



## **CAPITAL AREA COUNCIL OF GOVERNMENTS**

### **PROCUREMENT POLICY**

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**ARTICLE I  
GENERAL PROVISIONS**

**PART A: PURPOSES, CONSTRUCTION AND APPLICATION**

- 1-101 **Purpose:** The purpose of the Procurement Policy is to provide the **Capital Area Council of Governments**, herein referred to as CAPCOG, 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 specific requirements of Chapter 252 of the Local Government Code and with the general requirements of OMB Circulars A-87, A-102 and A-133 and the Texas Uniform Grant Management Standards. More specifically, the underlying purposes and policies of this Procurement Policy are:
1. to simplify and clarify the law governing procurement by CAPCOG;
  2. to provide consistency in the procurement practices of CAPCOG, with regard to pertinent procurement laws;
  3. to ensure the fair and equitable treatment of all persons who participate in the procurement process and provide a full accounting for all purchases;
  4. to provide increased economy and efficiency in procurement activities by avoiding unnecessary, unwarranted and duplicative procurements; and,
  5. to foster free and open competition while maintaining quality and integrity in procurement practices.
- 1-102 **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.
- 1-103 **Grantor Agency Policies and Procedures:** At no time is this Policy intended to be more stringent than required by the grantor agency from whom CAPCOG receives specific funds. The written procurement procedures prepared by the source-granting agency shall be followed when funds are spent for the operation of a specific program.
- 1-104 **Gender Neutral:** All personal pronouns used in this Procurement Policy, whether used in the masculine, feminine or neuter gender, shall include all genders.
- 1-105 **Singular-Plural:** Words in the singular include the plural and vice versa.
- 1-106 **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.
- 1-107 **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.
- 1-108 **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.

- 1-109 **Free and Open Competition:** All procurement transactions, regardless of dollar value, whether advertised or negotiated, shall be conducted in a manner so as to provide maximum free and open competition. CAPCOG should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. 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, IFBs, etc.) should be excluded from competing for such procurements.
- 1-110 **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.
- 1-111 **Good Faith:** The Procurement Policy requires that all parties involved in the negotiation, performance and administration of contracts act in good faith.
- 1-112 **Effective Date:** The Procurement Policy applies only to procurements initiated on or after the effective date of this Policy, December 1, 1996.
- 1-113 **Public Access to Procurement Information:**
1. All procurement information in CAPCOG's possession is public information, and is subject to disclosure to third parties upon request, unless excepted from disclosure by the Texas Public Information Act.
  2. If a bidder/offeror believes that information in the bid or proposal is proprietary and is not disclosable to a third party, the bidder/offeror must clearly mark the information as proprietary and inform CAPCOG in writing that the bidder/offeror will contest disclosure of the information if disclosure is requested under the Texas Public Information Act.
  3. If the allegedly proprietary information is clearly marked as such and CAPCOG was informed of the bidder/offeror's desire to keep the information confidential, CAPCOG agrees to use the information only to evaluate the bid or proposal and to take reasonable precautions to protect the information from unauthorized disclosure to third parties. CAPCOG agrees to refuse to disclose the information, if requested to do so under the Texas Public Information Act, and instead to request an Attorney General's opinion on whether the information may be disclosed. CAPCOG agrees to inform the bidder/offeror of any request for disclosure of the information under the Texas Public Information Act.
  4. CAPCOG's sole obligation to protect allegedly proprietary information contained in bids or proposals is described in this Section 1-113.
  5. A copy of this Section 1-113 shall be included in each solicitation for bids by CAPCOG.

## PART B: DEFINITION OF TERMS

- 1-201 "**Bidder**" means any person that submits a bid in response to an Invitation for Bid ("IFB").
- 1-202 "**Bidders' List**" means the pre-qualified list of persons which is used in acquiring goods and services. The Bidders' List must be kept current and include sufficient qualified sources to ensure maximum free and open competition.
- 1-203 **CAPCOG** means the **Capital Area Council of Governments** which was created and operates under Chapter 391 of the Texas Local Government Code as a political subdivision of the State of Texas.
- 1-204 "**Competitive Sealed Bidding**" or "Formal Competitive Bidding" means the procurement method whereby CAPCOG drafts the specifications, schedule and other conditions for award and sends the bid package to interested bidders and/or publishes an announcement in local periodicals. To be considered, bids must conform to the IFB. Bid opening is a formal, public procedure.
- 1-205 "**Construction**" means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
- 1-206 "**Contract**" means a legally binding agreement between CAPCOG and a contractor or between a contractor and a subcontractor.
- 1-207 "**Contractor**" means any person having a contract with CAPCOG.
- 1-208 "**Cooperative Purchasing**" means procurement conducted by, or on behalf of, a county, city, town or political subdivision of the state or public agency of the political subdivision; public authority, educational, health, or other institutions; or by the Procurement and Support Services, Comptroller of Public Accounts, or by the Houston-Galveston Area Council's Cooperative Purchasing Program.
- 1-209 "**Disadvantaged Business Enterprise**" ("**DBE**") means a for-profit corporation in which at least 51% of all classes of the shares of stock are 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 other federal agencies.
- 1-210 "**Equipment**" means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
- 1-211 "**Federal financial assistance**" means 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. It includes awards received directly from federal agencies, or indirectly through other units of state and local governments.

- 1-212 "**Grant**" or "**Grant-in-aid**" means 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 any COG, RPC, person 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.
- 1-213 "**Historically Underutilized Business**" ("**HUB**") means:
- (A) 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 are 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;
  - (B) 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);
  - (C) a partnership formed for the purpose of making a profit in which 51 percent of the assets and interest in the partnership are 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;
  - (D) a joint venture in which each entity in the joint venture is a historically underutilized business under this definition; or
  - (E) a supplier contract between a historically underutilized business under this definition 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.
- 1-214 "**Invitation for Bid**" ("**IFB**") means all documents, whether attached or incorporated by reference, utilized in soliciting bids.
- 1-215 "**Minority Business Enterprise**" ("**MBE**") means 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.
- 1-216 "**Negotiated Procurement**" (or competitive proposal procurement) means a process similar to competitive sealed bidding procurement except that offerors and CAPCOG discuss or negotiate aspects of the proposal, such as price. Negotiations are held with all offerors in the competitive range based upon the evaluation factors set out in the RFP.
- 1-217 "**Offeror**" means a person that submits a proposal in response to a Request for Proposals.

- 1-218 "**Person**" means any business, individual, group of individuals, union, committee, club organization, vendor, contractor, or governmental entity.
- 1-219 "**Procurement**" means the purchasing, renting, leasing or otherwise 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, and all phases of contract administration.
- 1-220 "**Purchase Order**" means a written offer to purchase equipment, supplies or services from a vendor; if the vendor accepts the Purchase Order, it becomes a contract.
- 1-221 "**Request for Proposal**" ("**RFP**") means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- 1-222 "**Responsible**" means that the bidder or offeror has the capability, in all respects, including financial, to fully perform the contract requirements, as well as integrity and reliability which will assure good faith performance.
- 1-223 "**Services**" means 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 generally Professional, Planning and Consulting Services, Section 3-208.]
- 1-224 "**Small Business Enterprise**" means 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.
- 1-225 "**Specifications**" means any description of the physical or functional characteristics, or the nature of a supply, service or construction item. It must include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and constitutes the total description of the purchase.
- 1-226 "**Subgrant**" means 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 subgrantee. 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**."
- 1-227 "**Subrecipient**" means any entity that receives federal assistance passed through from a prime recipient or another subrecipient to carry out or administer a program
- 1-228 "**Supplies**" means all tangible personal property other than "**Equipment**."
- 1-229 "**Vendor**" means a person who sells or leases supplies, equipment or services.
- 1-230 "**Women-Owned Business**" means 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**

**PART A: ORGANIZATION AND CONTRACT ADMINISTRATION**

**2-101 Executive Committee, Executive Director**

1. All contracts or grants exceeding \$15,000 must be approved by the Executive Committee.
2. Only the Executive Director or his or her designee is authorized to contract or award grants on behalf of CAPCOG.

**2-102 Executive Director of CAPCOG:**

1. Shall be responsible for compliance with and implementation of this Policy;
2. Shall review and approve proposed procurement actions to avoid unnecessary or duplicative purchases;
3. Shall analyze lease and purchase alternatives to determine the most economical and practical procurement.

**2-103 Deputy Director of CAPCOG:**

1. Shall be responsible for:
  - a. reviewing solicitations for compliance with this Policy;
  - b. overseeing the negotiation and execution of purchase orders and contracts, in coordination with Division Directors;
  - c. monitoring the terms and conditions of purchase orders and contracts; and
  - d. any and all other responsibilities assigned by the Executive Director or Executive Committee.

**2-104 Division Director:**

1. Shall be responsible for:
  - a. identification, solicitation and selection of vendors or contractors;
  - b. maintaining and updating the Bidders' List;
  - c. negotiating and executing purchase orders and contracts, in coordination with the Deputy Director; and
  - d. any and all other responsibilities assigned by the Executive Director.

**2-105 Purchasing Coordinator:**

1. Shall be responsible for:
  - a. processing requisitions forms;
  - b. classification of purchases;
  - c. ensuring the complete and accurate documentation of all procurements;
  - d. maintaining all procurement files and records; and
  - e. any and all other responsibilities assigned by the Executive Director.

**2-106 Authorization of Purchases**

1. Requisition Form: An approved form used to identify and request the supplies, equipment or service.
  - a. Requisition forms are used to inform the Purchasing Coordinator of the needs of a particular department and to correctly identify the supplies, equipment or services requested. This procedure provides a system of authorization and safeguards so that improper, illegal, unnecessary and/or duplicative purchasing is difficult to initiate and conceal.
  - b. The form is also used to inform the Purchasing Coordinator of the logistics of the procurement: what will be bought and when it is required at the delivery destination. The requisition should contain the following information:
    - 1) date of requisition;
    - 2) department, including contact person;
    - 3) date required;
    - 4) quantity;
    - 5) description of item, including technical requirements;
    - 6) purpose of purchase;
    - 7) authorized signature;
    - 8) estimated cost;
    - 9) source of funds; and
    - 10) delivery destination.

- c. The requisition must be made as early as possible to account for delivery time for competitive bidding.
2. Documentation: All purchases must be documented by the Purchasing Coordinator. The document is either a purchase order or a contract.
3. Each purchase order or contract must contain the signature of the Purchasing Coordinator or Executive Director or both to certify that the purchase satisfies the appropriate bid procedures, applicable grant requirements or restrictions and that adequate funds have been authorized for the purchase.
4. Payment: Vendor and contractor invoices should be compared to the related purchase order or contract and payment issued only upon verification of accuracy.

## **PART B: RECORD RETENTION**

### **2-201 Record Retention Policy**

1. All procurement-related records must be maintained by CAPCOG for a period of four years after the contract is completed, unless a grantor agency requires a longer retention period. .
2. 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.
3. At a minimum, records retained shall include but are not limited to:
  - a. correspondence, notes and memoranda relating to the procurement, including RFPs, IFBs, bids and proposals received and any other procurement form and notes on oral communications and telephone or facsimile quotations;
  - b. notes comparing quotations and relating to the basis for the award, including all negotiations;
  - c. notes and correspondence relating to the acceptance or rejection of bids, proposals or quotations;
  - d. 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;
  - e. any and all documentation justifying sole source procurements, citing the authorizing authority and the basis for selection of the particular vendor;
  - f. a copy of public media advertisements;
  - g. all documents relating to any protest;

- h. 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;
  - i. copies of required insurance policies;
  - j. monitoring/audit reports and any other required reports and financial reconciliation's; and,
  - k. all contract closeout documents and records.
4. In negotiated procurements, records or files for purchases in amounts in excess of \$50,000 shall reflect, at a minimum:
- a. justification for use of negotiation in lieu of competitive sealed bidding;
  - b. the basis for contractor selection; and
  - c. the basis for the cost or price negotiation.

**ARTICLE III.  
SOURCE SELECTION AND CONTRACT FORMATION**

**PART A: METHODS OF SOURCE SELECTION**

**3-101 General**

Unless otherwise specified by law or program requirements, all contracts shall be awarded by competitive sealed bidding pursuant to federal and state laws, rules and regulations.

- 1. Exceptions to Competitive Sealed Bidding
  - a. Negotiated procurements [see Section 3-202];
  - b. Small purchases [see Section 3-204];
  - c. Sole source procurement [see Section 3-205];
  - d. Emergency procurements [see Section 3-206]; and
  - e. Personal, Professional, Planning and Consulting Services [see Section 3-208].
- 2. Competitive Bidding: Dollar Amounts
  - a. Procurements in excess of \$50,000 require competitive sealed bidding procedures.

**3-102 Restrictive Competition Practices Prohibited**

1. Prohibited restrictive practices include but are not limited to:
  - a. requiring unnecessary experience and excessive bonding;
  - b. placing unreasonable requirements on persons in order to qualify to do business;
  - c. organizational conflicts of interest;
  - d. non-competitive pricing practices between firms;
  - e. non-competitive awards to consultants that are on retainer contracts;
  - f. "brand name" specifications;
  - g. overly restrictive specifications; and,
  - h. arbitrary action in the procurement process.

### 3-103 **Contract Types**

1. General: The procurement instrument shall be in accordance with Chapter 252 of the Local Government Code and specific grantor purchasing procurement standards, if any. The instrument shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved.
  - a. Fixed price contracts or purchase orders;
  - b. Cost reimbursement contracts or purchase orders; and
  - c. Incentive contracts.
  - d. A Cost Plus a Percentage of Cost or Percentage of Construction Cost contract shall **not** be used.
2. Payment:
  - a. Lump Sum upon completion of contract; or
  - b. Unit Price Basis: Partial payments based upon actual quantity constructed or supplied.

### 3-104 **Independent Cost/Price Analysis**

1. CAPCOG must perform an independent cost or price analysis prior to every procurement action, including contract modifications.
2. An independent cost estimate is required:
  - a. when the offeror must submit the elements of his estimated cost for professional, consulting and architectural/engineering services contracts;

and,

- b. when adequate price competition is lacking, such as sole source procurements, change orders or contract modifications.

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

4. Procedure:

- a. The Division Director or his designee must obtain an independent cost or price analysis from:

- 1) informational telephone solicitations from more than one dependable vendor or source;
- 2) 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,
- 3) historical data.

- b. A cost reasonableness review is conducted, which includes but is not limited to reviewing:

- 1) prior experience and effectiveness;
- 2) line item budget analysis;
- 3) profit/program income;
- 4) the amount of the total budget;
- 5) the amount of the administrative budget;
- 6) all cost items and salaries;
- 7) all cost items with respect to relevancy and appropriateness in accomplishing the services provided;
- 8) travel reimbursement policies;
- 9) cost per contract hour.

- c. The purpose of the cost reasonableness review is to:

- 1) assure that all costs are properly allocated and classified;
- 2) any high or questionable costs;
- 3) assure that an organization-wide cost allocation plan is provided

where the offeror/bidder has multiple sources of funding, if applicable;

- 4) list any questionable issues of purchase or lease;
  - 5) assure that the cost of audit is covered;
  - 6) review staffing sources and salaries to assure budgetary limitations;
  - 7) assure that staff salaries are properly allocated to administration or training;
  - 8) determine adequacy of staffing for particular activities;
  - 9) list high or questionable staff salaries and benefits;
  - 10) list low cost or unreasonable staffing; and
  - 11) perform a comparative analysis including a comparison of activities and services to be offered, staffing patterns and costs proposed. This analysis may 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.
5. 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.
6. 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:
- a. specific cost elements;
  - b. the necessity of specific costs;
  - c. the reasonableness of amounts estimated for the necessary costs;
  - d. the reasonableness of allowances for contingencies;
  - e. the basis for allocation of indirect costs;
  - f. the appropriateness of allocation of indirect costs to the proposed contract; and
  - g. the reasonableness of the total price.

7. 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.

## **PART B: CONTRACT FORMATION**

### **3-201 Competitive Sealed Bidding**

1. General. Competitive sealed bidding procedures must be followed:
  - a. For procurements costing more than \$50,000
  - b. For all construction, repairs or renovations of a structure, road, highway or other improvement or addition to real property costing more than **\$25,000**.
2. All IFBs must clearly set forth all requirements to be met by the bidder.
3. Competitive sealed bidding requires formal advertising, adequate purchase descriptions, sealed bids and public openings.
4. The award must be to the lowest responsible bidder or to the bidder who provides supplies, equipment or services at the best value for CAPCOG.
5. IFBs shall clearly set forth all factors to be used in evaluating bids.
6. CAPCOG may reject any and all bids.
7. For exemptions to Competitive Bidding Requirements, see Section 3-101.

### **3-202 Negotiated Procurement**

1. General.
  - a. Procurements may be negotiated if one or more of the following conditions exist which make competitive sealed bidding impracticable, unfeasible or inadequate:
    - 1) the contract is for personal, professional, planning or consulting services, or for any service to be rendered by a university, college or other educational institution;
    - 2) public exigency will not permit the delay incident to advertising;
    - 3) the supply, equipment or service to be procured is available from only one person or firm ("sole source");
    - 4) the supplies, equipment or services are to be procured and used outside the United States;
    - 5) no acceptable bids have been received after formal advertising under competitive sealed bidding procedures;

- 6) the purchases are for highly perishable materials or medical supplies; for supplies, equipment or services where the prices are established by law; for technical items or equipment requiring standardization or interchangeability of parts with existing equipment; for experimental, developmental or research work; for supplies purchased for resale; or for technical or specialized supplies requiring substantial initial investment for manufacture; or,
  - 7) the procurement is for insurance or high-technology products or services.
- b. Competition shall be obtained to the maximum extent practicable.
  - c. The proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. [See Section 1-113.]
  - d. Negotiation:
    - 1) Always document the results of negotiation, especially the reasons for the elimination of a proposal after negotiations.
    - 2) Award must be based upon the weighted evaluation factors set forth in the RFP.

### 3-203 Competitive Procedures

- 1. Invitation for Bids/Requests for Proposals
  - a. Shall be based upon clear and accurate descriptions of the technical requirements for the material, good, product, supply, equipment or service to be procured.
    - 1) The description may contain a statement of the qualitative nature of the material, good, product, supply, equipment or service; and,
    - 2) set forth minimum essential characteristics and standards to which the material, good, product, supply, equipment or service must conform in order to permit its intended use.
  - b. The description will not contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement. When so used, the specific features of the named brand which must be met by bidders/offerors should be clearly specified.
  - c. Bids/Proposals shall be solicited by sending IFBs/RFPs to an adequate number of qualified sources as indicated by the Bidder's List to ensure competition, as well as through publication of the solicitation and response to requests for the solicitation to the maximum extent practicable.

- d. The solicitation package should include the following:
- 1) IFB/RFP Form, including:
    - (a) purpose, goals and/or objectives, including performance standards;
    - (b) proposal outline with format and sequence for submitting responses;
    - (c) bidder's conference information;
    - (d) available funds and source of funds;
    - (e) proposed grant period;
    - (f) solicitation instructions, including requirement for information regarding the bidder's/offeror's:
      - i) background and experience;
      - ii) accounting system;
      - iii) audit/monitoring results;
      - iv) program proposal;
      - v) detailed budget; and,
      - vi) participant schedule/performance .
    - (g) identification number (for vendor reference and tracing purposes);
    - (h) type of contract: cost reimbursement, fixed price or fixed unit price performance;
    - (i) brief description of the supply, equipment or service;
    - (j) requisition number;
    - (k) closing date and hour for receiving bids/proposals, including designated time source, i.e., purchasing office's clock;
    - (l) address and office of where bids/proposals should be sent;
    - (m) information on when and where specifications may be reviewed or obtained if not included in the package;

- (n) contact person;
  - (o) instructions to bidders/offerors;
  - (p) a copy of Section 1-113 of this Policy;
  - (q) definition of terms;
  - (r) standard contract terms and conditions;
  - (s) evaluation factors and weight; and
  - (t) whether the bid will be awarded either to the lowest responsible bidder or to the bidder who provides supplies, equipment or services at the best value for CAPCOG.
- 2) Protest procedure.
  - 3) (RFPs only) Negotiation rights and requirements with respect to clarifying, explaining and verifying any aspect of a proposal submitted in response to an RFP.
  - 4) Standard Terms and Conditions: those conditions for doing business with CAPCOG which remain constant for all contracts and purchases, unless specifically deleted. Uniform Commercial Code Standard Terms and Conditions may also be utilized.
  - 5) Special Terms and Conditions: those terms and conditions not always required but that are required for the particular contract or purchase;
  - 6) Cost and Pricing Data
    - (a) lump-sum or unit price method; and,
    - (b) the solicitation's and/or grant program's fiscal requirements such as cost categories, allowable costs and specific cost limitations.
  - 7) Specifications
    - (a) Statement of Work
      - i) Service Plan/Program Design/Management Plan describing the proposed program with a synopsis of key features, whether they are mandatory, optional or supplemental, program results and type of contract.
      - ii) scope and intent of procurement; and,

- iii) definitions and contract documents.
- (b) Requirements
  - i) Performance Requirements and Characteristics
  - ii) Design Features
- (a) Quality Assurance Standards
  - i) Samples
  - ii) Test Requirements
- (b) Delivery Terms
- (c) Method of Payment
- 8) Evaluation
  - (d) Identify reviewing staff;
  - (e) Specify how proposals will be reviewed;
  - (f) Ranking or rating criteria, including the manner in which points will be assigned; and
  - (g) Any and all considerations relating to competition, reasonableness of cost/price, organizational issues and scope of work.

## 2. Public Notice

- a. A short summary of the IFB/RFP shall be published in the local newspaper or a newspaper of general circulation, or both, under Legal or Public Notices.
  - 1) 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.
- b. The newspaper notice must be published at least once a week for two consecutive weeks. The date of the first publication must be before the 14th day before the date of public opening.
- c. The solicitation package should be sent to all qualified persons on the Bidders' List. The Bidders' List must be kept current and include qualified sources to ensure open and free competition. Potential bidders may not be

precluded from qualifying during the solicitation period.

3. Opening

- a. Bids and proposals must be received by and opened on the date and time specified by the IFB/RFP.
  - 1) Bid/proposal opening is open to the public; and,
  - 2) If no member of the public attends, a member of another department shall act as a witness.
- b. Late submissions will not be considered for award.
  - 1) Bids/proposals shall be date/time stamped upon receipt.
- c. Incomplete bids/proposals must be considered non-responsive, and may not be considered for award unless due to a non-material omission.
  - 1) If the incomplete proposal is due to a non-material omission CAPCOG may seek the additional information or waive or correct the non-material omission.
    - (a) 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/offerors, i.e., the effect on price, quality, quantity, delivery or other contractual conditions is negligible.
- d. All bids and proposals must be sealed with the identification number marked outside the envelope. Only one bid/proposal may be submitted per envelope.
  - 1) An unmarked envelope may be opened to establish it contains a bid, then resealed; and,
  - 2) The unmarked bid will not automatically be eliminated; however, it does violate the integrity of the process.
- e. Opened bids/proposals shall be kept available for inspection except as provided in Section 1-113.

4. Acceptance and Evaluation

- a. IFBs/RFPs must clearly set forth all requirements to be met by the bidder/offeror for evaluation and the weight attached to each factor. Evaluation factors may include, but are not limited to:
  - 1) price;

- 2) experience in same or similar programs;
- 3) demonstrated performance;
- 4) likelihood of meeting performance goals, cost, quality of training and characteristics of participants;
- 5) ability to respond in a timely manner (service capacity and response time);
- 6) past recommendations and performance;
- 7) safety record;
- 8) financial stability and resources, including fiscal management capabilities and project budget;
- 9) quality of supplies, equipment, or services offered;
- 10) operating characteristics;
- 11) technical innovations;
- 12) administrative capability;
- 13) a review of monitoring reports, goal attainment, and program outcomes; and,
- 14) any other factors, listed in the IFB/RFP, considered by CAPCOG as necessary for the procurement.

b. Summary of Bid/Proposal Processing

- 1) Review bid/proposal for completeness, including but not limited to:
  - (a) verifying all calculations and sums;
  - (b) extending unit prices to a total price for the requested quantity;
  - (c) verifying authorized signature;
  - (d) verifying responsiveness to solicitation specifications; any failures to meet the requirements should be noted, as well as whether such failures disqualify the bid/proposal;
  - (e) verifying that all samples or testing requirements were satisfied;

- (f) evaluating the bid/proposal against the independent cost estimate or desired, ideal system;
  - (g) evaluating the proposal against the weights assigned in the IFB/RFP;
  - (h) reviewing the history of the bidder's/offeror's responsibility and demonstrated performance; and,
  - (i) making recommendations and/or noting areas to be negotiated.
- 2) The RFP/IFB process must:
- (a) require a line item budget (an outline of the budget summary to be completed with sufficient detail of costs to enable a cost/price reasonableness analysis);
  - (b) avoid and protect against giving inappropriate signals regarding an acceptable price;
  - (c) include a rating method containing:
    - i) a value for price reasonableness;
    - ii) criteria for judging price reasonableness; and,
    - iii) past performance as a quantifiable and criteria-referenced element;
  - (d) aggregate individual scores; final awards shall be consistent with dollar value, numerical ratings and category in accordance with the IFB's/RFP's stated intentions;
  - (e) separately rate proposals (staff or the Purchasing Agent's designated representative);
  - (f) document any and all inconsistencies; rating sheets shall be completed, signed and dated by the reviewing parties and shall be maintained as part of the procurement record;
  - (g) contain minimum standards (such as administrative and organizational qualifications, fiscal system standards, performance and outcome expectations, adherence to time frames, etc.) for considering a response and components which would constitute disqualification, including failure to meet minimum threshold requirements; and,

- (h) contain signed statements certifying that the individual signing on behalf of an organization has the authority to submit the proposal and carry out the proposed services.

5. Negotiations with Responsible Offerors (RFPs Only):

- a. Negotiations (written or 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.
  - 1) The competitive range is determined by a technical evaluation of proposals received based upon the evaluation factors;
  - 2) The review and rating of proposals must be consistently applied to assure equal treatment and arms-length transaction;
  - 3) Data collected in the cost reasonableness review should be used to outline strengths and weaknesses of the proposed budget; and,
  - 4) All changes resulting from negotiation should be documented.

6. Correction or Withdrawal of Bids

a. Correction of Bids/Proposals

- 1) Bids/proposals may not be altered or amended after the submission deadline. However: before a bid/proposal is opened CAPCOG may waive a non-material omission or error in the bid/proposal if the omission or error:
  - i) relates to a matter of form, not substance;
  - ii) has merely a negligible effect on price, quantity, delivery or other contractual conditions; and
  - iii) does not otherwise prejudice the other bidders/offerors.
- 2) Any alteration or change made to a bid or proposal prior to opening must be initialed by the bidder/offeror's authorized representative guaranteeing authenticity.

b. Withdrawal of Bids/Proposals

- 1) Unless a bid/proposal contains a material mistake, it may not be withdrawn or canceled by the bidder/offeror, without the written permission of CAPCOG, for a period of 90 days following the date designated for the receipt of bids. The bidder/offeror so agrees upon

submission of the bid/offer.

- 2) A bid bond may be required on a public works project or for bids/proposals exceeding \$100,000 to ensure that if a bidder/offeror withdraws the bid/proposal after acceptance, CAPCOG will not suffer a loss.

The IFB/RFP may require the bidder/offeror to furnish a good and sufficient bid bond in the amount of 5% of the total contract price.

7. Rejection of IFBs or RFPs

- a. Any or all bids/proposals may be rejected.
- b. If no bid/proposal is accepted, CAPCOG may repeat the solicitation process if in CAPCOG's best interest.

8. Disqualification of Bids or Proposals

- a. The following occurrences, among others, require disqualification of the bid/proposal:
  - 1) Unsigned or unauthorized signatures on bids/proposals;
  - 2) Bids/proposals received after the date and time for opening; or,
  - 3) Bids/proposals where prices are conditioned on award of another bid or are subject to unlimited escalation.

9. Award

- a. The award shall be made to:
  - 1) Bids: to either the lowest responsible bidder **or** to the bidder who provides supplies, equipment or services at the best value for CAPCOG.
    - (a) If no bidder or more than two bidders have a place of business in State Planning Region 12, CAPCOG shall make the award by drawing lots.
  - 2) Proposals: to the responsible offeror whose proposal is the most advantageous to CAPCOG considering the relative importance of price and other evaluation factors included in the request for proposals.
  - 3) In the case of tie bids or proposals, CAPCOG shall make the award:
    - (a) to the bidder/offeror whose place of business is located in State Planning Region 12, or

- (b) if no bidder/offeror or more than two bidders/offerors have a place of business in State Planning Region 12, by drawing lots.
    - 4) Only one bid/proposal may be accepted.
  - b. Notify all unsuccessful bidders/offerors of the award in writing.
- 10. Certifications
  - a. Executive Order 12549, Debarment and Suspension.
    - 1) No award may be made at any tier, under a federal assistance program valued at \$25,000 or more, to a party who is debarred, suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.
    - 2) The successful bidder/offeror must certify compliance with the debarment and suspension regulation.
  - b. Prohibition Against Lobbying with Appropriated Funds.
    - 1) No appropriated funds may be expended by the recipient of a federal contract, grant or subgrant, loan or cooperative agreement, valued at \$100,000 or more, 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.
    - 2) The successful bidder/offeror must certify that he or she has not made a prohibited payment:
      - (a) upon submission of any request for consideration for award of a federal contract, grant or subgrant, loan or cooperative agreement;
      - (b) upon receipt of such federal monies unless such a certification was previously filed; and
      - (c) 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.

1. Definition: A small purchase is the procurement of supplies, equipment, services, or other property, that does not cost more than \$ \$50,000in the aggregate. Competitive sealed bidding requirements and competitive procedures do not apply to small purchases.
2. Procedures:
  - a. General:
    - 1) A small purchase procurement requires that price or rate quotations be obtained from an adequate number of qualified sources.
    - 2) CAPCOG may not split purchases to circumvent the competitive requirements or the \$50,000 limit.
  - b. Competitive Telephone Facsimile or Email Bids (informal competitive bids):
    - 1) For purchases of \$2,500 or less in the aggregate, telephone facsimile or email bids are permissible.
    - 2) The solicitation should commence with a written request for supplies, equipment or services but telephone solicitations with potential contractors are permissible.
    - 3) The purchase shall be approved, in writing, by the Purchasing Coordinator.
    - 4) The Division Director or his or her designee must obtain a minimum of three telephone or facsimile quotations, unless there does not exist three such potential contractors on the Bidders' List.
    - 5) The quotations must be recorded, in writing, and made part of the procurement files. All notes of telephone solicitations should be made part of the procurement files.
    - 6) An award should be made consistent with competitive bidding policies and in conformance with maximizing free and open competition.
    - 7) Any purchase that exceeds the small purchase limit may not be split in order to circumvent the small purchase limit. Split purchases to avoid competitive bidding requirements will be considered an unauthorized purchase and may be disallowed.
  - c. Competitive Written Bids or Quotations
    - 1) For purchases of more than \$2,500 in the aggregate, the Division Director must solicit written requests for quotations.
    - 2) Written quotations (including facsimile and email) must be

obtained from at least three different persons, if available.

- 3) The Purchasing Coordinator shall submit quotations to the Executive Director, who shall review them to determine cost reasonableness and to avoid the purchase of unnecessary or duplicative items.
- 4) The selected quotation, along with those that were not selected, shall be made part of the procurement files.

### 3-205 **Sole Source Procurement**

1. Sole source procurement may be used when the award is not feasible under small purchase, competitive sealed bidding or negotiated procurement procedures.
2. Sole source procurement is limited to the following:
  - a. in response to public exigency or emergency;
  - b. where the item is available from only a single source;
  - c. if, after soliciting a number of sources, competition is deemed inadequate after CAPCOG has demonstrated a good faith effort in soliciting qualified providers through the small purchase, competitive sealed bids or competitive proposal processes; and
  - d. is authorized by the grantor agency, if applicable.
3. Procedures
  - a. The process may be initiated with a Request for Proposals or telephone solicitations.
  - b. The sole source should be required to submit a relatively complete proposal, including a description of the work to be accomplished and a proposed contract price.
  - c. Negotiations should be conducted with the sole source to obtain the best possible price.
  - d. The negotiations should be documented and retained in the procurement file along with the sole source justification.
4. Approval of Grantor Agency. CAPCOG must receive prior written approval from the grantor agency:
  - a. for a sole source procurement expected to exceed \$100,000; or
  - b. if the procurement, which is expected to exceed \$100,000, specifies a

"brand name" product.

### 3-206 **Emergency Procurements**

1. A procurement qualifies as an emergency if:
  - a. a public calamity requires the prompt purchase of items to provide for public needs or preserve property;
  - b. the item is necessary to preserve or protect the public health or safety of residents; or
  - c. the item is made necessary by unforeseen damage to public property.
2. Procedures
  - a. Procedures set forth in either Section 3-204, regarding small purchases, or Section 3-205 for sole source procurements, should be followed to the extent possible.
  - b. All documents relating to the emergency procurement and its justification must be retained in the procurement files.
3. Emergency procurement may be made without competitive bidding.

### 3-207 **State Contract or Cooperative Purchases**

1. CAPCOG shall consider the possibility of entering into intergovernmental agreements for procurement or use of common supplies, equipment or services.
2. CAPCOG should consider, when appropriate, procuring supplies, equipment and services through an approved program of cooperative purchasing which has been certified as having met all applicable laws and regulations such as those provided by the Procurement and Support Services, Office of the Comptroller, or by the Houston-Galveston Area Council.
3. CAPCOG's procurement of supplies, equipment or services pursuant to the programs of the Procurement and Support Services, Office of the Comptroller, or of the Houston-Galveston Area Council, or under the Interlocal Cooperation Act, satisfy the competitive procurement requirement.

### 3-208 **Personal, Professional, Planning and Consulting Services Procurements**

1. General:
  - a. Definitions:

- (1) "Professional Services" are those performed by an independent contractor licensed by state government and include but are not limited to the services of accounting, architecture, land survey, law, medicine, optometry and engineering.
- (2) "Planning Services" means services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- (3) "Consulting Service" means the service of studying or advising a governmental entity performed by an independent contractor.

b. Professional Services:

- (1) Selection of professional services on the basis of competitive bids is prohibited.
- (2) If based upon a competitive bid, the contract is contrary to public policy and void.
- (3) Require selection and award based upon demonstrated competence and qualifications to perform the services for a fair and reasonable price.
- (4) Contracts should be selected through the use of a Request for Proposal (RFP).
  - (a) The solicitation should track the RFP process including:
    - i) a statement of qualifications;
    - ii) public notice; and,
    - iii) describing the services required and outlining in detail the information and data required of each offeror.
  - (b) Award shall be made to the offeror determined, in writing, to be the best qualified based upon the enumerated evaluation factors and compensation determined to be fair and reasonable.

- c. Planning or Consulting Services do not require or prohibit the use of competitive bidding procedures. Negotiated procurement is appropriate for procuring Planning or Consulting Services.

2. Two-tiered Selection Process

- a. CAPCOG shall select a person capable of performing the service, on the basis of demonstrated competence and qualifications.
- b. CAPCOG shall enter into negotiation for a contract at a fair and reasonable price.

**3-209 Unsolicited Bids or Proposals**

1. An unsolicited bid/proposal is any offer/proposal other than one submitted in response to an IFB or RFP.
2. To be considered by CAPCOG, the unsolicited offer/proposal must:
  - a. not be for an item required by law to be competitively bid or proposed;
  - b. be in writing; and,
  - c. meet the sole source procurement standards.
3. If an unsolicited bid/proposal meets the requirements of subsection 2. above, the Deputy Director shall determine its utility and benefit to CAPCOG .

**3-210 Unlawful Solicitations and Awards**

A contract awarded in violation of CAPCOG's Procurement Policy or otherwise in violation of the law is void.

**3-211 Lease/Purchase Agreements**

The leasing of property and/or equipment is encouraged in lieu of purchasing where leasing is the most economical procurement approach. This Policy applies to lease or lease/purchase procurement.

**3-212 Federal Excess or Surplus Property**

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

**ARTICLE IV  
MODIFICATION AND TERMINATION OF CONTRACTS**

**4-101 Modification and Change Orders**

1. Definitions
  - a. "Change Order" means a written order signed by the Division Director directing the contractor to make changes authorized by the changes clause of the contract.
  - b. "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.
2. All modifications or changes to the contract must be in writing.
  - a. For an increase or decrease in the contract price of \$5,000 or less, the Deputy Director may approve the change order. For an increase of more than \$5,000, the Executive Director must approve the change order.
  - b. The original contract price may not be increased by more than 25% unless the change order is necessary to comply with a federal or state statute, rule, regulation or judicial decision enacted, adopted or rendered after the contract was made.
  - c. The original contract price may not be decreased by more than 25% without the contractor's written consent.
  - d. Total contract price may not be increased unless the cost of the change can be paid from available funds.
3. If a modification requires a new solicitation, the contract must be terminated and a new solicitation issued.
4. Requirements to Reopen
  - a. CAPCOG must reopen if the modification results in the procurement of equipment, supplies or services that:
    - 1) are materially different from that for which competition was held;
    - 2) result in a change in the terms or conditions of a contract that interferes with or defeats the purpose of competitive procurements; or
    - 3) is tantamount to an unjustified sole source procurement.
  - b. To determine whether the modification is outside the scope of the RFP/IFB, and thus violates subsection a. above, the Deputy Director must review:
    - 1) the language of RFP/IFB;
    - 2) the instructions to offerors/bidders;

- 3) the content and weighting of evaluation factors;
- 4) the preliminary efforts required before the contractor can begin work;
- 5) whether the Statement of Work must be amended to include the modification;
- 6) the cost or value of the modification in relation to the original contract price;
- 7) whether a substantial extension of time is required; and,
- 8) whether the modification was in connection with the work contemplated or specified by the contract.

c. Improper Justifications for Modification:

Making an award with the intent to change contract specifications by a subsequent modification, i.e., CAPCOG may not make an award when the Division Director knows or should know it is not based on the conditions under which the performance will occur and will thus require a modification.

#### 4-102 Termination of Contracts

1. General

- 1) A contract may be terminated because of circumstances beyond the contractor's control, for default and for convenience.
- 2) The termination for convenience clause must include the termination procedure and the basis for settlement.

2. Termination for Default

- a. CAPCOG may terminate a contract, in whole or in part, when it has determined that the contractor has violated any material provision of this contract.
- b. Grounds for default include, but are not limited to:
  - 1) failure to perform pursuant to the terms and conditions of the contract; and
  - 2) violation of applicable law.
- c. The termination for default clause must be included in all contracts.

**ARTICLE V  
LEGAL AND CONTRACTUAL REMEDIES**

**PART A: RESOLUTION OF CONTROVERSIES**

**5-101 Protest of solicitations and awards**

An unsuccessful bidder/offeror may protest the bid/proposal process or contract award or both by following the procedure set out in the *Protest Procedure* section of the Invitation for Bids or Request for Proposals.

**ARTICLE VI  
SMALL, DISADVANTAGED, MINORITY, WOMEN-OWNED AND  
HISTORICALLY UNDERUTILIZED BUSINESSES:  
FEDERAL ASSISTANCE OR CONTRACT PROCUREMENT REQUIREMENTS**

**PART A: POLICIES**

**6-101 Policy Statement:**

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

**6-102 Bidder/Offeror Statement:**

Every solicitation for procurement must require that each bidder or offeror include a statement that the bidder or offeror will comply with this Policy.

**6-103 To ensure that CAPCOG's policy to assure that small, MBEs, DBEs, women-owned businesses, and HUBs are utilized, CAPCOG and its contractors and subcontractors should take the following affirmative steps:**

1. Include qualified small, MBEs, DBEs, women-owned businesses, and HUBs on the Bidders' List. State lists may be utilized to locate such businesses by contacting the General Services Commission;
2. Assure that small, MBEs, DBEs, women-owned businesses, and HUBs are solicited whenever they may be potential sources. In this regard, CAPCOG should investigate new sources and advertise when feasible in minority publications;
3. When economically feasible, and where not in contravention of competitive bidding requirements, CAPCOG should divide the total requirements into smaller tasks or quantities so as to permit maximum small, MBE, DBE, women-owned businesses and HUB participation;
4. 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 Commission and other similar agencies for locating

such businesses;

5. Require that prime contractors take affirmative and meaningful steps towards retaining small, MBE, DBE, women-owned businesses and HUB subcontractors;
  6. Procure goods and services from labor surplus areas;
  7. If feasible, establish delivery schedules that encourage small, MBEs, DBEs, women-owned businesses, and HUBs to participate; and,
  8. 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.
- 6-104 For such affirmative steps to be meaningful, CAPCOG should review all solicitations, offers and bids to confirm that such affirmative action steps have been taken. 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.
- 6-105 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; however, this factor may not be a consideration in procurements involving purely state or local funds as Texas law requires awards to be made to the lowest responsible bidder.
- 6-106 For procurements costing more than \$3,000 but less than \$50,000 the Division Director shall contact at least two HUBs on a rotating basis.

## **ARTICLE VII CONFLICT OF INTEREST**

### **PART A: STANDARD OF CONDUCT**

#### **7-101 Disclosure of Potential Conflict of Interest**

1. Chapter 176 of the Texas Local Government Code requires a current or prospective vendor or contractor of CAPCOG to complete and file a *Conflict of Interest Questionnaire* to disclose whether the vendor or contractor has an employment or business relationship with a member of CAPCOG's Executive Committee, its Executive Director or Deputy Director, with its Officer Manager, or with a Department Director. The completed *Questionnaire* must be delivered to CAPCOG's Office Manager, who serves as its Records Administrator, not later than the seventh business day after the vendor or contractor becomes aware of facts that require filing the *Questionnaire*. The *Questionnaire* form, which describes the filing requirements of chapter 176, is available on the website of the Texas Ethics Commission, [www.ethics.state.tx.us](http://www.ethics.state.tx.us), and the names of the members of CAPCOG's Executive Committee, its Executive Director and Deputy Director, Office Manager, and Department Directors are available on CAPCOG's website, [www.CAPCOG.org](http://www.CAPCOG.org).
2. The Texas Ethics Commission's legal department will answer questions about chapter 176

and the *Questionnaire* at 512-463-5800 or toll-free at 800-325-8506. Please do not contact a CAPCOG employee with a question because he or she is not authorized to answer it.

3. If an Executive Committee member is named in a *Questionnaire* filed by a vendor or contractor under subsection 1, the Records Administrator shall promptly inform the Executive Director who shall explain to the member his or her duty to comply with chapter 176 and, if required, to complete and file with CAPCOG's Records Administrator the *Local Government Officer Conflicts Disclosure Statement* by 5 p.m. of the seventh business day after receiving the Executive Director's explanation. If the Executive Director, Deputy Director, Office Manager, or a Department Director is named in a *Questionnaire*, the Records Administrator shall promptly notify the individual so named who shall complete and file the *Statement* if required by 5 p.m. of the seventh business day after receiving the notice.
4. An Executive Committee member or CAPCOG employee who files a *Statement* under subsection 3 must abstain from discussing, explaining, lobbying for, rating, scoring, recommending, or approving a procurement from a current or prospective vendor or contractor named in the *Statement*.

## **PART B: VIOLATIONS AND REMEDIES**

- 7-201 An employee's violation of the provisions of Sections 3.05 or 3.06, which regulate conflict of interest, of the *Personnel Policies* subjects the violator to discipline and to all penalties prescribed by law.
- 7-202 A contract or grant made in violation of Section 3.05 or 3.06 of the *Personnel Policies* is voidable.

## **ARTICLE VIII AUDITS**

### **8-101 Independent Audit Requirements**

1. CAPCOG must have an audit conducted in accordance with the Single Audit Act of 1984, as amended, and the federal Office of Management and Budget's implementing regulation, Circular A-133.
2. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards.
3. When CAPCOG subgrants \$500,000 or more in a fiscal year to a subgrantee, CAPCOG shall:
  - a. determine whether the subgrantee has met the Act's requirements and ensure that prompt corrective action is taken in the event of material non-compliance;
  - b. if no audit is conducted by the subgrantee, determine if expenditures are in accordance with applicable laws and regulations and ensure prompt corrective action is taken in the event of material non-compliance; and,

- c. require each subgrantee to permit independent auditors to have access to all records and financial statements, as a condition of receiving funds.