

**CAPITAL AREA COUNCIL OF GOVERNMENTS  
TERMS AND CONDITIONS**

**INDEPENDENT CONTRACTOR**

Contractor is not an employee or agent of CAPCOG, but it performs this contract solely as an independent Contractor.

**ASSIGNMENT AND SUBCONTRACTING**

Except as described herein, CONTRACTOR may not assign its rights or subcontract its duties under this contract without the prior written consent of CAPCOG.

**RECORDS AND INSPECTIONS**

Contractor agrees to maintain records adequate to document its performance, costs, and receipts under this contract.

**PROPRIETARY OR CONFIDENTIAL INFORMATION**

All information in CAPCOG's possession is public information and is subject to disclosure to third parties upon request, unless exempted from disclosure by the Texas Public Information Act. CAPCOG's sole obligation to protect allegedly proprietary or confidential information submitted and identified as such by Contractor.

**TAXES**

CAPCOG is a governmental agency and is exempt from payment of Sales Tax. Unless the CAPCOG request for quote or specifications specifically indicate otherwise, the price bid must be net exclusive of the previously mentioned taxes.

**APPLICABLE LAW**

In carrying out this contract, Contractor agrees to comply with all applicable laws and policies. This Contract is governed by and shall be construed in accordance with the laws of the State of Texas. Venue for suit of any kind shall be filed in a court of competent jurisdiction in Travis County, Texas. All claims against the Agency by the Subrecipient seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to the contract shall be filed in Travis County, Texas.

**TERMINATION**

By CAPCOG for Convenience:

CAPCOG may, upon providing at least 30 days' written notice to Contractor, partially or fully suspend or terminate this contract for convenience. Termination shall not prejudice any other right or remedy of CAPCOG or Contractor. Contractor may request reimbursement for conforming work and timely, reasonable costs directly attributable to termination. Contractor shall not be paid for work not performed, loss of anticipated profits or revenue, consequential damages or other economic loss arising out of or resulting from termination. If CAPCOG suspends or terminates only part of this contract, Contractor agrees to perform the unsuspended or unterminated part if CAPCOG so requests.

By CAPCOG for Default:

In the event that the materials and/or services furnished by the Contractor do not conform to the standard set forth herein, or if the deliveries and services of this agreement do not conform to the requirement detailed herein, CAPCOG through written notice to the CONTRACTOR describing such default may as it options:

1. Terminate the agreement for default and CAPCOG shall have no further obligations.
2. Demand corrective action to correct the default within a reasonable time as specified in the notice. CAPCOG, at its sole option, may extend the proposed date of termination to a later date. If the CONTRACTOR fails to cure the default to CAPCOG's satisfaction in the time specified, then CAPCOG may terminate its performance under this agreement and have no further obligation under this agreement.

By CAPCOG for Unavailability of Funds:

CONTRACTOR acknowledges that CAPCOG is a governmental entity without taxing power and agrees that CAPCOG may suspend its payment obligations under or terminate this contract in whole or part if CAPCOG learns that funds to pay for all or part of the goods or services will not be available at the time of delivery or performance. CAPCOG suspends or terminates this contract for unavailability of funds by giving CONTRACTOR notice of the suspension or termination, as soon as it learns of the funding unavailability, specifying the suspension or termination date, which may not be fewer than 10 business days from the notice date.

**DISPUTE RESOLUTION**

The parties desire to resolve disputes arising under this contract without litigation. Accordingly, if a dispute arises, the parties agree to attempt in good faith to resolve the dispute between themselves. To this end, the parties agree not to sue one another, except to enforce compliance with this section, toll the statute of limitations, or seek an injunction, until they have exhausted the procedures set out herein.

1. At the written request of either party, each party shall appoint one nonlawyer representative to negotiate informally and in good faith to resolve any dispute arising under this contract. The representatives appointed shall determine the location, format, frequency, and duration of the negotiations.
2. If the representatives cannot resolve the dispute within 30 calendar days after the first negotiation meeting, the parties agree to refer the dispute to the Dispute Resolution Center of Austin for mediation in accordance with the Center's mediation procedures by a single mediator assigned by the Center. Each party shall pay half the cost of the Center's mediation services.
3. The parties agree to continue performing their duties under this contract, which are unaffected by the dispute, during the negotiation and mediation process.

**NOTICE TO PARTIES**

Notice to be effective under this contract must be in writing and received by the party against whom it is to operate. Notice is received by a party: (1) when it is delivered to the party personally; (2) on the date shown on the return receipt if mailed by registered or certified mail, return receipt requested, to the party's address and signed on behalf of the party; or (3) three business days after its deposit in the United States mail, with first-class postage affixed, addressed to the party's address.

## **CONFLICT OF INTEREST**

Chapter 176 of the Texas Local Government Code requires contractors and consultants seeking to do business with CAPCOG to file a conflict of interest questionnaire (CIQ) if they have an employment or other business relationship with a CAPCOG officer or an officer's close family member. The required questionnaire and instructions are located at the Texas Ethics Commission website [www.ethics.state.tx.us/forms/CIQ.pdf](http://www.ethics.state.tx.us/forms/CIQ.pdf). CAPCOG officers include the Executive Committee and Executive Director, who are listed on the CAPCOG website. The CIQ must be completed and filed with a bid, request for proposal or quote, if an employment or business relationship defined in the law exists.

## **GIFT TO PUBLIC SERVANT**

CONTRACTOR warrants that it has not given, offered to give, nor does it intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the RFP or the Agreement.

## **EQUAL OPPORTUNITY**

CONTRACTOR will be required to comply with all Equal Employment Opportunity laws and regulations.

## **TITLE VI REQUIREMENTS**

CONTRACTOR will be required to comply with all requirement imposed by Title VI of the Civil Rights Acts of 1964 (49 U.S.C. Section 2000d), the regulations of DOT issued hereunder (49 C.F.R. part 21), and the assurances by CAPCOG thereto.

## **LOBBYING**

If the total amount of this Agreement is in excess of \$100,000, CONTRACTOR certifies that it will not use and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. CONTRACTOR also agrees to disclose any lobbying with non- Federal funds that takes place in connection with obtaining any Federal award or contract.

## **BUY TEXAS**

To the extent applicable, CONTRACTOR represents and warrants that it will buy Texas products, services, and materials for use in providing the services authorized herein when such products, services, and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products, services, and materials.

## **CLEAN AIR AND WATER POLLUTION CONTROL**

If the total amount of this Agreement is in excess of \$150,000, the CONTRACTOR certifies it will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387).

## **EXCLUDED PARTIES**

CONTRACTOR understands that CAPCOG will adhere to the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, and CONTRACTOR certifies that it and its principals are eligible to participate in this Agreement and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity; that it is in compliance with Texas statutes and rules; and that it is not listed on the federal government's terrorism watch list.

## **ENERGY COMPANIES**

If the total amount of this Agreement is in excess of \$100,000, and if the CONTRACTOR is required to make a certification pursuant to Texas Government Code, Section 2274.002 (as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2), the CONTRACTOR certifies that it does not boycott energy companies and will not boycott energy companies during the term of this Agreement. If the CONTRACTOR does not make that certification, the CONTRACTOR must state why the certification is not required.

## **FIREARM ENTITIES OR FIREARM TRADE ASSOCIATIONS**

If the total amount of this Agreement is in excess of \$100,000, and if the CONTRACTOR is required to make a certification pursuant to Texas Government Code, Section 2274.002 (as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1), the CONTRACTOR certifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. If the CONTRACTOR does not make that certification, the CONTRACTOR must state why the certification is not required.

## **FOREIGN TERRORIST ORGANIZATIONS**

The CONTRACTOR represents that neither the CONTRACTOR, nor any affiliate of the CONTRACTOR, (i) is an entity listed by the Texas Comptroller of Public Accounts under Texas Government Code, Sections 2252.153 or 2270.0201; (ii) constitutes a "scrutinized company" as defined by Texas Government Code, Section 2270.0001 (9); or (iii) has contracts with, provides supplies or services to, or is otherwise engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Texas Government Code, Section 2252.152.

## **ISRAEL**

If the total amount of this Agreement is in excess of \$100,000, and if the CONTRACTOR is required to make a certification pursuant to Texas Government Code, Section 2271.002, the CONTRACTOR certifies that the CONTRACTOR: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.

## **RECOVERED MATERIALS**

The CONTRACTOR represents and warrants that it will comply with Section 6002 of the federal Solid Waste Disposal Act (42 USC§ 6962), as amended by the Resource Conservation and Recovery Act, and Title 40, Pa11 247 of the Code of Federal Regulations.