

# **CAPITAL AREA COUNCIL OF GOVERNMENTS PROCUREMENT POLICY**

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# Article I. General Provisions

## Part A. Purpose, Construction, and Application

- 1-101. **Purpose:** The purpose of the Procurement Policy is to provide the Capital Area Council of Governments (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 Chapter 252, Local Government Code, Chapter 2254, Texas Government Code, applying to a local government. These policies are also intended to comply with the general requirements of Uniform Grant Guidance 2 CFR 200 as issued by the OMB and the Texas Uniform Grant Management Standards. More specifically, the underlying purposes and policies of this Procurement Policy are:
1. to simplify, clarify, and reflect the law governing procurement by CAPCOG;
  2. to provide consistency in the procurement practices of CAPCOG with regard to procurement laws;
  3. to increase public confidence in public procurement;
  4. to ensure the fair and equitable treatment of all persons who participate in the procurement process and provide a full accounting for all purchases;
  5. to provide increased economy and efficiency in procurement activities by avoiding unnecessary or duplicative procurements; and,
  6. to foster full and open competition;
  7. to provide safeguard for the maintenance of a procurement system of quality and integrity; and
  8. to ensure that full accounting is available and given for procurements.
- 1-102. **Interpretation:** This Procurement Policy shall be construed and applied to promote its underlying purposes. The guidelines set forth in this document 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 which CAPCOG receives funds. Written procurement procedures prepared by the grantor agency shall be followed when funds are expended 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. **Full and Open Competition:** All procurement transactions, regardless of dollar value, whether advertised or negotiated, shall be conducted in a manner so as to provide full 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 that develop or draft specifications, requirements, or statements of work for solicitation instruments (RFPs, IFBs, etc.) must 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, September 23, 2023.
- 1-113. **Public Access to Procurement Information:** Procurement information shall be a public record to the extent provided by the Texas Public Information 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).

The information submitted during a procurement process is protected from disclosure until a contract is awarded. All proposals are open for public inspection after the contract is awarded, but proprietary and confidential information in the proposals are not open for public inspection.

A copy of this Section 1-113 shall be included in each solicitation for bids by CAPCOG.

## **Part B. Definition of Terms**

- **"Best Value:"** an assessment to define the best combination 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 for Bid ("IFB").
- **"Bidders' List:"** the pre-qualified list of persons which is used in acquiring goods and services.
- **"CAECD:"** the Capital Area Emergency Communications District (CAECD), a regional emergency communications district established pursuant to Chapter 772 of the Texas Health and Safety

Code with boundaries coterminous with CAPCOG and managed as a business component of CAPCOG.

- **"CAPCOG:"** 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.
- **"Competitive Sealed Proposals"** the procurement method whereby CAPCOG drafts the specifications, prepares a Request for Proposal (RFP), issues it to interested offerors and/or publishes an announcement in local periodicals. To be considered, bids must conform to the RFP. The award of a contract or purchase order 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 CAPCOG, considering the relative importance of price and other evaluation factors set forth in the RFP.
- **"Construction"** the process of utilizing labor to build, alter, repair, improve or demolish any structure or building, or other public improvement. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
- **"Contract"** a legally binding agreement between CAPCOG and a vendor or contractor; or a legally binding agreement between a contractor and a subcontractor.
- **"Contractor"** any person, vendor, or entity having a contract with CAPCOG.
- **"Cooperative Purchasing"** procurement conducted by, or on behalf of, more than one public procurement entity, including but not limited to a county, city, town or political subdivision of the state or public agency of the political subdivision, or other corporate or political entity organized under state entities. Efforts may result in contracts that other public entities may "piggyback."
- **"Disadvantaged Business Enterprise" ("DBE")** 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, women, African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other designated groups as determined and classified by the Small Business Administration (SBA) in 13 CFR §124.103 and/or the State of Texas.
- **"Equipment"** 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.
- **"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. It 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 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.

- **"Historically Underutilized Business" ("HUB")**, as defined in Chapter 2161 of the Texas Government Code 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 is owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups, including women, Black Americans, Hispanic Americans, Asian Pacific Americans, Native Americans, and veterans as defined by 38 U.S.C. Section 101(2) who have suffered at least a 20 percent service-connected disability as defined by 38 Section U.S.C. Section 101(16), and 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.
- **"Invitation for Bid" ("IFB")** all documents, whether attached or incorporated by reference, utilized in soliciting competitive bids.
- **"Micro-Purchase"** a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the threshold of \$5,000.00 in order to expedite the completion of its lowest-dollar small purchase transactions to minimize the associated administrative burden and cost.
- **"Minority Business Enterprise" ("MBE")** a small business concern wherein at least 51% is owned or controlled in management and daily operations by minorities, including but not limited to African-Americans, Hispanic Americans, Asian-Pacific Americans, Subcontinent-Asian Americans, and Native Americans.
- **"Negotiated Procurement"** 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.
- **"Offeror"** means a person that submits a proposal in response to a Request for Proposals.
- **"Person"** means any business, individual, group of individuals, union, committee, club organization, vendor, contractor, or governmental entity.

- **"Procurement"** the buying, 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.
- **"Purchase Order"** a written offer to purchase equipment, supplies or services from a vendor; if the vendor accepts the Purchase Order, it becomes a contract.
- **"Request for Proposal" ("RFP"):** all documents, whether attached or incorporated by reference, used to solicit proposals from potential providers for goods and services; provides for the negotiation of all terms including price prior to award of a contract.
- **"Responsible Bidder/Offeror:"** means 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; also able to demonstrate integrity and reliability which will assure 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.
- **"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.
- **"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:"** 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.
- **"Subgrant:"** 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."
- **"Subrecipient:"** any entity that receives federal assistance passed through from a prime recipient or another subrecipient to carry out or administer a program.
- **"Supplies"** all tangible personal property other than "Equipment."
- **"Vendor:"** a person or entity who sells or leases supplies, equipment or services.
- **"Vendor Pool for Direct Purchase of Services:"** a list of pre-qualified vendors that have executed a direct purchase of service contract with CAPCOG as described in 3-209.

- **“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**

### **Part A. Organization and Contract Administration**

#### **2-101. Executive Committee:**

1. Establishes CAPCOG Procurement Policy.
2. All contracts or grants exceeding \$25,000.00 awarded by CAPCOG must be approved by the Executive Committee, excepting those pertaining to Capital Area Emergency Communications District (CAECD) business.
3. All contracts or grants awarded by the CAECD and exceeding \$50,000.00 must be approved by the Executive Committee in their capacity as the Board of Managers for the District.

#### **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; and
4. Only the Executive Director or his or her designee is authorized to contract or award grants on behalf of CAPCOG.

#### **2-103. Deputy Executive Director:**

1. Shall be responsible for reviewing and preparing solicitations for compliance with this Policy;
2. Shall be responsible for overseeing the negotiation and execution of contracts, in coordination with Division Directors;
3. Shall be responsible for monitoring the terms and conditions of contracts; and
4. Shall be responsible any and all other responsibilities assigned by the Executive Director or Executive Committee.

#### **2-104. Division Director:**

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

#### **2-105. Finance Director:**

1. Shall be responsible for processing requisitions forms, purchase orders, and payments;
2. Shall be responsible for classification of purchases;
3. Shall be responsible for ensuring the complete and accurate documentation of all procurements;
4. Shall be responsible for maintaining all procurement files and records; and
5. Shall be responsible for any and all other responsibilities assigned by the Executive Director or Deputy Executive Director.

**2-106. Authorization of Purchases**

1. Requisition forms are used to inform the Finance Division of the needs of a particular division and to correctly identify the supplies, equipment or services requested. The purchase requisition forms provide the documentation needed for the Finance Division to prepare a purchase order if needed. These procedures provide a system of authorization and safeguards so that improper, illegal, unnecessary and/or duplicative purchasing is difficult to initiate and conceal.
  - i. The requisition form should contain the following information:
    1. date of requisition;
    2. vendor's legal name and address;
    3. description of item, including technical requirements;
    4. quantity;
    5. estimated cost;
    6. fund code and program code to identify the source of funds;
    7. pass-through or location code if applicable;
    8. expenses code;
    9. purpose of purchase;
    10. date required; and
    11. director's signature approving the request.
2. Documentation: All purchases must be documented through the Finance Division and be supported by documentation in compliance with the appropriate fund and these procurement policies.
3. Each purchase requisition must contain the appropriate signatures 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. Except in situations otherwise explicitly authorized by CAPCOG’s Executive committee,<sup>1</sup> or Executive Director, each contract and related purchase request should contain the following approvals to correspond to the total cost or change to total cost:

*Table 1. Bidding and Authorization Requirements*

<b>Purchase Value</b>	<b>Bidding Requirements</b>	<b>Required Approval</b>
<b>\$500.00 or Less</b>	Quotes optional	Division Director, Finance Director
<b>\$500.01 - \$5,000.00</b>	Quotes optional	Division Director, Finance Director, Executive Director
<b>\$5,000.01 - \$25,000.00</b>	Three Written Quotes	Division Director, Finance Director, Executive Director
<b>\$25,000.00 - \$50,000.00</b>	Three Written Quotes	Division Director, Executive Director, Budget, Executive Committee
<b>Over \$50,000.00</b>	Formal Competitive Sealed Bids	Division Director, Finance Director, Executive Director, Executive Committee

5. Payment: Before payment is made on an invoice, the Finance Director will review the invoice against the items ordered and what was received.

**2-107. Monitoring of Programs**

Division Directors shall, in coordination with the Director of Administration, have the responsibility to monitor grant, sub grant funded programs, and procurements. The monitoring system shall:

1. Ensure accountability;
2. Ensure that contract goals and obligations are established in unambiguous terms;
3. Review contractor performance against the statement of work and other contract terms;
4. Require prompt corrective action upon evidence of any violations; and
5. Identify in writing all problems, corrective actions and plans.

**Part B. Record Retention**

**2-201. Record Retention Policy**

1. All procurement-related records must be maintained by CAPCOG for a period of four (4) 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.

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<sup>1</sup> These include contracts and purchase requests paid for by the CAECD with values ranging from \$25,000.01 - \$50,000.00, and direct purchase of service contracts entered into pursuant to 3-209, which are delegated to the Executive Director

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, and any other procurement form;
  - b. notes comparing quotations and relating to the basis for the award, including all negotiations;
  - c. 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;
  - d. any and all documentation justifying sole source procurements, citing the authorizing authority and the basis for selection of the particular vendor;
  - e. a copy of public media advertisements where required;
  - f. all documents relating to any protest;
  - g. 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;
  - h. copies of required insurance certificates;
  - i. monitoring/audit reports and any other required reports and financial reconciliations; and,
  - j. 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**

1. 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.
2. Exceptions to Competitive Sealed Bidding
  - a. Negotiated procurements [see Section 3-202];
  - b. Small purchases (\$50,000.00 or below) [see Section 3-204];
  - c. Non-competitive procurements [see Section 3-205];
  - d. Emergency procurements [see Section 3-206];
  - e. State Contracts, Interlocal Agreements, and Cooperative Purchases [see Section 3-207]
  - f. Professional and Personal Services Procurements [see Section 3-208];
  - g. Direct Purchase of Service Vendor Pools authorized under 26 TAC §213.55 [see Section 3-209]; and
  - h. Other exemptions to requirements for competitive bidding provided for in Section 252.022 of the Texas Local Government Code.

#### **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;
  - h. geographic preference when using federal funds, except for any authorized domestic preference per 2 CFR §200.322and,
  - i. arbitrary action in the procurement process.
2. Payment:
  - a. Lump Sum upon completion of contract; or
  - b. Unit Price Basis: Partial payments based upon actual quantity constructed or supplied.

### 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) online research;
    - 2) informational telephone solicitations from more than one dependable vendor or source;
    - 3) 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,
    - 4) 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; and
  - 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) identify 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 Procurements**

1. General.
  - a. Procurements may be negotiated if one or more of the following conditions exist which make competitive sealed bidding impracticable, infeasible or inadequate:
    - 1) the contract is for professional or personal services as described in section 3-208;
    - 2) , the contract is for any service to be rendered by a university, college or other educational institution;
    - 3) public exigency will not permit the delay incident to advertising;
    - 4) the supply, equipment or service to be procured is available from only one person or firm ("sole source");

- 5) the supplies, equipment or services are to be procured and used outside the United States;
  - 6) no acceptable bids have been received after formal advertising under competitive sealed bidding procedures;
  - 7) 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,
  - 8) 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.
  - d. Results of negotiation shall be documented, especially the reasons for the elimination of a proposal after negotiations.

### 3-203. **Competitive Procedures**

- 1. Invitation for Bids/Requests for Proposals
  - a. IFBs/RFPs shall be based upon clear and accurate descriptions of the technical requirements for the material, good, product, supply, equipment or service to be procured.
  - b. The description may contain a statement of the qualitative nature of the material, good, product, supply, equipment or service.
  - c. The description may 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.
  - d. 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.
  - e. The solicitation package may include many sections listed below; however, sections may be deleted, added or reorganized to meet the proposal requirements with the approval of the Deputy Executive Director.
    - 1) Purpose, goals and/or objectives, including performance standards.
    - 2) Proposal outline with format and sequence for submitting responses.
    - 3) Bidder's conference information.

- 4) Available funds and source of funds.
- 5) Solicitation instructions, including requirements 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.
- 6) Type of contract: cost reimbursement, fixed price or fixed unit price performance.
- 7) Closing date and hour for receiving bids/proposals.
- 8) Address and office or e-mail address of where bids/proposals should be sent.
- 9) Information on when and where specifications may be reviewed or obtained if not included in the package.
- 10) A copy of Section 1-113 of this Policy, Public Access to Procurement Information.
- 11) Evaluation factors and weight.
- 12) 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.
- 13) Protest procedure.
- 14) Negotiation rights and requirements with respect to clarifying, explaining and verifying any aspect of a proposal submitted in response to an RFP.
- 15) 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 used.
- 16) Special Terms and Conditions: those terms and conditions not always required but that are required for the particular contract or purchase.
- 17) As an alternative to including standard and special terms and conditions, the RFP may include a sample contract that includes such terms.
- 18) Onsite testing and inspections.
- 19) Cost and Pricing, including a price list or line-item pricing, hourly.
- 20) Technical specifications, if relevant.

- 21) Statement of Work
- 22) Delivery Terms
- 23) Method of Payment

2. Public Notice

- a. A short summary of the IFB/RFP shall be published in the local newspaper or a newspaper of general circulation under Legal or Public Notices.
- b. 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.
- c. 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 14<sup>th</sup> day before the date of public opening.
- d. The solicitation package should be sent to all qualified persons on the Bidders' List. 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) If soliciting physical bid/proposal submissions, the bid/proposal opening is open to the public; and, if no member of the public attends, a member of another department shall act as a witness.
  - 2) If soliciting electronic bid/proposal submissions, the electronic records related to the submission constitute a public record.
- b. Late submissions will **not** be considered for award.
  - 1) Physical bids/proposals shall be date/time stamped upon receipt.
  - 2) Electronic bids/proposals shall include relevant metadata documenting the date and time received.
- 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.
  - 2) 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 physical 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. As allowed for under Section 252.0415 of the Texas Local Government Code, (“Procedures for Electronic Bids or Proposals”) a bid or proposal may be electronically submitted if provided for in the RFP, and provisions of this policy that apply to a sealed bid also generally apply to a bid or proposal received through electronic transmission.
- 1) The RFP must provide specific instructions for electronic submission of proposals or quotes.
  - 2) In handling electronically submitted bids or proposals, CAPCOG shall ensure the identification, security, and confidentiality of electronic bids or proposals and ensure that they remain effectively unopened until the proper time.
- f. Opened bids/proposals shall be kept available for inspection except as provided in Section 1-113, Public Access to Procurement Information.
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) Bids/proposals will be reviewed 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/offeree'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 budget summary to be completed with sufficient detail of costs to enable a cost/price reasonableness analysis;
- (b) 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;
- (c) avoid and protect against giving inappropriate signals regarding an acceptable price;
- (d) 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.
- (e) separately rate proposals – rating sheets shall be completed, signed and dated by the reviewing parties and shall be maintained as part of the procurement record;
- (f) 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; and

(g) document any and all inconsistencies.

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.
  - b. The competitive range is determined by a technical evaluation of proposals received based upon the evaluation factors;
  - c. The review and rating of proposals must be consistently applied to assure equal treatment and arms-length transaction;
  - d. Data collected in the cost reasonableness review should be used to outline strengths and weaknesses of the proposed budget; and,
  - e. 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:
      - (a) relates to a matter of form, not substance;
      - (b) has merely a negligible effect on price, quantity, delivery or other contractual conditions; and
      - (c) does not otherwise prejudice the other bidders/offerors.
  - 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 submittal 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 FB/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) Bids: to either the lowest responsible bidder **or** to the bidder who provides supplies, equipment or services at the best value for CAPCOG.
    - 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.
  - b. Notify all unsuccessful bidders/offerors of the award in writing.

9. Certifications  
CAPCOG requires that interested bidders and proposers comply with the certifications listed below:

- a. Executive Orders 12549 and 12689, Debarment and Suspension, 29 CFR Part 98.5120 and Part 180, certification requirement;
  - 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.
- 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.
- c. Any other certification required under the State of Texas Procurement and Contract Management Guide.

**3-204. Small Purchases (\$50,000.00 or below)**

A small purchase is the procurement of supplies, equipment, services, or other property, that does not cost more than \$50,000.00 in the aggregate.

1. Competitive sealed bidding requirements and competitive procedures do not apply to small purchases. 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 \$50,000.00 limit. Split purchases to avoid competitive bidding requirements will be considered an unauthorized purchase and may be disallowed.
3. Procedures.
  - a. Micro-Purchases of \$5,000.00 or less:
    - 1) For purchases of \$5,000.00 or less in the aggregate, a quote combined with an independent cost analysis as described in 3-104. is sufficient to justify the selection of a vendor, although where possible, three quotes is preferred;
    - 2) The purchase shall be approved, in writing, by the Finance Director.
    - 3) Any quotations obtained must be recorded, in writing, and made part of the procurement files..
    - 4) An award should be made consistent with competitive bidding policies and in conformance with maximizing free and open competition.
  - b. Small Purchases of \$5,000.01 up to \$50,000.00.
    - 1) For purchases of more than \$5,000.00 in the aggregate, the Division Director must solicit written bids or quotations.
    - 2) Written quotations (including fax and email) must be obtained from three (3) or more qualified contractors/suppliers, if available, to ensure the price is fair and in line with the current market.
    - 3) The Finance Director 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. Non-Competitive Procurement**

1. Non-competitive procurements can only be awarded if one or more of the following circumstances apply, as authorized under 2 CFR 200.320:
  - a. The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold;
  - b. The item is available from only a single source (such as the examples identified in Section 252.022(7) of the Texas Local Government Code);
  - c. The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

- d. The grantor agency expressly authorizes a noncompetitive procurement in response to a written request, if applicable; or
  - e. After solicitation of a number of sources, competition is determined inadequate.
2. Procedures
- a. The process for a non-competitive procurement may be initiated with an RFP or RFQ.
  - b. The source should be required to submit a relatively complete proposal or quote, 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.
3. Approval of Grantor Agency.
- a. CAPCOG must receive prior written approval from the grantor agency:
    - 1) for a sole source procurement expected to exceed \$100,000; or
    - 2) 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 Contracts, Interlocal Agreements, and 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 is authorized, under Texas law, to procure supplies, equipment and services through an approved program of cooperative purchasing which has been certified as having met all applicable laws and regulations for competitive procurement.
3. Examples of cooperative purchasing programs CAPCOG may utilize include those of the Texas Comptroller of Public Accounts, the Department of Information Resources (DIR), the Houston-Galveston Area Council, or purchases made under the Interlocal Cooperation Act.
4. CAPCOG is also authorized under Chapter 791 of the Texas Government Code to enter into interlocal contracts/agreements with other governmental entities to contract for governmental functions and services as defined under Section 791.003 of the Texas Government Code.
5. Approval thresholds for interlocal agreements pursuant to Chapter 791 are the same as the thresholds identified in Table 1 of this policy.

### 3-208. **Professional and Personal Services Procurements**

1. Definitions:
  - a. "Professional Services" are those performed by an independent contractor licensed by state government or otherwise identified in Chapter 2254 of the Texas Government Code, such as certified public accountants, architects, landscape architects, land surveyors, physicians (including surgeons), optometrists, professional engineers, real estate appraisers, registered nurses, forensic analysts or forensic science experts, or interior designers, and include the services of accounting, architecture, landscape architecture, land surveying, law, medicine, optometry, professional engineering, or forensic science.
  - b.
  - c. "Personal Services" involve a contract characterized by the employer-employee relationship it creates between CAPCOG and the contractor's personnel, as described in 48 CFR §37.104 and in accordance with 2 CFR §200.430.
2. Professional Services:
  - a. Selection of professional services shall be based on demonstrated competence and qualifications to perform the services for a fair and reasonable price.
  - b. In accordance with Chapter 2254, selection of professional services based competitive bids as described in sections 3-201 and 3-203 of this policy.
  - c. Contracts should be selected through the use of a Request for Qualifications (RFQ).
    - 1) The solicitation should track the RFQ process including:
      - (a) a statement of qualifications;
      - (b) public notice; and,
      - (c) describing the services required and outlining in detail the information and data required of each offeror.

- 2) 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.
  - 3) Contracts for legal services shall be procured in compliance with Sections 2254.1032-2254.110 of the Texas Government Code.
3. Personal Services
- a. Personal services contracts are authorized under this procurement policy.
  - b. Personal services contracts may include contracts with temporary staffing agencies or with individual staff members who are uniquely capable of assisting CAPCOG with a particular programmatic or administrative issue.
  - c. Personal services contracts may not exceed one year in length.
  - d. For personal service contracts, compensation for services will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities at CAPCOG or for similar work in the labor market, and may include wages/salaries and fringe benefits.
  - e. For personal services contracts entered into with former employees, the employee pay rate at the time of separation plus the fringe rate in effect at that time is the maximum rate that CAPCOG may authorize.
4. 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. The professional fees under the contract may not exceed any maximum provided by law.

**3-209. Direct Purchase of Service Vendor Pools**

1. Under 26 TAC §213.55, CAPCOG’s Area Agency on Aging is authorized by the Texas Health and Human Services Commission to use a procurement method called “Direct Purchase of Service” for services provided under the Older Americans Act (OAA).
2. This methodology provides a flexible mechanism for CAPCOG to offer services on a client-by-client basis as determined by an assessment of the individual’s needs, and in situations in which the total dollar value that an individual vendor may ultimately receive under a contract is unknown.
3. Under this methodology, CAPCOG may establish and maintain a vendor pool by soliciting qualified vendors and entering into vendor agreements to authorize the use of that vendor to provide defined services under the Older Americans Act (OAA) based on client preference and needs.
4. In accordance with written guidelines adopted by the Executive Director and 26 TAC §213.55, the Executive Director may establish a direct purchase of service vendor pool and award contracts to vendors through this methodology without direct approval from the Executive Committee of individual contracts, even if the amount paid to a vendor ultimately exceeds the relevant threshold.

**3-210. 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 Director of Administration shall determine its utility and benefit to CAPCOG.

**3-211. Unlawful Solicitations and Awards**

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

**3-212. 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.

**3-213. Excess or Surplus Property**

CAPCOG is encouraged to use Federal, State, and local 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 a cumulative increase or decrease in the contract price of \$500.00 or less, from the original contract amount the Finance Director may approve the change order.
  - b. For a cumulative increase of \$500.01 - \$25,000.00 from the original contract amount, the Executive Director must approve the change order.
  - c. For a cumulative increase of \$25,000.01 or more from the original contract amount, the Executive Committee must approve the change order, unless it is for a CAECD contract.
  - d. For a cumulative increase of \$25,000.01 to \$50,000.00 from the original contract amount for CAECD, the Executive Director may approve the change order.
  - e. For an increase of more than \$50,000.01 from the original contract amount for the CAECD, the Executive Committee must approve the change order in its capacity as the CAECD Board of Managers.
  - f. 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.
  - g. Changes that bring the contract total above an approval threshold in Table 1 that are below the amounts listed in this section are not required to be approved by the next-highest authorizing entity (for example, a change from \$24,000.00 to \$26,000.00 can be approved by the Executive Director without going to the Executive Committee since the change itself does not exceed \$25,000.00).
  - h. The original contract price may not be decreased by more than 25% without the contractor's written consent.
  - i. 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 Executive 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
  - a. A contract may be terminated because of circumstances beyond the contractor's control, for default and for convenience.
  - b. 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.
- 3. Breach or default
  - a. Upon breach or default, CAPCOG shall give the contractor written notice of default. If the default is not remedied to the satisfaction and approval of CAPCOG, CAPCOG will declare the vendor in default.
  - b. Upon breach of contract or default, CAPCOG may exercise any and all of its rights afforded by law, including by not limited to those referenced in CAPCOG's general contract terms and conditions.

## Article V. Resolution of Controversies

### 5-101. Protest of solicitations and awards

1. **Protest in Writing**

An unsuccessful bidder/offeror/quoter may protest the procurement process by following this procedure. The protest must be made within five business days of the date the basis of the protest to the procurement process became known or should have become known to the protester, whichever is earlier (for example, if there are milestones in the RFP indicating when certain information will become publicly available or decisions will be made, those are the dates the proposer “should have known” that something had occurred, even if they only actually became aware of it later through no fault of CAPCOG’s). The protest must be submitted in writing to CAPCOG, to the attention of the contact person, and identify and be signed by the protester. The protest must identify the bid/proposal/quote or contract award or both being protested and must specifically describe the basis for the protest, including, if relevant, the qualifications of the winning bidder/offeror/quoter; the suitability of the supplies, equipment, or services offered; alleged irregularities in the procurement process; citation to each law or policy allegedly violated; and all additional, pertinent information regarding the procurement process.
2. **Action Following Protest**

Upon receipt of the written protest, CAPCOG shall furnish a copy of the protest to all of the other bidders/offerors/quoters and suspend the procurement process until the protest is resolved. CAPCOG shall also suspend award of the contract, or its performance if already awarded, until the protest is resolved unless (1) there is a bona fide emergency justifying the immediate award or the start of performance or completion of the contract; or (2) federal or state law requires award or completion of the contract by a particular date.
3. **Informal Resolution of Protest**

Upon receipt of the written protest, the contact person shall communicate in writing with the protester within three business days after receipt and attempt to resolve the protest informally. If the protest cannot be informally resolved between the contact person and protester within three business days after the contact person’s first written communication with the protester, the protester may request the Executive Director to decide the protest. The request must be in writing and be received by the Executive Director within three business days after the last written communication between the contact person and protester. The contact person shall summarize the efforts to resolve the protest, and recommend a decision on the protest, in a memorandum to the Executive Director, which shall be marked “Confidential – Intragency Memorandum” on each page, and forward the complete procurement file to the Executive Director.
4. **Decision by Executive Director on Protest**

Upon receipt of the request, the Executive Director, or her or his designee appointed in writing to act for the Executive Director on the protest, shall decide the protest. The Executive Director (or designee) shall review the entire procurement file and may interview CAPCOG employees and communicate in writing with the protester and others with information about the procurement process and contract award (if made). The Executive Director shall decide the protest within 10 business days following receipt

of the request. The decision must be in writing, signed by the Executive Director, and a copy of the decision furnished to the protester and to all of the other bidders/offerors/quoters for the procurement. The Executive Director's decision on the protest is final unless the protestor is permitted to appeal to the Executive Committee's Procurement Protest Appeal Subcommittee.

5. Appeal to Executive Committee's Appeal Subcommittee
  - a. The Executive Director may permit appeal of the Executive Director's decision denying the protest to the Executive Committee or a subcommittee consisting of CAPCOG's officers if the protester requests the appeal in writing and the request is received by the Executive Director within five business days following the date of the decision. In deciding whether to permit the appeal, the Executive Director shall consider the dollar amount of the bid/proposal/quote or contract award and the cost to CAPCOG of delaying the award or performance of the contract; the protester's good faith in requesting the appeal; the seriousness of the alleged violation of CAPCOG's Procurement Policy or applicable law; the novelty of the protest; and any other factors relevant to the Executive Director's decision denying the protest. The Executive Director's decision to permit or reject appeal to the Executive Committee or its subcommittee must be in writing, made within five business days following receipt of the protestor's request, and shall be furnished to the protester and to all of the other bidders/offerors/quoters for the procurement.
  - b. The decision of the Executive Committee or its subcommittee is final unless the protester files suit challenging the decision, in a court of competent jurisdiction in Travis County, Texas, within 15 business days following the date of the decision.
6. Action Following Final Decision on Protest
  - a. If the Executive Director denies the protest, and there is no timely appeal or court challenge, the procurement process shall resume and the contract awarded or the award confirmed if already made before the protest was received. If the Executive Director sustains the protest, or the appeal or court challenge is successful, the Executive Committee shall revoke the contract award (if made), reject all the bids/proposals/quotes, and solicit new bids/proposals/quotes if in CAPCOG's best interest.
  - b. After the protest is finally resolved, CAPCOG shall notify the grantor agency, if any, of the details of the protest.

## **Article VI. Small, Disadvantaged, Minority, Women-Owned and Historically Underutilized Businesses: Federal Assistance or Contract Procurement Requirements**

### **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 Comptroller 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 \$5,000.00 up to \$50,000.00 the Division Director shall contact at least two 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, CAPCOG is exempt from this section.

## Article VII. Conflict of Interest

### Part A. Standard of Conduct

#### 7-101. Elected Officials and Executive Staff

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 CAPCOG.

1. Conflict Disclosure Filing  
CAPCOG Executive Committee members, the Executive Director and Division Directors are required to file a conflicts disclosure statement when the official becomes aware that CAPCOG has a contractual or business relationship or is considering such a relationship and:
  - a. The person has a business or employment relationship with the official; or
  - b. The person has a business or employment relationship with a family member of the official, within the first degree of consanguinity; or
  - c. 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.
2. Vendor and Consultant Disclosures  
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 Division Directors.

In addition, Section 2252.908 of the Government Code requires Disclosure of Interested Parties for all contracts of a governmental entity that:

- a. requires an action or vote by the governing body of the entity or agency before the contract may be signed; or
- b. has a value of at least \$1 million.

#### 7-102. Conflict of Interest Questionnaire

1. The completed Questionnaire must be delivered to CAPCOG's Deputy Executive Director, who serves as its Records Administrator, not later than the seventh (7th) 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 Division 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 or a Division 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 this section 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.

**7-103. Disclosure of Interested Parties (Form 1295)**

1. CAPCOG may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295) as required to the Texas Ethics Commission online, with a notarized copy of the filing to CAPCOG at the time the contract is signed.
2. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission. The business entity is responsible for accessing and filing Form 1295 online. The form may be found on the Texas Ethics Commission website at <https://www.ethics.state.tx.us/tec/1295-Info.htm>.
3. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized.
4. The completed Form 1295 with the certification of filing must be delivered to CAPCOG's Deputy Executive Director, who serves as its Records Administrator.

**7-104. Employees and Agents**

1. No employee or agent of CAPCOG 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 CAPCOG shall at all times avoid the appearance of impropriety.
2. A conflict arises when a CAPCOG 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.
  - a. "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.
  - b. "Substantial interest" for purposes of this section, means the person:
    - 1) owns 10% or more of the voting stock or shares of the entity; or

- 2) 10% or more or \$15,000 or more of the fair market value of the entity;  
or
- 3) received funds from the entity in excess of 10% of the person's gross income for the previous year; or
- 4) is related to an employee or agent in the first degree of consanguinity or affinity.

## **Part B.      Violations and Remedies**

- 7-201. An employee's violation of the provisions of Sections 3.05 or 3.06 of the Personnel Policies, which regulate conflict of interest, constitutes misconduct and 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 Uniform Grant Guidance 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
2. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards.
3. When CAPCOG subgrants \$750,000 or more in a fiscal year to a subgrantee, CAPCOG shall:
  - a. determine whether the subgrantee has met the state or federal requirements as appropriate 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.