



Metropolitan Washington  
Council of Governments

# PROCUREMENT POLICY

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The Metropolitan Washington Council of Governments  
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# 1 INTRODUCTION

## 1.1 Purpose

The purpose of this Procurement Policy is to establish procedures for staff of the Metropolitan Washington Council of Governments (“COG”) to follow in connection with the purchase of goods and services. The procedures set forth within this Procurement Policy are designed to ensure timely and efficient acquisition of goods and services at a reasonable cost, consistent with good business practices, and to assure full and open competition among vendors interested in doing business with COG. Unless stated otherwise, these Procurement Procedures shall apply to every purchase of goods or services, regardless of funding source or payment method.

## 1.2 Applicability

This Procurement Policy applies to the purchase of goods and services by COG, for itself, and for any of the following entities:

- A. National Capital Regional Transportation Planning Board (“TPB”);
- B. Metropolitan Washington Air Quality Committee (“MWAQC”);
- C. Blue Plains Intermunicipal Agreement Regional Committee;
- D. Clean Air Partners;
- E. Washington Area Housing Partnership;
- F. Other COG policy boards or committees, and other non-COG policy boards or committees as approved by COG’s Board of Directors or pursuant to a cooperative procurement as set forth in Section 2.2.4.1;
- G. Procurements conducted by COG for other entities, unless otherwise stated herein.

## 1.3 Definitions

### 1.3.1 Goods

The term “goods” means and refers to all material, equipment, supplies, printing, as well as, information technology hardware and software.

### 1.3.2 Services

The term “services” means and refers to any type of work or services performed by an independent contractor, where such work or services does not consist primarily of the acquisition of equipment or materials, or the rental of equipment, materials and supplies. *(For the purposes of this policy, the term “independent contractor” refers to any person that performs work, tasks, assignments, etc. for COG, when that person is not on COG’s payroll and is not otherwise classified as an employee of COG for federal tax and reporting purposes.)* The following are examples of contracts for services: insurance, accounting, auditing, actuarial, architecture, catering, engineering, building management, management consulting, etc.

### 1.3.3 Person

The term “person” includes any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity.

#### 1.3.4 Technical Selection Committee (“TSC”)

Refers to a group of individuals assigned to evaluate proposals received in response to a Request for Proposals or an approved alternate form of procurement, or specific aspects of such proposals. A TSC, where utilized, shall consist, at a minimum, of: (i) the Contracts and Purchasing Manager and (ii) a representative of the department that will be responsible for contract management. Any TSC may also include other individuals who have knowledge or expertise that would facilitate the evaluation process (*for example: other COG employees; representatives of a funding agency; representatives of affiliated organizations, such as the local government membership of COG; etc.*). If any TSC will include persons other than those referenced in (i) and (ii) above, the designation of the membership of the TSC for a particular procurement shall be established by the Manager, with the concurrence of the Contracting Officer, prior to the issuance of the RFP or approved alternate form of procurement.

See also Section 2.9.

### 1.4 Procurement Responsibilities

#### 1.4.1 Promulgation of Procurement Policy

The COG Board of Directors (“Board”) has promulgated and adopted this Procurement Policy, and any amendments, by resolution of the Board.

#### 1.4.2 Administrative Responsibility

The Executive Director is COG’s Contracting Officer, and as such, shall have responsibility for the administration and proper implementation of this Policy. The Executive Director, through the Chief Financial Officer, has delegated specific responsibilities for the administration of procurement policies and procedures to the Contracts and Purchasing Manager (“Manager”). This includes, subject to the approval of the Office of General Counsel, development of standard forms and documents for use in procurement transactions, including, without limitation, compilation of a set of General Terms and Conditions applicable to COG contracts.

#### 1.4.3 COG Employees

Each COG employee shall comply with the provisions of this Policy, unless otherwise directed in advance by the Executive Director or Board of Directors.

For each contract, other than transactions completed with a Purchasing Card, a COG employee shall be assigned to serve as **contract/project manager**. Typically, this will be a department head, or a designee thereof. This employee will be responsible for monitoring the contractor’s performance to ensure that COG receives goods and services in accordance with the terms and conditions of the applicable contract.

## **1.5 Related Requirements**

### **1.5.1 COG Guidelines**

#### **1.5.1.1 COG Organizational Documents**

The COG Articles of Incorporation authorize COG to purchase, or otherwise acquire, real and personal property, and to make contracts and incur liabilities therefor.

Further, according to COG's Bylaws, the secretary-treasurer of the corporation is responsible for ensuring that full and accurate accounts of receipts and disbursements are kept. The Board may delegate to any employee(s) of the corporation any or all of the duties and powers of the secretary-treasurer. In regard to the purchase of goods and services, the Board's approval of this Policy shall serve as its delegation of such record-keeping responsibilities to the Chief Financial Officer.

#### **1.5.1.2 Executive Director - Contracting Officer**

Pursuant to this Policy, the Executive Director, as Contracting Officer, shall execute all contracts entered into on behalf of COG, unless the signing and execution thereof has been expressly delegated by the Board to some other officer, employee, or agent of the corporation by a resolution.

#### **1.5.1.3 Board Directives**

From time to time the Board of Directors may take action (by motion, resolution, etc.) to provide authorization, funding, instructions, delegations of authority, conditions, or requirements specific to a particular procurement transaction. In such instances, the Executive Director and COG employees shall follow the directives reflected in the Board's action, in addition to the procedures set forth within this Policy.

#### **1.5.1.4 Administrative Directives and Interpretations**

The Executive Director shall have the authority to issue interpretations of this Policy, to issue directives, and to make decisions in circumstances where such authority is not otherwise specifically reserved to the Board.

#### **1.5.1.5 Requirements of Specific Awards**

It is the intention of COG that this policy shall include methods and procedures for contractor selection that are consistent with the competitive procurement processes utilized by the federal and state governments with which COG interacts.

However, where a source of funding for a contract resulting from a particular procurement transaction consists of federal or state funding, and where specific conditions or related requirements (e.g., specific contractor selection procedures, or specific levels/methods of competition) are mandated in connection with the expenditure of such funding, then if the awarding agency's mandated conditions or requirements are more specific, or more

restrictive, than those set forth within this Policy, COG will comply with the awarding agency's conditions and requirements.

## **1.5.2 Federal Requirements**

### **1.5.2.1 OMB Circulars and CFR Guidance**

As a council of governments and a recipient of federal awards, COG will adhere to the requirements of applicable federal Office of Management and Budget ("OMB") Advisory Circulars, as they currently exist and/or as they are released.

Effective December 26, 2014, the OMB released final guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards. This final guidance is codified in Title 2 of the Code of Federal Regulations ("CFR"). These new CFR regulations supersede previous OMB Circulars in order to create more effective and consolidated guidance governing Federal awards.

Title 2 of the CFR supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122 (which have been placed in 2 CFR Parts 220, 225, 215 and 230); Circulars A-89, A-102, and A-133; and the guidance in Circular A-50 on Single Audit Act follow-up.

Through the CFR, federal agencies provide guidance for implementation of OMB Advisory Circulars and the laws and regulations referenced therein. For instance, the Environmental Protection Agency ("EPA")'s requirements for implementation of Title 2 of the CFR are set forth within 2 CFR Part 1500, *"Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."* These CFR regulations shall be followed to the extent required of COG as a recipient of federal awards from EPA. Another example includes the Federal Transit Administration ("FTA") Circular 4220.1, *"Federal Funding Accountability and Transparency Act"* ("FFATA"). Likewise, COG will adhere to CFR guidance published by other federal agencies from which COG receives funding as well as the requirements of Title 2 of the CFR.

### **1.5.2.2 IRS Regulations and Guidelines**

Among the issues regulated and enforced by the IRS is whether a particular individual is properly classified as an independent contractor, or whether such individual should be classified, paid, and treated as an employee. Any contract for services with an independent contractor who is an individual shall be reviewed periodically by COG's Department of Human Resources, at the following times: (i) prior to award of a contract, (ii) prior to any renewal or extension of a contract, and (iii) at such other reasonable times as the Director of Human Resources may request.

### 1.5.3 Necessary Approvals

#### 1.5.3.1 Federal or State Funding

Before proceeding with a purchase of goods or services funded, in whole or in part, by federal or state funds, COG may be required to obtain advance written approval from the funding agency. The Contracts and Purchasing Manager shall verify that requests for such outside approvals have been timely submitted to the funding agency for consideration. No purchase transaction shall proceed, and no contract shall be awarded or entered into, until the Manager has received the required written approval of the funding agency. A copy of such approval shall be maintained in the contract file.

#### 1.5.3.2 Contracts, generally

The Executive Director, or other person serving as Contracting Officer, shall not execute any contract involving an expenditure of \$25,000 or more (regardless of the source of funding) unless and until such contract has been approved by the Board.

However, where the Transportation Policy Board has approved a contract for which funds have been appropriated, additional approval by the COG Board is not required.

See also Section 7.2.3.

## 2 SELECTION OF CONTRACTORS

### 2.1 Full and Open Competition

All of COG's procurement transactions shall be conducted in a manner that provides, to the maximum extent practical, free and open competition.

### 2.2 Authorized Procedures

In its procurement of goods and services, COG will implement one of the following methods to select a supplier or contractor:

#### 2.2.1 Small Purchase Procedures (Informal Procurement)

Small purchase procedures consist of relatively simple and informal solicitation methods, where the goods or services being procured do not exceed the amount of \$25,000. If small purchase procedures are used, price or rate quotations shall be solicited from qualified sources. The following table sets forth COG's requirements for small purchases.

If goods or services are anticipated to cost:	The following solicitation method shall be used:
<b>Cost/price:</b> Less than \$3,000	<b>No Competition Required</b> —A purchase at this level is considered a minor purchase, or micro-purchase, and no competitive quotes are required, so long as the price to be paid is fair and reasonable. Use of contractors listed on the General Service Administration (“GSA”) Schedule, or similar

	<p>state schedules, is encouraged. Although solicitation of multiple prospective contractors in a particular instance is not required, over time, orders should be distributed among various contractors.</p>
<p><b>Cost/price:</b> \$3,000 or more, but less than \$10,500</p>	<p><b>Solicitation of 2 Written Quotes, minimum</b>—COG staff shall solicit written price or rate quotes from at least 2 sources. The solicitation shall be in writing and shall contain sufficient detail to allow accurate pricing of the goods or services to be procured.</p> <p>If the Contracts and Purchasing Manager determines a simple description of goods or services will not be sufficient, then a <b>Statement of Work (“SOW”)</b> shall be included as part of the solicitation of quotes. The SOW shall be accompanied by a list of factors that will be used to evaluate responses. COG will select the responsible contractor who offers the best combination of price, quality, and other elements of required goods or services that are optimal to COG’s needs.</p> <p>Documentation of each solicitation, and any written quotes received in response, shall be placed in the contract file. Prior to making a purchase, the Contracts and Purchasing Manager shall confirm that the price to be paid is fair and reasonable, and shall document how this determination was derived. Use of GSA and other state or local government purchasing schedules, as a source of contractors to be solicited, is encouraged.</p>
<p><b>Cost/price:</b> \$10,500 or more, but Less than or equal to \$25,000</p>	<p><b>Solicitation of 3 Written Quotes, minimum</b>— COG staff shall solicit written price or rate quotes from at least 3 sources. The solicitation shall be in writing and shall contain sufficient detail to allow accurate pricing of the goods or services to be procured. If the Contracts and Purchasing Manager determines that a simple description of goods and services will not be sufficient, then a Statement of Work shall be included as part of the solicitation of quotes. The SOW shall be accompanied by a list of factors that will be used to evaluate responses.</p> <p>COG will select the responsible contractor who offers the best combination of price, quality, and other elements of required goods or services that are optimal to COG’s needs.</p> <p>Documentation of each solicitation, and any written quotes received in response, shall be placed in the contract file. Use of GSA and other state or local government purchasing schedules, as a source of contractors to be solicited, is encouraged.</p>

**2.2.2 Competitive Proposals (Formal Procurement)**

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or a cost-reimbursement method (“time and materials”) of compensation will be utilized—or some combination thereof. If this method of contractor selection

is utilized, then the process of selecting a supplier or contractor will follow the following process:

#### **2.2.2.1 Issuance of a Written Solicitation**

Competitive proposals are initiated through issuance of a solicitation referred to as a Request for Proposals (“RFP”). Each RFP shall indicate in general terms what is to be procured, and shall contain, or incorporate by reference, the applicable terms and conditions, including any unique capabilities or qualifications that will be required of the contractor. The RFP shall instruct prospective offerors of the need to demonstrate, within their proposals, their “responsibility.” Each RFP shall also specify the factors that will be used in evaluating the merits of proposals received, **including price**, along with their relative importance.

[Note: Qualifications-based procurement, where price is **not** initially used as a selection factor, can only be used for procurement of the following services: architectural, engineering services, accounting, actuarial, and legal.]

#### **2.2.2.2 Notice and Distribution of the RFP**

RFPs shall be distributed to an adequate number of qualified sources, at least 10 days prior to the date set for receipt of proposals. The RFP shall be posted on COG’s publicly-accessible website. In addition, potentially qualified contractors on COG’s Vendor Registration list shall be notified via electronic mail of the solicitation, and proposals may also be solicited directly from other potential contractors.

#### **2.2.2.3 Evaluation of Proposals**

Evaluation of the proposals received by COG in response to an RFP shall be conducted based on **price and other factors** identified within the RFP. These factors typically include considerations relevant to a determination of responsibility (such as financial, human, and organizational capability), as well as other technical considerations (such as the degree to which the proposer is expected, based on information submitted and available, to achieve the performance objectives, to provide the quality expected, and on the relative qualifications of the proposer's personnel).

The Contracts and Purchasing Manager shall ensure that an evaluation method is in place, prior to issuance of the solicitation, for evaluating the responsiveness of each proposal, for technical evaluations of each proposal, and for ranking, in order of preference, the proposals that are received in response to the solicitation. The specified method shall include a mechanism for written reporting of the results of the evaluations, by numerical scores or other acceptable means of assigning rank. Evaluation of proposals may be conducted by the Manager, or by a Technical Selection Committee (“TSC”) selected by the Manager subject to the concurrence of the Contracting Officer.

Final determinations of the “responsibility” of a contractor shall be made by the Contracting Officer, based on a review, report, and recommendation of the Manager. The Manager, in his review of the issue of responsibility, may be assisted by any TSC or evaluation committee conducting other aspects of the proposal evaluation.

#### **2.2.2.4 Discussion and Negotiation**

COG may choose **not** to enter into discussions or negotiations with any offeror, provided that (i) the solicitation did not commit to discussions, or the solicitation affirmatively notified all offerors that award might be made without any discussions or negotiations, and (ii) an award is made without any oral or written discussions with **any** offeror. In such circumstances, COG may accept one of the proposals received if it can clearly be demonstrated that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price. The Contracts and Purchasing Manager shall prepare a written determination to this effect, with supporting documentation, and shall place the determination/documentation in the contract file.

In other cases, discussion and negotiation shall be conducted as follows: COG shall engage in individual discussions with two (2) or more offerors deemed fully-qualified, responsible, and suitable on the basis of their initial responses. The offerors shall be encouraged to elaborate on their qualifications, performance data or staff expertise, and other matters relevant to the evaluation criteria specified in the solicitation. At the conclusion of discussions, COG shall select, on the basis of the evaluation factors referenced in the solicitation, the offeror whose proposal is deemed most meritorious. If a contract satisfactory and advantageous to COG can be negotiated with that offeror, at a fair and reasonable price, then COG may award the contract to that offeror.

Otherwise, negotiations with the first-ranked offeror shall be formally terminated, and negotiations conducted with the offeror ranked second, and so on, until a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards have been included in the solicitation, then COG may award contracts to more than one offeror.

**Note:** COG may award a contract to the offeror whose proposal offers the greatest business value/”best value”, based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the “**best value**” to COG. However, if COG elects to use the best value selection method as the basis for award, then the solicitation must contain language which establishes and describes the manner in which award will be made on a “best value” determination.

#### **2.2.2.5 Federal Considerations**

Under federal guidelines applicable to the expenditure of certain funds, see e.g., 44 C.F.R. §13.36(b)(10), time and materials contracts may be used only where: (i) there is a written determination that no other form of compensation is suitable, and (ii) the contract includes a not-to-exceed (ceiling) price that the contractor exceeds at its own risk. Prior to the award of a contract that will involve expenditure of funding falling within the purview of 44 C.F.R. §13.36(b)(1), or any similar federal regulation, the Contracts and Purchasing Manager shall verify that any time-and-materials compensation is entered into based on documentation of the requisite findings.

#### **2.2.2.6 Award**

Upon conclusion of a competitive proposal process, COG may award a contract to a responsible contractor whose proposal is deemed most advantageous to COG, following any pre-award review required by a federal or state funding agency. No contract involving an expenditure of \$25,000 or more (regardless of the source of funding) shall be deemed awarded, or shall become binding upon COG, until it has been approved by the Board.

#### **2.2.2.7 Notice of the Award**

Notice of contract award shall be posted on COG's publicly-accessible website. In addition, within five (5) days of the award, COG shall provide to each offeror who submitted a proposal a written notice of the award; these offerors' notices shall inform the unsuccessful offerors of COG's protest procedure.

#### **2.2.2.8 Debriefings**

Within five (5) days of a contract award or other time period set forth in the RFP, an offeror may seek a debriefing by filing a notice with the Contracts and Purchasing Manager. During the debriefing, the offeror may request information and discuss its proposal with the Manager or other COG staff, whom the Manager requests to attend the debriefing; however, such information shall not include the proposals, proposed prices or rankings of other offerors.

### **2.2.3 Sealed Bids (Formal Procurement)**

A competitive sealed bidding process is normally utilized when price is desirable as the principal determinative factor in contractor selection. In order for the sealed bid process to be utilized, the Contracts and Purchasing Manager should determine in advance that the following conditions are present: (i) a complete, accurate, and realistic specification or purchase description is available, (ii) two (2) or more responsible bidders are willing and able to compete effectively for the business; and (iii) the nature of the transaction lends itself to a firm, fixed-price contract (lump sum and/or unit-price) and selection of the successful bidder can be made principally on the basis of price. The Manager shall render his determination in writing and a copy of the determination shall be maintained in the purchasing file.

If the sealed bidding method of contractor selection is utilized, then the selection of a supplier or contractor will follow the following process:

#### **2.2.3.1 Issuance of a Written Solicitation**

A competitive sealed bidding process is initiated through issuance of a solicitation referred to as an Invitation for Bids (“IFB”). The IFB will incorporate a clear and accurate description of the technical requirements and specifications for the goods or services to be procured, and the description will set forth the minimum essential characteristics and standards to which the goods or services must conform if they are to satisfy COG’s intended use. Particular attention should be given to describing requirements that affect the price, quality, quantity, or delivery schedule for the goods or services. If it is impractical or uneconomical to make a clear and accurate description of technical requirements for a particular item, a “brand name or equal” description may be used to define salient characteristics or requirements. A Bid Form shall be included with the IFB, on which the bidder may set forth the fixed price (lump sum or unit cost) of each aspect or component of the desired goods/services.

#### **2.2.3.2 Public Notice and Dissemination of the IFB**

Notice of the IFB shall be given to an adequate number of qualified sources, at least 10 days prior to the date set for receipt of bids. The IFB shall be posted on COG’s publicly-accessible website. In addition, potentially qualified sources on COG’s Vendor Registration list shall be notified via electronic mail of the IFB, and bids may be solicited directly from other potential sources.

#### **2.2.3.3 Public Opening and Announcement of Bids**

COG shall instruct bidders to submit their bids in sealed envelopes, and to deliver the sealed bids to COG on a date, time, and at a location specified within the IFB. COG shall mark each bid received with the date and time of receipt, and COG shall not open or review any bid until the deadline specified within the IFB passes.

On the date, time, and location specified within the IFB, COG will open and announce the dollar amount of each bid, and the name of the contractor who has submitted each bid.

#### **2.2.3.4 Evaluation of the Low Bid**

Following the opening and announcement of bids received, COG shall review the apparent low bidder for responsiveness and responsibility.

#### **2.2.3.5 Withdrawal of a Bid Due to Error**

A. A bidder may withdraw his bid from consideration if the price bid was substantially lower than the other bids, due solely to a mistake in the bid; provided, however, that: (i) the bid was submitted in good faith, and (ii) the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid. Any unintentional arithmetic error or

unintentional omission must be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

- B.** If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if (i) the price bid would have been substantially lower than the other bids due solely to the clerical mistake, and (ii) the clerical mistake was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid. Any bidder seeking this avenue of withdrawal must clearly demonstrate the error was unintentional by submission of objective evidence drawn from inspection of original work papers, documents, and materials used in the preparation of the bid sought to be withdrawn.
- C.** Any request for withdrawal of a bid shall be submitted to COG in accordance with the following procedure: (i) The bidder shall give notice in writing of his claim of right to withdraw his bid, within two (2) business days after the conclusion of the bid opening procedure; (ii) the bidder shall submit original work papers, and other relevant documents and materials, along with such notice; and (iii) the bidder's request shall affirmatively state whether the bidder requests COG to handle the work papers, documents and materials submitted with the request as trade secrets or proprietary information.
- D.** Within five (5) days of receipt of a bidder's request for withdrawal of a bid, the Contracting Officer shall render a determination either granting or denying the request. No request shall be granted when the result would be the awarding of the contract on another bid of the same bidder, or on the bid of a separate bidder in which the ownership of the withdrawing bidder is more than five percent (5%). If the Contracting Officer denies the withdrawal request, he shall notify the bidder in writing: (i) of the reasons for his decision to deny the withdrawal, and (ii) that he is awarding a contract to the bidder at the bid price (provided that the bidder is a responsive and responsible bidder).
- E.** If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid. If the deemed low bidder is responsive and responsible, then COG may award the contract to that bidder at the bid price.
- F.** No bidder who is permitted to withdraw a bid shall: (i) for compensation, supply any material or labor to, or perform any subcontract or other work agreement, for the person or firm to whom the contract is awarded, or (ii) otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted. In the event the

Contracting Officer determines that either of these circumstances exist, COG shall have a right to terminate the awarded contract.

#### **2.2.3.6 Award**

Following completion of a competitive sealed bidding process, COG may award a contract to the lowest responsive and responsible bidder. No contract involving an expenditure of \$25,000 or more (regardless of the source of funding) shall be deemed awarded, or shall become binding upon COG, until it has been approved by the Board.

#### **2.2.3.7 Public Notice of Award**

Notice of the award shall be posted on COG's publicly-accessible website. In addition, COG shall provide notice of the award directly to each offeror who submitted a bid, and the notice shall inform those unsuccessful offerors of COG's protest procedures.

### **2.2.4 Alternative Procedures**

Alternative procedures, designed to promote full and open competition, may be used on a case-by-case basis, upon approval of the Executive Director set forth in writing prior to commencement of the procurement process. The Director's written approval shall include a description of the written justification for the alternative procedures, including, without limitation, the need to accommodate requirements of special funding sources, federal award conditions, applicable federal or state laws and regulations, or other circumstances. Examples of such procedures include, but are not limited to, the following:

*Example 1:* One acceptable alternative procedure is the two-step, sealed bidding method of contractor selection. While it has some characteristics of both sealed bidding and competitive proposals, it complies with all requirements for the competitive proposal process. This process would allow, in the first phase, for the submission of unpriced technical proposals in response to a solicitation. In the second phase, only those firms that have been found to be technically qualified in the first phase are invited to submit sealed bids. Award is then made to the lowest, responsive and responsible bidder.

*Example 2:* Another acceptable alternative procedure would be a process structured similarly to that described in the Virginia Public-Private Education Facilities and Infrastructure Act, or similar statutes within Maryland or the District of Columbia. Under this type of process, guidelines must be established prior to requesting or considering proposals, and those guidelines must encourage competition and must contain standards to guide the selection of projects.

*Example 3:* Yet another acceptable alternative might be the selection of a contractor who has been already been awarded a contract for the goods or services sought to be procured by COG, if (i) the member jurisdiction's contract was awarded following a competitive selection process, and (ii) the

contract awarded to the contractor contemplated that the contractor's goods and services would be made available to other entities upon the same terms and conditions, including pricing.

#### **2.2.4.1 Cooperative Procurement**

From time to time, COG and/or its member jurisdictions engage in solicitations for items used among multiple jurisdictions. COG and its members engage in cooperative procurements to maximize the benefits of economies of scale. COG may or may not be a party to a cooperative procurement. When COG is a participant in a cooperative procurement, the resulting agreement is subject to all the rules and procedures contained in this Policy. The jurisdiction that volunteers to issue the solicitation is referred to as the "Lead Jurisdiction."

In cooperative procurements, regardless of COG's role as either a party or merely a facilitator, the Lead Jurisdiction shall serve as the issuer of the solicitation, and the Lead Jurisdiction's procurement laws, policies, and procedures will govern the selection of a contractor.

*Note:* Procurements conducted by COG itself, to facilitate the expenditure of federal or state funds in accordance with specific award requirements, shall not be deemed or construed as a joint or cooperative procurement between or among COG and any parties that may ultimately benefit from the goods or services procured.<sup>1</sup>

#### **2.2.5 Non-Competitive Contractor Selection**

Occasionally, as a practical matter, (i) there exists only one source of goods or services sought to be procured; or (ii) following the solicitation of quotes, offers or bids under one of the competitive selection processes described above, competition is inadequate; or (iii) the nature of the relationship with a particular contractor is one involving special confidentiality, or fiduciary, advisory services; or (iv) a procurement for the goods or services has already been conducted by a federal, state or local governmental entity or council of governments (see *also* Section 2.2.6). In such cases, selection of a contractor, without competition, may be in the best fiscal and organizational interests of COG. Prior to award of a contract without competition, if federal funding is involved, COG may be required to submit the proposed contract to the funding agency for pre-award review. Also, any non-competitive contractor selection involving a contract to be funded, in whole or in part, by federal funding requires a cost analysis.

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<sup>1</sup> COG publishes a separate policy, titled "*User's Guide to Cooperative Procurement.*" The User's Guide sets forth the manner in which COG will provide administrative assistance to its member jurisdictions with various tasks associated with the conduct of a cooperative or joint procurement transaction undertaken by one or more of those jurisdictions.

### 2.2.5.1 Written Determination Required, in Advance

The Contracts and Purchasing Manager may authorize a purchase based on a non-competitive contractor selection process, upon a determination that at least one of the following circumstances exists:

A. The goods or services are only available from a **single source**, and (when applicable) an entity that controls funding that will be involved in the purchase (e.g., a federal or state funding agency) authorizes and approves, in advance, a noncompetitive selection. Bases for identifying a contractor as a sole source include:

(i) Proprietary, patented or copyrighted items are legally available from only one source;

(ii) Required compatibility of equipment, accessories, software, or replacement parts can only be met by one source; including, without limitation, maintenance or support services for software during the useful life of the software originally purchased;

(iii) Required public utility services are available from only one company (e.g., a specific electrical or water utility);

(iv) A particular contractor or subcontractor has been specified within an award accepted by COG;

(v) One contract service provider possesses unique qualifications, of a nature and to such an extent that no other contractor can be found who can perform or provide the services that are the subject of the contract. If unique qualification is claimed with respect to a contract service provider, reference to specific methodologies, licenses, certifications, etc. must be provided in the determination letter. Mere preference or desirability is not sufficient; conclusory statements as to a service provider's capability, experience, personal know-how, etc. will not be sufficient to support a determination that a contractor is the sole source available to provide specified services.

or

B. Documentation of solicitations made to a number of sources, and any responses thereto (including a lack of responses) justifies a finding that **competition is inadequate**, and (if applicable) an entity that controls funding involved in the proposed procurement transaction (e.g., a federal or state funding agency) authorizes and approves, a noncompetitive selection; **or**

C. **Time is of the essence**, and circumstances will not permit a delay resulting from a competitive selection process. To justify a non-competitive selection under this subparagraph, the Contracting Officer must determine in writing, in advance, that time is of the essence, and the determination must set forth: (i) factual information demonstrating

that a specific delivery schedule is critical, or that an emergency exists, involving an imminent threat to the safety of an individual or to COG's property; (ii) that specific adverse financial or organizational consequences will be sustained by COG or one of its programs if the delivery schedule is not met, or the threat is not immediately addressed and (iii) as a result of the foregoing, it is impractical to complete the solicitation and evaluation of quotes/responses from multiple contractors, under either the informal or formal competitive processes provided by this policy, within the necessary time period. Mere recitation of an administratively established deadline, commissioning date, or implementation schedule, without demonstration of specific adverse consequences resulting from a deviation from the referenced schedule, is not enough to support the determination. Additionally, an entity that controls funding involved in the proposed transaction (e.g., a federal or state funding agency) must authorize and approve, in advance, a non-competitive selection under such circumstances; or

- D. (i) The proposed contract is for: the management and investment of COG's retirement funds; corporate audit services; legal services; legal, expert witness and other services associated with specific litigation or regulatory proceedings; compilation, storage, analysis, and/or evaluation of data required by federal or state law to be maintained confidential; (ii) a continuous relationship with a single contractor over a period of time is fiscally advantageous, as demonstrated by a cost-benefit analysis considering issues such as training; familiarity with COG's organizational structure, processes and procedures; the costs of replacement software; etc., and (iii) non-competitive selection will not adversely impact the availability of any federal or state funding intended as a source of funds for payment of the contractor.
- E. A procurement for the goods or services has already been conducted by a federal, state or local governmental entity, council of governments, or public educational institution which has been competitive or meets the requirements for non-competitive procurement of the respective governmental entity (see also Section 2.2.6).

#### **2.2.5.2 Records Required**

A copy of the Contracting Officer's written determination, and of any funding agency's concurrence, shall be maintained in the contract file.

#### **2.2.5.3 Selection from GSA Schedule**

When a non-competitive selection is determined to be justified in accordance with paragraph 2.2.5.1(B) or (C), above, consideration should be given to selection of a vendor listed on the GSA Schedule, or a similar State or Local Schedule. Where federal funding is involved, selection of a contractor listed on the GSA Schedule will facilitate compliance with documentation of fair and reasonable price (see also Section 2.2.6).

#### 2.2.5.4 Board Approval Required

No sole source contract involving an expenditure of \$25,000 or more (regardless of the source of funding) shall be deemed awarded, or shall become binding upon COG, until it has been approved by the Board.

#### 2.2.6 Use of Government Schedules

COG may choose to purchase goods or services from the GSA Schedules, or from similar state or local purchasing schedules. If federal, state or local government funding is involved, advance written permission shall be obtained from the funding agency.

##### 2.2.6.1 Source of Quotes, Small Purchase Procedure

COG may, at any time, use the GSA or other government schedules as a source of contractors from which to solicit quotes or proposals: see Small Purchase Procedures Section 2.2.1.

##### 2.2.6.2 Selection of GSA or Other Schedule Contractor, without Review of Multiple Quotes

COG may place an order or award a contract to any Schedule contractor that can meet COG's needs, without review of multiple quotes or proposals, under the following circumstances:

- A. Following a Determination rendered pursuant to 2.2.5.1(B) or (C), as set forth above; or
- B. For orders of supplies or services of less than \$25,000, provided the contractor selected has not been awarded a contract by COG within the 12 months preceding the date of award.

##### 2.2.6.3 Selection of GSA or Other Schedule Contractor, upon Review of Multiple Quotes

COG may place an order or award a contract to any Schedule contractor that can meet COG's needs, without formal competition, under the following circumstances:

- A. For orders of supplies or services of \$25,000 or more, and
- B. The following process is followed:

***Supplies and Services not requiring a Statement of Work:*** survey or review the price lists of three (3) Schedule contractors; seek price reductions where appropriate; evaluate; and select the contractor who can offer the best overall combination of quality, price, and various elements of the required supplies or services that, in total, are optimal relative to COG's needs. If the applicable Schedule does not include three (3) contractors who meet COG's requirements, then fewer than three (3) may be surveyed or reviewed.

***Supplies and Services requiring a Statement of Work:*** prepare a written solicitation that includes a statement of work and evaluation criteria; transmit the request to three (3) Schedule contractors; evaluate responses; and select the contractor who can offer the best overall combination of quality, price, and various elements of the required supplies or services that, in total, are optimal relative to COG's needs. If the applicable Schedule does not include three (3) contractors who meet COG's requirements, then fewer than three (3) may be surveyed or reviewed.

#### **2.2.6.4 Board Approval Required**

No contract involving an expenditure of \$25,000 or more (regardless of the source of funding) shall be deemed awarded, or shall become binding upon COG, until it has been approved by the Board.

#### **2.2.7 Solicitations, generally**

In addition to other information and instructions required by this Policy, each solicitation issued by COG shall contain the following information, as applicable:

- A. Statements that: (i) COG is the procuring authority, (ii) that COG's Procurement Policy will apply to the selection of a contractor and award of a contract, and (iii) that, by submitting a quote, proposal or bid in response to the solicitation, the bidder or offeror agrees to abide by the instructions, requirements and procedures set forth within COG's Procurement Policy;**
- B. Reference to COG's General Terms and Conditions, and a statement of their applicability to any contract resulting from the solicitation;**
- C. Reference to other federal or state requirements, and a statement of their applicability to any contract resulting from the solicitation. Such requirements shall include, but not be limited to, notification of potential bidders and offerors that, where federal funding is involved, the successful bidder or offeror may be required to provide documentary evidence of compliance with OMB A-133 Single Audit requirements, and (in the event of an audit finding) may be required to provide documentation to COG verifying that the audit finding is corrected in a timely manner; and**
- D. A statement that no contract involving an expenditure of \$25,000 or more (regardless of the source of funding) shall be deemed awarded, or shall become binding upon COG, until it has been approved by either the COG Board or the TPB.**

## **2.2.8 Unsolicited Proposals**

### **2.2.8.1**

When COG receives an unsolicited proposal, the Executive Director shall determine whether COG has need for the goods or services, whether funds are available, and whether the proposal should be considered. COG has no obligation to consider or take any other action with respect to any unsolicited proposal. COG may charge a reasonable fee to cover the process of reviewing, evaluating, and processing the proposal.

### **2.2.8.2**

If the Executive Director determines that the proposal should be considered, the Contracts and Purchasing Manager shall determine whether competition exists for the goods and services, and without revealing offeror-specified proprietary or confidential information, shall in a format similar to IFBs and RFPs solicit proposals for the same goods and services. Upon receipt of other bids or proposals or if no other bids or proposals are received, the Manager shall proceed as otherwise set forth in this Policy.

### **2.2.8.3**

If the Manager determines that the proposed goods and services would qualify for non-competitive procurement, the procedures with respect to those procurements and as otherwise set forth in this Policy shall be followed.

### **2.2.8.4**

COG is not required to enter into a contract for goods or services as a result of an unsolicited proposal.

### **2.2.8.5**

The Executive Director or Contracts and Purchasing Manager may develop additional guidelines or attach additional requirements to the consideration of specific unsolicited proposal(s).

## **2.3 Cost/Price Analysis**

For purchases funded by federal money, some form of cost or price analysis may be required prior to award of a contract, including for contract modifications. The method and degree of analysis will depend on the specific procurement transaction; however, as a starting point, when required, independent estimates must be obtained before receiving bids or proposals. The following methods of contracting shall not be used: cost-plus-a-percentage-of-cost and percentage-of-construction-cost.

No procurement transaction shall proceed unless and until any applicable requirement for cost/price analysis has been met and the results of the cost/price analysis have been received by COG.

## **2.4 Responsibility**

COG shall award contracts only to responsible contractors possessing the ability to successfully perform the terms, conditions, and requirements of a proposed contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. A contractor must be considered responsible to be awarded a contract, regardless of the procurement method used to select that contractor.

Responsibility is an issue determined after receipt of bids, proposals, or quotes, and prior to the time of contract award. Final determinations of “responsibility” of a contractor shall be made by the Contracting Officer, based on a review, report and recommendation of the Contracts and Purchasing Manager. The Manager, in his review of the issue of responsibility, may be assisted by any TSC or evaluation committee conducting other aspects of proposal evaluation. Along with information submitted by the bidder or offeror as part of a bid or proposal, COG may consider information obtained from outside sources, including surveys, reference checks, and debarment lists.

### **2.4.1 Check of GSA Excluded Parties List**

No contract shall be awarded unless and until the Contracts and Purchasing Manager verifies that a check of GSA’s Excluded Parties List System has been conducted, and the prospective contractor is not included within that list. COG may also treat a prospective contractor or subcontractor listed on a centralized State government debarment and suspension list, or on a similar list maintained by one of COG’s member local government jurisdictions, as being non-responsible.

### **2.4.2 Factors for Use in Determining Responsibility**

To be determined responsible, a contractor must have:

- A.** Financial resources adequate to perform the contract, or the ability to obtain them;
- B.** Ability to meet the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- C.** A satisfactory performance record;
- D.** A satisfactory record of integrity and business ethics;
- E.** Licenses or certifications required by law or governmental authority;
- F.** No current “debarment” status with any federal or state governmental authority, or with any local government authority among the membership of COG;
- G.** Ability to comply with DBE Program requirements, or similar requirements; and
- H.** Other characteristics demonstrating that the contractor is, in all respects, capable of fully performing the contract requirements, and who has been prequalified, if required.

### **2.4.3 Determination of Non-Responsibility**

When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the Contracting Officer should make and sign a written determination which states the basis for the finding of non-responsibility, and the Contracts and Purchasing Manager shall ensure that a copy of the determination is placed in the contract file, along with documents and reports supporting the determination of non-responsibility, including any pre-award survey reports. The Contracting Officer's decision is final, except as provided in Section 3.1.3.A, following below.

### **2.5 Responsiveness**

No contract shall be awarded to a bidder or offeror whose bid or proposal does not conform, in all material respects, to the requirements of a solicitation. The Contracts and Purchasing Manager may waive informalities—i.e., minor defects or variations of a bid or proposal from the exact requirements of an IFB or RFP, which do not affect the price, quality, quantity, or delivery schedule for the goods or services being procured.

### **2.6 Cancellation or Rejection**

Any solicitation, or any and all quotes, bids, or proposals received in response to a solicitation may be canceled or rejected when it would be in COG's best interests to do so. The reasons for cancellation or rejection shall be set forth in writing and made a part of the contract file.

### **2.7 Vendor List**

The Contracts and Purchasing Manager shall be responsible for preparing and maintaining an up-to-date list of qualified and capable sources who may offer goods and services for purchase by COG ("Vendor List"). The Manager shall update the Vendor List on a regular basis. DBEs, small businesses, minority-owned firms, women's business enterprises, etc., shall be included and identified on the Vendor List.

The Vendor List shall include, for each source:

- A.** an e-mail address to which solicitations may be sent;
- B.** a physical address and, if different, a mailing address;
- C.** a contact name and telephone number;
- D.** a description of the goods/services that the vendor provides;
- E.** indication of whether the source qualifies as a small business, minority-owned firm or women's business enterprise;
- F.** annotation as to whether the vendor is known to have been debarred by any federal, state or local contracting authority (*federal non-procurement debarment and suspension regulations set forth in 40 CFR part 32, implementing Executive Orders 12549 and 12689, "Debarment and Suspension," may restrict COG from entering into contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities*).

## **2.8 Disadvantaged Business Enterprises (“DBEs”)**

When required by regulation or agreement, COG will utilize disadvantaged business enterprises in accordance with its written DBE policy. In summary, said policy allows scoring points only for federally or state certified DBE’s, and not other more limited certification programs such as Small Business Women and Minority (“SWAM”) certifications.

## **2.9 Use of Technical Selection Committees (“TSC”)**

The Contracts and Purchasing Manager may determine to use a TSC to review proposals or bids and make a recommendation for award regarding a contract. When a TSC is used, it shall adhere to the following requirements:

- A.** TSC members must meet in person or by conference call to review the proposals or bids, unless otherwise excused by the Manager;
- B.** TSC members shall review the entire IFB or RFP, and all bid packages and proposals;
- C.** TSC must use scoring sheets which mirror those in the IFB or RFP;
- D.** TSC members shall not communicate with vendors until an award of the contract has been made.

## **2.10 Debriefings**

Within a time period set forth in the solicitation, an offeror may seek a debriefing by filing a notice with the Contracts and Purchasing Manager. During the debriefing, the offeror may request information and discuss its proposal with the Manager or other COG staff, whom the Manager requests to attend the debriefing; however, such information shall not include the proposals, proposed prices, or rankings of other offerors.

# **3 PROTESTS**

## **3.1 Right to Protest**

### **3.1.1 Aggrieved Bidders and Offerors**

Any aggrieved bidder or offeror may protest COG’s decision to award a contract. An “aggrieved bidder or offeror” is one who is an actual or prospective bidder or offeror, and who may be eligible for award of a contract if the protest is sustained. (*Example:* a fourth-ranked offeror will not be considered “aggrieved” and eligible to initiate a valid protest, unless the grounds for a protest, if sustained, would disqualify each of the top three (3) ranked bidders or offerors or would require that the solicitation be cancelled and reissued).

### **3.1.2 Deadline**

A protest must be submitted to COG’s Executive Director within five (5) working days of the date when the protester has received actual or constructive notice of COG’s decision to award a contract.

### **3.1.3 Contents of Protest**

The written protest shall identify the action being protested, or other basis for the protest, and it shall identify the specific relief sought. The written protest shall specifically describe relevant facts and documents, and shall cite to relevant language in the solicitation, COG's Procurement Policy, and any law relied upon.

- A.** No protest shall lie for a claim presented by an unsuccessful bidder or offeror, alleging that the successful bidder or offeror is non-responsible, except with respect to the following: (i) a good faith assertion, supported by verifiable factual evidence included with the written protest, that the successful bidder or offeror is debarred by a federal, state or local governmental authority, or (ii) a good faith assertion, supported by verifiable factual evidence included with the written protest, that the successful bidder or offeror does not hold a license or certification required by a governmental authority for or in connection with the provision of goods or services that are the subject of the solicitation. Except as noted above, a protest based on an allegation of non-responsibility of the successful offeror shall be deemed "invalid" for purposes of this section.
  
- B.** No protest shall lie for a claim presented by an interested party challenging the validity of the terms or conditions of any solicitation. Any such claim shall be deemed "invalid" for purposes of this section.

### **3.2 Authority to Resolve Protests**

The Executive Director shall have authority to make a final determination of whether a particular protester qualifies as an "interested party", whether a particular claim constitutes a valid protest, and to make final decisions on valid protests initiated by interested parties.

The Executive Director shall issue a decision in writing within five (5) working days after receipt of a protest, stating his findings and the reasons for the action taken. However, the Director may, in his sole discretion, afford an interested party the opportunity to present his valid protest in person before a final decision is rendered. If an in-person hearing is afforded, the Director shall render his written decision within five (5) days after the date on which the presentation occurs.

Decisions of the Executive Director shall be final.

### **3.3 Effect of Protest upon Contract Award**

Pending final determination of a protest, the validity of a contract awarded and accepted in good faith in accordance with this procurement policy shall not be affected by the fact that a protest or appeal has been filed.

COG shall not be required or compelled to delay the award of a contract for the period allowed for initiation of protests; however, if a protest is received prior to a decision to award a contract, then no further action shall be taken to award the contract unless: (i) the Executive Director renders a written determination that

proceeding without delay is necessary to protect COG's interests or (ii) a bid or offer would expire before a final decision on the protest can be rendered.

#### **4 CONTRACT FORMATION**

COG uses the following instruments to authorize purchases and contractually bind COG to a purchase of goods or services: (1) purchase cards; (2) purchase orders, and (3) formal written contracts.

##### **4.1 Purchase Card Transactions**

**A. Purchase Cards** may be used for purchases of goods and services, subject to compliance with the Small Procedures or other contractor selection procedure authorized by this Policy, as may be applicable.

**B. The use of Purchase Cards** shall be subject to the spending limits and other restrictions and requirements set forth in written Purchase Card Policy.

##### **4.2 Purchase Orders**

A purchase order is a written document, signed by an authorized officer or employee of COG, issued to a vendor to authorize the purchase of goods or services in specific quantities and prices. Purchase orders are commonly used in procurement transactions that involve smaller amounts of money and minimal terms and conditions (e.g., office supplies; office equipment).

If no prior offer or proposal signed by the vendor has been received, then COG's purchase order constitutes an offer by COG that is not enforceable until accepted by the vendor through a signed written confirmation. If a purchase order is used in a situation where COG has previously received a signed, written quote or proposal from a vendor, then the purchase order may be used as a means of documenting COG's acceptance of that quote/proposal; in such cases, the purchase order should, on its face, reference the date of the vendor's written quote/proposal.

###### **4.2.1 Preparation**

Purchase orders will be approved by a department head and the Contracts and Purchasing Manager, and shall clearly describe the item(s) being purchased, the contract price/cost, the purpose of the purchase, as well as, the project number and charge code. Each purchase order shall also include, on its face, or by reference to a separate document, a date for performance (e.g., a required delivery date; the date on which services must be completed, etc.).

Each purchase order will be signed by the Contracting Officer for the transaction referenced in the purchase order.

###### **4.2.2 Requirements to Be Referenced**

Transactions authorized by purchase order will reference and adhere to:

**A. COG's General Terms and Conditions for Contracts;**

- B. The requirements of 40 CFR Part 30, if required, and to any other applicable state or local requirements. Staff shall ensure that applicable requirements have been incorporated by reference into the purchase order, or were expressly incorporated by reference into the documents by which quotes or offers were solicited;
- C. A list of each of the documents that, together, set forth all of the terms and conditions of the contract.

#### **4.2.3 Availability of Funding**

When a COG officer or employee signs any purchase order he or she is certifying that (i) funds are available within COG's approved budget, or from additional funding awarded to COG, to cover COG's financial obligation in connection with the purchase and (ii) the terms of payment are reasonable and acceptable in accordance with applicable financial and accounting policies of COG.

### **4.3 Formal Written Contracts**

A formal contractual agreement is a document which sets forth all of the terms and conditions of the parties' agreement for the purchase of goods or services. In cases where a substantial amount of money is involved, complicated terms or conditions apply to a transaction, or both, a formal written agreement is used to ensure that all of the parties' agreements and understandings are set forth in one instrument that is signed by authorized representatives of both parties, as a means of verifying that there has been a "meeting of the minds" as to the obligations set forth within the document. A formal contractual agreement may be in a format as simple as a letter, or it may consist of multiple pages of terms, conditions, and requirements, with attachments, schedules, or exhibits. The form and content of a written contract document will depend on the nature of a particular transaction.

The requirements of Sections 4.2.2 and 4.2.3, above, shall also apply to formal written contracts.

### **4.4 Legal Review**

The Office of General Counsel ("General Counsel") is responsible for reviewing and approving standard forms, general terms and conditions, and written contract documents, as to their form and legal sufficiency.

### **4.5 Signatures**

Except for transactions completed with a Purchasing Card, all contracts must contain the signature of both the contractor and COG's Contracting Officer. Contracts that are not signed in compliance with this requirement are voidable at the option of COG.

## **5 CODE OF CONDUCT**

Consistent with corporate policy set forth in the Conflicts of Interest provisions of COG's Board of Directors' Rules of Procedure, and consistent with COG's general Human Resources policies, COG employees, members and officers of the Board,

and persons acting as agents of COG shall avoid conflict of interests, as well as situations which create the appearance of a conflict of interest. If there is any question as to whether a conflict, real or apparent, may exist, COG's Executive Director should be contacted immediately.

### **5.1 Personal Conflicts of Interest**

No employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing, may participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award.

Any person referenced in the preceding paragraph, who is uncertain as to whether he or she may have a conflict, should ask COG's General Counsel for an opinion. If requested, the General Counsel shall issue a written opinion stating the basis for the opinion, and the opinion shall be presumed to be correct. The General Counsel shall provide a copy of the opinion to the person who requested it, with copies to: the Executive Director; the Human Resources Director, as well as to an employee's supervisor and department head (if applicable); and to the Contracts and Purchasing Manager. The opinion may be relied upon by the person who requested it. Copies of all such written opinions shall be retained in the offices of each person who receives them. The Executive Director shall maintain an official file containing the Director's copies of such opinions.

### **5.2 Acceptance of Gifts or Gratuities**

Consistent with COG's general Human Resources Policies, the officers, employees, and agents of COG shall neither solicit nor accept gifts, gratuities, favors, or any other thing of more than nominal intrinsic monetary value, from contractors, potential contractors, or parties to grant sub-agreements. Meals paid for by a third party are considered gifts, gratuities or favors.

An unsolicited item, having a monetary value of \$5 or less, shall be deemed to have nominal intrinsic value ("*de minimus* gift"). An employee, officer or agent accepting a *de minimus* gift shall not be deemed in violation of this Policy; provided, however, that no such employee, officer or agent shall accept more than one *de minimus* gift from the same source (including affiliates) in any calendar year.

An exception is receipt of food-stuffs by employees, at COG's offices, which may be opened and shared in COG offices (for example: food baskets or candy).

### **5.3 Disciplinary Action**

Any officer, employee or agent of COG who violates the standards set forth in this code of conduct shall be subject to disciplinary action or sanctions imposed by the Board or Executive Director, as applicable, up to and including termination of his employment, appointment or contract with COG.

#### **5.4 Consultants Who Participate in Preparing Solicitations**

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids and/or requests for proposals shall be excluded from competing within such procurements. Such contractors shall execute a disclosure statement, specifying that they have no financial or other interest in the outcome of the procurement transaction.

#### **5.5 Handling Requests for Recommendation**

Requests by contractors or former contractors for letters of recommendation or other similar communications shall be sent to the Contracts and Purchasing Manager who shall make or approve any response before it is sent in order to ensure that the response accurately reflects the work of the contractor for COG and avoids any perception of impropriety. The Manager shall consult with the Executive Director and General Counsel, if necessary, to ascertain whether a letter of recommendation should be sent.

### **6 RECORDS OF PROCUREMENT TRANSACTIONS**

#### **6.1 Records of Formal Procurements**

The Contracts and Purchasing Manager shall ensure that written records are prepared and maintained, detailing the history of each Procurement transaction. Such records shall include, but not necessarily be limited to:

- A. Procurement Method;**
- B. Contract Type—for example: fixed price, cost reimbursement, etc.;**
- C. Contractor Selection—including reasons for contractor selection, and a written responsibility determination for the selected contractor;**
- D. Cost or Price Justification.**

The extent of documentation for a particular transaction shall be what is reasonable, given the size and complexity of the transaction.

#### **6.2 Records of Other Procurements**

For all other solicitations and procurement transactions, the Contracts Manager shall maintain a contract file containing a reasonable amount of documentation sufficient to demonstrate compliance with the requirements of this Policy.

#### **6.3 Retention Period**

Records of each procurement transaction shall be maintained for a period of three (3) years from the date final payment is made by COG in connection with the transaction, or for such other time period as may be required by federal or state law or regulations, or by applicable award requirements.

## **7 CONTRACT ADMINISTRATION**

### **7.1 Designated Contract Monitor**

The head of a department that initiated a purchase of goods or services, or to whose business the performance of a contract relates, shall designate a contract/project manager to be responsible for monitoring (i) a contractor's performance of a contract and (ii) implementation of the written terms and conditions of the contract. If a contractor violates any of the terms or conditions of its award, then the responsible contract/project manager shall notify the Contracts and Purchasing Manager immediately. The Manager shall be responsible for taking appropriate action. Additionally, the responsible contract/project manager will be responsible for reviewing each payment request submitted to COG by the contractor, to ensure that COG has received goods and services in accordance with contract requirements.

### **7.2 Commencement of Performance**

#### **7.2.1 Fully-Executed Contract Required**

Except for transactions made with a Purchasing Card, no COG officer or employee shall authorize the commencement of performance by any contractor, unless and until a contract signed by both COG and the contractor has been received by COG.

#### **7.2.2 Notice to Proceed**

Following receipt of a contract signed by both COG and the contractor, COG may issue a Notice to the contractor authorizing commencement of performance ("Notice to Proceed").

#### **7.2.3 Modification of Contract Requirements**

COG and a contractor, by mutual agreement, may delete contract requirements or add/increase contract requirements, so long as the nature and scope of the resulting contract is consistent with the terms, conditions and requirements of the original solicitation. So, for instance, COG may extend the time for performance applicable to a service contract, to allow completion of work undertaken but not completed during the original term of the contract. However, COG may not agree to a modification that excuses a contractor from less than the full performance of all tasks originally contracted for, unless the contractor, in exchange, gives full and fair consideration (discount on contract price, additional work at no charge, etc.). Likewise, COG may not modify a contract to agree to pay additional money for work which was required to be performed by the terms and conditions of the original contract.

The facts and circumstances of a particular contract, and the relationship between the contract, as modified, and the scope of work contemplated by the original solicitation, will enter into a determination of whether a particular contract modification is appropriate.

No fixed price contract may be increased by more than twenty-five (25%) of the amount of the original contract, without the advance written approval of the Contracting Officer. Any contract amendment that would result in an increase of compensation to the contractor of \$25,000 or more must have the advance approval of the COG Board, whether such contract involves a fixed-price or any other method of compensation.

- A. Such Board approval would be required, for example, for the renewal or extension of a contract, where (i) neither the solicitation nor the contract document identified the possibility of any renewal term(s), or (ii) the original contract did not require Board approval, however the extension or renewal of the contract would result in a situation where the contractor will receive, over the extended life of the contract, more than \$25,000 from COG.
- B. On the other hand, Board approval would not be required for renewal of a contract, if the original contract provided for one or more renewal term(s), and the Board approved the original contract.

In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of a bidder or offeror from the consequences of an error in its bid or proposal.

### **7.3 Cancellation or Termination**

The Contracting Officer shall be the only COG official or employee who is authorized to cancel or terminate a contract. Prior to any cancellation or termination, the Contracting Officer shall consult with the General Counsel. Prior to cancellation or termination, reasonable efforts should be made to avoid possible default by the contractor or by COG. If the need for cancellation or termination cannot be avoided, the Contracting Officer shall consult with the General Counsel to determine how to proceed in a manner that will minimize adverse financial or other consequences to COG.

### **7.4 Determination of Completion**

The contract/project manager shall inform the Contract and Purchasing Manager in writing, when, in the estimation of the contract/project manager, a contractor's obligations have been fully and completely performed in accordance with the terms, conditions and requirements of a contract. Upon receipt of this notice, the Manager shall verify that no outstanding issues of performance remain, that no unresolved claims or disputes remain outstanding between the parties, and that, where applicable, a funding agency agrees with the conclusions of the contract/project manager and has approved payment of a proposed final invoice. Upon this verification, and following receipt of a final invoice received from the contractor supported by all required documentation, COG may approve a final invoice for payment.

## **7.5 Contract Payments**

### **7.5.1 Invoices Required**

All requests for payment submitted by a contractor to COG shall be in the form of an invoice or billing statement acceptable to COG, in its discretion. Invoices shall be prepared and submitted to COG by a contractor, reference COG's Purchase Order number, and be supported by relevant documentation, in accordance with the terms and conditions of the applicable contract.

### **7.5.2 Review of Invoices**

Upon receipt of an invoice, no payment shall be made until the contract/project manager verifies whether COG has received all of the goods or services referenced in the invoice, and whether those goods or services have been provided in accordance with the terms and conditions of the contract. The responsible contract/project manager shall verify that the price(s) and charge(s) referenced on an invoice are correct, accurate, and in accordance with the terms and conditions of the parties' contract. Additionally, no payment shall be made by COG until other requirements of COG, and of federal or state funding agencies, have been satisfied (for example: in addition to review by a contract/project manager, each invoice will also be reviewed by COG's Department of Finance and Accounting for compliance with applicable contractual, financial and accounting requirements).

In instances where there is (i) a defect or impropriety in an invoice, (ii) a defect or impropriety in the goods or services referenced within an invoice, (iii) an objection by COG to the quantity, quality, or time of delivery of the goods or services or an invoice; or (iv) other dispute by COG as to whether the request for payment, or the goods or services that are the subject of the invoice are in compliance with the terms and conditions of the contract, then the Contracts and Purchasing Manager shall notify the contractor in writing of the issue and shall advise whether it is the intention of COG to withhold all or a portion of the contractor's payment as a result of the defect or impropriety.

## **8 EFFECTIVE DATE OF POLICY**

This policy was approved by vote of the Board of Directors, on July 10, 2013, and became effective as of July 10, 2013. This policy was amended May 11, 2016.