texas Council of Governments  
2180 North Main Street  
Belton, TX 76513

Proposals that are hand delivered must be received by Month Day, Year, 0:00 P.M. CST

**Submission by Electronic Delivery (Option 1)**

In addition to the printed copies of the proposal, each vendor may also submit an electronic version of the proposal in Microsoft Office 2010 format or above.

Proposals which are delivered electronically must be e-mailed to:

[email@ctcog.org](mailto:email@ctcog.org), with a copy to [email@ctcog.org](mailto:email@ctcog.org).

CTCOG shall bear no responsibility for submitting responses on behalf of any Proposer. Proposer(s) may submit their proposal to CTCOG any time prior to the stated deadline.

Submission of proposal will constitute acknowledgement and acceptance of all the terms and conditions contained within this RFP.

Proposers, their authorized representatives, and their agents are responsible for obtaining, and will be deemed to have, full knowledge of the conditions, requirements, and specifications of this RFT at the time a proposal is submitted to CTCOG.

Time for Submission- Proposals shall be submitted no later than the date and time indicated for submission in the FRP. Late submittals will not be considered and will be returned.

Format- Proposal should be left-bound with information on both sides of the page when appropriate. Material should be organized following the order of the submission requirements separated by labeled tabs. Expensive paper and bindings are discouraged since no materials will be returned.

Complete Submission- Proposers are advised to carefully review all the requirements and submit all documents and information as indicated in this RFP. Incomplete proposals may lead to a proposal being deemed non-responsive. Non-responsive proposals will not be considered.

Packaging and Labeling- The outside wrapping/envelope shall clearly indicate the RFP Title and date and time for submission. It shall also indicate the name of the proposer.

Timely Delivery of Proposals- the Proposal must be delivered by hand or sent to CTCOG through U.S. Mail or other available courier services to the address shown on the cover sheet of

this RFP. Include the RFP number on any package delivered or sent to CTCOG and on any correspondence related to the Proposal. If using an express delivery service, the package must be delivered to the designated building. Packages delivered by express mail services to other locations might not be re-delivered in time to be considered.

Late Proposals- the proposer remains responsible for ensuring on-time delivery of all submissions requirements regardless of whether the delay is caused from the U.S. Postal Service, courier delivery services or any other act or circumstance. Late proposals will not be considered and will be returned.

#### **PART IV – PROPOSAL CONTENTS/SUBMISSION REQUIREMENTS**

List all contents of the returned Proposal.

#### **PART V - SPECIAL CONDITIONS**

##### **A. CTCOG Terms and Conditions**

CTCOG will not pay for any expenses incurred prior to the execution date of a contract, or any expenses incurred after the termination date of the contract.

All materials submitted to CTCOG, including any attachments, appendices, or other information submitted as a part of a proposal, are considered public information, unless otherwise noted in the proposal itself as a trade secret or proprietary information, and become the property of CTCOG upon submission and may be reprinted, published, or distributed in any manner by CTCOG according to open records laws, requirements of the US Department of Labor and the State of Texas, and CTCOG policies and procedures. CTCOG is not responsible for the return of creative examples of work submitted.

##### **B. Updates to the Request for Proposal**

Any changes, corrections, additions, or deletions made to this Request for Proposals will be posted to the CTCOG website ([www.CTCOG.org](http://www.CTCOG.org)). It is the responsibility of proposers to check the website for any possible changes.

##### **C. Interpretation of Specifications**

The specifications and/or product references contained herein are intended to be descriptive rather than restrictive. CTCOG is soliciting proposals to provide a complete service package which meets its overall requirements. Specific services and collection references may be included in this RFP for guidance, but they are not intended to preclude proposers from recommending alternative solutions offering comparable or better performance or value. Results of informal meetings or discussions between a potential Proposer and CTCOG official or employee may not be used as a basis for deviations from the requirements contained in this RFP.

#### **D. Debarment**

Successful respondents will be required to comply and submit a certification statement in accordance with the laws imposed by Federal Executive Order 12549, “Debarment and Suspension” (3 CFR 1986 Comp., p. 189), Executive Order 12689.

#### **E. Conflict of Interest**

Chapter 176 of the Texas Local Government Code requires vendors and consultants contracting or seeking to contract with CTCOG to file a conflict of interest questionnaire (CIQ) if they have an employment or other business relationship with an CTCOG officer or an officer’s close family member. The required questionnaire is located at the Texas Ethics Commission website <https://www.ethics.state.tx.us/forms/CIQ-New-2015.pdf>. CTCOG officers include its Board of Directors and Executive Director, who are listed on this website. The CIQ must be completed and filed with a bid/proposal response if an employment or business relationship defined in the law exists.

#### **F. CTCOG Responsibilities**

CTCOG is responsible for project administration and final decisions on all contractual matters. All responses to inquiries about the RFP and attachments will be posted on the CTCOG website as often as possible. Visit <http://www.CTCOG.org> to access the RFP page. CTCOG has sole discretion and reserves the right to cancel this RFP or to reject any or all proposals received prior to the contract award. CTCOG reserves the right to waive any formalities concerning this RFP, or to reject any or all proposals or any part thereof.

#### **G. Compliance with Federal Regulations (Optional)**

Respondent’s attention is called to the fact that any contract between CTCOG and the selected respondent(s) will be subject to financial assistance contracts between the CTCOG, \_\_\_\_\_ . The contract to be awarded, therefore, is subject to the terms of these agreements and will not proceed without these agreements having been duly executed. The successful respondent will be required to comply with, in addition to other provisions of the agreement, the conditions required by applicable federal regulations, including those regulations which must be documented in the proposal, as indicated the Proposal Contents/Submission Requirements section of this RFP.

#### **H. Management Plans/Consortiums, etc. (Optional)**

Consortiums, joint ventures, or teams submitting proposals will not be considered responsive to this RFP unless they have demonstrated in a management plan that all contractual responsibility rests solely with one prime contractor or legal entity of the team. A duly authorized official of the prime respondent must sign the cover letter and other pertinent certifications.

## **I. Resolution of Protested Solicitations and Awards**

The following language should be included where appropriate in all CTCOG solicitations:

Any Proposer who is aggrieved in connection with a purchase transaction may file a grievance. The grievance may be filed at any phase of the procurement, and up to five (5) days after the CTCOG's Directors public agenda is posted for action regarding the questioned item. Grievances filed more than five (5) working days after action by the CTCOG's Executive Director will not be deemed timely and will not be considered. In order for a Proposer to enter the grievance process, a written complaint must be sent to the Director of Administration of CTCOG by certified mail and sent to P.O. Box 729, Belton, Texas 76513, which includes the following:

1. Name, mailing address and business phone number of the complainant.
2. Appropriate identification of the procurement being questioned.
3. A precise statement of the reasons for the protest.
4. Supporting exhibits, evidence or documents to substantiate any claims.

The grievance must be based on an alleged violation of CTCOG's Procurement Procedures, a violation of State or Federal Law (if applicable), or a violation of applicable grant or contract agreements to which CTCOG is a party. Failure to receive a procurement award from CTCOG in and of itself does not constitute a valid grievance. Upon receipt of grievance, the Director of Administration will initiate the informal resolution process.

The Procurement Administrator or Department Director responsible for the solicitation shall contact the complainant and all interested parties and attempt to resolve the allegations informally within ten (10) working days from the date of complaint. If the allegations are successfully resolved by mutual agreement, documentation will be forwarded to the Director of Administration of the resolution with specifics on each point addressed in the original complaint.

If the Procurement Administrator or Department Director is not successful in resolving the allegations, the complaint, along with the comments, will be forwarded to the Director of Administration immediately. The Director of Administration will review all documentation. All interested parties will be given written notice of the date, time, and place of hearing and an opportunity to present evidence. A written decision will be issued within five (5) working days after the hearing along with notice of appeal rights.

The complainant may appeal the Director of Administration's decision by submitting a written appeal, within five (5) working days, to the Executive Director of CTCOG. The Executive Director, upon receipt of a written notice of appeal, shall contact the complainant and schedule a hearing within ten (10) working days. The Executive Director of CTCOG has the option of appointing a Hearing Officer to preside over the hearing. If appointed, the Hearing Officer shall conduct a hearing and forward a summary and recommended resolution to the Executive Director.

The decision reached by the Executive Director or his designee shall be final and conclusive. This decision will be forwarded to the complainant in writing within thirty (30) working days.

The Proposer may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction.

## **PART VI – EVALUATION AND SELECTION PROCESS**

An evaluation committee may consist of representatives from Administration and other departments of CTCOG, and will review the responses to the RFP in accordance with the evaluation criteria listed below.

The committee members will individually evaluate the proposals and numerically score each proposal in accordance with the evaluation criteria driven by the content in the Evaluation Criteria section of this RFP. The proposals will then be ranked by score and a recommendation will be made for award to the highest ranking proposal that best meets the needs of CTCOG.

The evaluation committee reserves the right to contact respondents for clarification of information submitted and to contact references to obtain information regarding past performance, reliability and integrity.

### **A. Selection Process**

Upon review of all information provided by proposers, the evaluation committee will rank each proposal on the total score of the written proposal. CTCOG intends to select a proposal that best meets the needs of CTCOG, and other stakeholders to be determined.

### **B. Contract Award**

A Recommendation will be presented to the Executive Director for approval to negotiate, and execute a contract with the ranked Consultants in descending order. The targeted date for approval is Month Day, Year. CTCOG reserves the right to delay the date as needed and to reject any and all proposals as deemed in its interest.

### **C. Debriefing**

Requests for a debriefing must be made within one week notification of non-selection. CTCOG reserves the right to not conduct debriefings if requests are made after that time.

### **D. Evaluation Criteria**

List the criteria that will be used to evaluate the proposals.

## **PART VII – INSTRUCTIONS TO PROPOSERS**

### **A. Pre-Proposal Conference**

A Pre-Proposal Conference will be held on Day of Week, Month Day, Year , from 0:00 P.M. CST to 0:00 P.M. CST in the CTCOG \_\_\_\_\_(Location)\_\_\_\_\_.

(Optional) Those unable to attend this meeting in person may participate via conference call. Please notify \_\_\_\_\_ no later than Day of Week, Month Day, Year, by 0:00 P.M. CST, if you wish to be included on the conference call.

It will be assumed that potential Proposers attending this conference have reviewed the RFP in detail and are prepared to raise any substantive questions which have not already been addressed by CTCOG. CTCOG requests that, as much as is practical, Proposers submit all questions in writing, via email or fax, prior to the Pre-Proposal Conference. No additional questions regarding the RFP will be accepted after 0:00 P.M. CST on Day of Week, Month Day, Year. Questions submitted in advance should be sent to \_\_\_\_\_, via email at [email@CTCOG.org](mailto:email@CTCOG.org). All questions and answers from the Pre-Proposal meeting will be compiled and provided to participating Proposers, as well as posted on the CTCOG website.

## **B. Inquiries and Additional Information**

Respondents can submit questions in writing or by e-mail to [email@CTCOG.org](mailto:email@CTCOG.org) no later than 0:00 pm, Day of Week, Month Day, Year. No telephone inquiries will be accepted or considered. The Central Texas Council of Governments will respond as completely as possible to each question. Questions and answers will be posted on the CTCOG website as soon as they are available or no later than Month, Day, Year as stated in the time line. The names of prospective vendors who submit questions will not be disclosed.

### **▪ Inquiries Regarding the Contract and Scope of Work**

Inquiries must be submitted in writing by Day of Week, Month Day, Year, 0:00 pm to:

Central Texas Council of Governments  
Attn. Name, Title  
P.O. Box 729  
Belton, TX 76513-0729  
Email: [email@CTCOG.org](mailto:email@CTCOG.org)

### **▪ Technical Inquiries (Optional)**

Inquiries must be submitted in writing by Day of Week, Month Day, Year, 0:00 pm to:

Central Texas Council of Governments  
Attn. Name, Title  
P.O. Box 729  
Belton, TX 76513-0729  
Email: [michael.irvine@CTCOG.org](mailto:michael.irvine@CTCOG.org)

## **C. Letter(s) of Clarification**

All Letters of Clarification and interpretations to this Solicitation shall be in writing. Any letter of Clarification(s) or interpretation that is not in writing shall not legally bind the Central Texas Council of Governments. Only information supplied by the Central Texas Council of Governments in writing or in this RFP should be used in preparing Proposal responses.

CTCOG does not assume responsibility for the receipt of any Letters of Clarification sent to Proposer(s).

**D. Examination of Documents and Requirements**

Each Proposer shall carefully examine all RFP documents and thoroughly familiarize themselves with all requirements prior to submitting a Proposal to ensure that the Proposal meets the intent of this RFP.

Before submitting a Proposal, each Proposer shall be responsible for making all investigations and examinations that are necessary to ascertain conditions affecting the requirements of this RFP. Failure to make such investigations and examinations shall not relieve the Proposer from obligation to comply, in every detail, with all provisions and requirements of the RFP.

**E. Modification of Proposal (Before Submission Deadline)**

Bidders may modify proposals that have already been accepted by providing a written modification to CTCOG. However, no proposals may be modified after the deadline for submission.

**F. Non-Responders to RFP**

If unable to submit a proposal, please contact CTCOG in writing advising the reason for not submitting a proposal. Reasons for non-response to the RFP may be submitted to Michael Irvine at [michael.irvine@CTCOG.org](mailto:michael.irvine@CTCOG.org).

**PART VIII – REQUIRED FORMS TO BE SUBMITTED WITH PROPOSAL**

- A. Certification Regarding Debarment (Attachment A)
- B. Conflict of Interest (Attachment B)
- C. List all Other Required Forms