



CONCHO VALLEY COUNCIL OF GOVERNMENTS

Procurement Policy Index

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Introduction

1. CONTRACTING AND PROCUREMENT AUTHORITY

The Concho Valley Council of Governments (CVCOG), its programs, and Concho Valley Transit District (CVTD) reports to the Concho Valley Council of Governments Executive Director who is appointed by CVCOG Executive Board of Directors. The Executive Director is granted authority by the Executive Board to enter into contracts and agreements in accordance with (IAW) Federal rules, laws, guidelines and regulations as advised and guided by Procurement Policy. In no instance shall a contractual vehicle be executed for more than five years for rolling stock, five years with options not to exceed nine years total for services, and one year for all others in accordance with Federal rules, laws, guidelines, regulations, or FTA (CVTD specific) policies for commodities, utilities or other types of procurements.

1.1. Federal Laws and Regulations

CVCOG must comply with applicable 2 CFR Part 200, Texas Government Code Ch., 2155, Title 45 CFR, Federal Laws and Regulations including, but not limited to, Federal transit laws at 49

U.S.C. Chapter 53, Federal Transit Administration (FTA) regulations, and other Federal laws and regulations that contain requirements applicable to Agency recipients and their federal assisted procurements. FTA regulations and other Federal laws and regulations that contain requirements applicable to FTA recipients and their FTA assisted procurements specific to CVTD, but are not limited to the following for program specific procurements (CVCOG shall be responsible for complying with all other applicable laws and regulations particular to each program):

- a. Common Grant Rules – The Common Grant Rules for Governmental Recipients that apply to specific programs are stated in “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 2 CFR, 49 CFR Part 18 and 45 CFR Part 75.
- b. Federal Acquisition Regulations (FAR) – The FAR does not apply to federally assisted procurements, absent Federal laws or regulations to the contrary; however, in the case of FTA programs, FAR cost principles in Part 31 apply to grants and cooperative agreements with private for-profit entities. Although the FAR does not apply, CVCOG may review and utilize the FAR for guidance on how to accomplish specific tasks and incorporate language identified in acquisitions or contracts.
- c. Other Federal Requirements – In addition to the Common Grant Rules, CVCOG must comply with applicable Federal transit laws and implementing regulations not addressed in the Common Grant Rules, and with other Federal cross cutting statutes and regulations that affect what CVTD may acquire.
 - (1) Program Master Agreement – Citations to most Federal requirements are included in the latest edition of FTA’s Master Agreement, typically issued at the beginning of each Federal fiscal year, which includes comprehensive information about Federal laws and regulations that may apply to an FTA assisted project.
 - (2) Conflicting Federal Requirements – Requirements of the various Federal agencies that may be involved in the project will sometimes differ, with the result that agencies expect CVCOG to comply with all those differences. If compliance with all applicable Federal requirements is impossible, CVCOG may seek local Legal Counsel and should notify the Program Agency Chief Counsel for resolution.
- d. Waivers – Requests for waivers of Federal requirements should be addressed to the funding agency.

1.2. State and Local Laws and Regulations

In accordance with the Common Grant Rules, CVCOG and CVTD will use its own procurement procedures that comply with applicable State and local laws and regulations, and also comply with applicable Federal laws and regulations.

- a. Inadequate State and Local Requirements – If State or local laws or regulations do not adequately address a particular aspect of procurement, the FAR may provide useful guidance.
- b. Conflicts Between Federal Requirements and State or Local Requirements – If Federal requirements conflict with State or local requirements, CVCOG and/or CVTD should provide written notification promptly to either the Agency Regional Counsel or the Assistant Chief Counsel for General Law in the case of projects administered by headquarters staff. Agencies will then work with CVCOG to make appropriate arrangements to proceed with the project. If unsuccessful, then Agencies reserve the right to amend or terminate Federal assistance for the underlying project or local Legal Counsel as appropriate.

1.3. Statement of Policy

CVCOG and/or CVTD shall conduct all procurement transactions in a manner that provides full and open competition as determined by agency applicable guidance, FAR, state procurement law, policies, regulations, processes and/or guidelines. Full and Open Competition means all responsible contractors have equal opportunity to compete. This starts with publicizing requirements. Micro purchases up to \$999.99 does not require competition or advertising. Between \$1000.00 and \$2999.99 shall have market research or three quotes. However, if fair and open competition or multiple quotes are not a factor then a determination of “fair and reasonable” shall be required. All purchases between \$3,000 and \$24,999.99 shall be competed. Above \$25,000 shall be advertised in a newspaper of general circulation or a trade journal and or electronic websites and board approval prior to contract execution required.

CVCOG shall adopt a written code of standards of conduct which provides that no employee, officer, agent, immediate family member, or Board member of the Recipient shall participate in the selection, award, or administration of a contract supported by agency funds if a conflict of interest, real or apparent, would be involved. The recipient defines such a conflict to be when any of the following has a financial or other interest in the firm selected for award:

- a) The employee, officer, agent, or Board member;
- b) Any member of his/her immediate family;
- c) His or her partner; or
- d) An organization that employs, or is about to employ, any of the above.

CVCOG and CVTD’s code of conduct also provides that its officers, employees, agents, or board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements and contains penalties, sanctions, or other disciplinary action for violation of such standards by the recipient’s officers, employees, or agents, or by contractors or their agents.

1.3.1. Definition of Key Terms Concerning Conflict of Interest

- a. Conflict of Interest – A situation in which an employee, Board Member, officer, or agent has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. A conflict of interest represents a divergence between an employee’s private interests and his or her professional obligations to CVCOG or CVTD such that an independent observer might reasonably question whether the employee’s professional actions or decisions are determined by considerations of personal gain, financial or otherwise.
- b. Immediate Family – Immediate Family includes an employee’s spouse, grandparent, parent, brother, sister, child or grandchild, his or her partner.

1.3.2. Employee Conflict of Interest

- a. Conflict of Interest – It shall be a breach of ethical standards for any CVCOG employee who participates directly or indirectly in a procurement when the employee knows:
 - (1) The employee or any member of the employee’s immediate family, board member, officer, agent, his or her partner, has a financial interest pertaining to the procurement;
 - (2) A business or organization in which the employee, or any member of the employee’s immediate family, has a financial interest pertaining to the procurement; or
 - (3) Any other person, business or organization with whom the employee or any member of employee’s immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
- b. Discovery of Actual or Potential Conflict of Interest (Disqualification and Waiver) – Upon discovery of an actual or potential conflict of interest, an employee participating directly or indirectly in a procurement shall:
 - (1) Promptly file a written statement of disqualification with the Executive Director; and
 - (2) Withdraw from further participation in the procurement.

The employee may, at the same time, request from the Executive Director an advisory opinion as to what further participation, if any, the employee may have in the procurement. It shall be at the sole discretion of the Executive Director to determine if the employee may have any further participation in the procurement and, if so, the extent to which the employee may participate. Any employee who fails to comply with the provisions of this paragraph may be subject to disciplinary action.

1.3.3. Employee Disclosure Requirements

A CVCOG employee, who has reason to believe that he/she or his/her immediate family have an interest that may be affected by his/her official acts or actions as a CVCOG employee or by the official acts or actions of CVCOG, shall disclose the precise nature and value of such interest in a written disclosure statement to the Executive Director. The employee's disclosure statement will be reviewed by the Executive Director and the Executive Director will respond to the employee in writing with an opinion as to the propriety of said interest.

1.3.4. Confidential Information

A CVCOG employee may not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of their position or employment with CVCOG or CVTD.

1.3.5. Solicitation Provision

CVCOG and CVTD procurements shall require the insertion of the following provision in all formal competitive solicitation documents for products and services:

CVCOG has adopted Standards of Ethical Conduct for Procurement for all CVCOG employees involved in procurement. It is a breach of ethical standards for any CVCOG employee to participate directly or indirectly in a procurement when the employee knows:

- (1) The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
- (2) A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- (3) Any other person, business or organization with whom the employee or any member of employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

In addition, any persons acting as members of the Evaluation Committee for this procurement shall, for the purposes of this procurement, be bound by CVCOGs Standards of Ethical Conduct for Procurement. Throughout the bid/proposal evaluation process and subsequent contract negotiations, Offerors shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the evaluation process or the contract negotiations, with members of the Evaluation Committee, CVTD Board of Trustees, CVCOG Executive Committee, or CVCOG employees other than the CVCOG Procurement Staff.”

1.3.6. Third-Party Contracting Capacity

Revenue Contracts

To ensure fair and equal access to all federally funded or agency assisted property and to maximize revenue derived from such property, CVCOG shall on behalf of all programs conduct its revenue contracting as follows:

- (a) Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
- (b) Open Contract Opportunities. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

CVCOG Procurement must maintain adequate technical capacity to carry out its agency and federally funded projects on behalf of all CVCOG programs and comply with Federal Common Grant Rules, Circulars, Federal and State Laws, regulations and guidelines. All third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements. Adequate planning is a key to effective and efficient procurement. All programs under the purview of CVCOG will conduct annual planning with its requirement organization in advance of receipt of purchase requests. Annual planning will assist both Procurement staff and program customers in timely contract awards.

CVCOG programs will conduct formal planning for all requirements in excess of \$100,000.00 using Attachment A as a guide.

1.3.6.1. Specific Requirements Include:

- a. Contract Administration System – CVCOG Procurement shall maintain a contract administration system to ensure that it and its third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local requirements to include policies and procedures.
- b. Written Procurement Procedures – CVCOG Procurement Staff shall be responsible to ensure compliance and maintenance of procurement procedures that address the following as determined applicable and appropriate by Procurement Staff:
 - (1) Solicitations – Requirements for solicitations.
 - (2) Necessity – Requirements related to need for products or services.
 - (3) Lease Versus Purchase – Requirements related to the use of lease or purchase alternatives to achieve an economical and practical procurement.
 - (4) Metric Usage – Requirements related to the acceptance of products and services dimensioned in the metric system of measurement.

- (5) Environmental and Energy Efficiency Preferences – Requirements related to preference for products and services that conserve natural resources, protect the environment, and are energy efficient.
 - (6) Procurement Methods – Descriptions of procurement methods appropriate and deemed applicable to the acquisition.
 - (7) Legal Restrictions – Descriptions of Federal and State restrictions on.
 - (8) Third Party Contract Provisions – Specific third party contract provisions required for each third party contract and flow down requirements to subcontracts as determined to be appropriate and applicable for each acquisition.
 - (9) Sources – Descriptions of the availability and use of various sources of products and services.
 - (10) Resolution of Third Party Contracting Issues – Procedures related to the resolution of third party contracting issues.
- c. Adequate Third Party Contract Provisions – Procurement Staff shall include provisions in all of its third party contracts that are adequate to form a sound and complete contract/agreement.
 - d. Industry Contracts – CVCOG shall not use an industry developed contract or a contract that is provided by a bidder or offeror unless it has first been evaluated and the benefits of the provided contract is determined to be acceptable to CVCOG. CVCOG shall ensure that such contracts include all required Federal provisions but do not include terms and conditions that may be unfavorable to any CVCOG program.
 - e. Record Keeping – CVCOG must prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. CVCOG must maintain these records for seven (7) years (unless otherwise determined) after CVCOG and its subrecipients, if any, have made final payment and all other pending matters are closed. Specific record keeping requirements include:
 - (1) Written Record of Procurement History – CVCOG Procurement and Finance Departments shall maintain and make available to funding agencies, written records detailing the history of each procurement. For all procurements above the micro-purchase level Procurement Staff must maintain records relating to:
 - a. Procurement Method – must provide rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive;
 - b. Contract Type – must state the reasons for selecting the contract type it used;
 - c. Contractor Selection – must state its reasons for contractor selection or rejection;
 - d. Contractor Responsibility – must provide a written determination of responsibility for the successful contractor;

- e. Cost or Price – must evaluate and state its justification for the contract cost or price; and
 - f. Reasonable Documentation – must retain documentation commensurate with the size and complexity of the procurement.
- (2) Access to Records – CVCOG must provide FTA, DOT officials, the Comptroller General, funding agencies, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any agency project financed with Federal assistance.
- f. Use of Technology/Electronic Commerce – CVCOG and subrecipients may use an Electronic Commerce system to conduct third party procurements. If an Electronic Commerce system used then the following requirements apply:
- (1) Sufficient System Capacity – system must have sufficient system capacity necessary to accommodate all federal requirements for full and open competition.
 - (2) Written Procedures – Before any solicitation takes place CVCOG must establish adequate written procedures to ensure that all information required for project administration is entered into the system and can be made readily available to any entity identified in 1.3.6 as needed.
 - (3) Uses – CVCOG may use its system to undertake the following types of third party procurements:
 - a. Standard Bidding and Proposal Procedures. Standard procurement procedures may be implemented through an electronic medium or resource to the extent of the system’s capacity.
 - b. Electronic Bidding and Reverse Auctions. CVCOG and subrecipients may use electronic bidding and reverse auctions.

1.3.7. Determination of Needs

CVCOG must maintain and follow adequate procedures for determining the types and amounts of products and services it needs to acquire. CVCOG shall comply with the following requirements when determining the types and amounts of products and services it needs to acquire:

- a. Eligibility – All products and services to be acquired with Federal, State, Grant, or FTA funds must be eligible under the Federal or State law authorizing the funding entity or assistance award and any regulations there under. All products and services to be acquired with federal, state, grant, or agency funds must also be eligible for support within the scope of the underlying grant or cooperative agreement from which the federal, state, grant, or agency assistance to be used is derived.
- b. Necessity – CVCOG shall adhere to the following standards for avoiding the purchase of duplicative and/or unnecessary products and services it does need.

- (1) Unnecessary Reserves – CVCOG shall limit the acquisition of federally assisted property and services to the amount it needs to support its operations.
- (2) Acquisition for Assignment Purposes – CVCOG shall contract only for its current and reasonably expected public transportation or other needs and shall not add quantities or options to third party contracts solely to permit assignment to another party at a later date.
 - a. If CVCOG chooses not to exercise all of its contract options for a particular contract, it may assign its unneeded contract authority to another entity that would like to acquire the products or services.
 - b. The general limit on assignments does not preclude CVCOG or its programs or subrecipients from participating in joint procurements or purchasing from State Government Purchasing Contracts.
- c. Procurement Size – For every procurement, CVCOG shall consider whether to consolidate or break out the procurement to obtain the most economical purchase. Absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms and women’s business enterprises, CVCOG programs or subrecipients shall not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.
- d. Options – CVCOG programs or subrecipients shall justify as needed all option quantities included in every solicitation and contract.
- e. Lease Versus Purchase – CVCOG shall review lease versus purchase alternatives for acquiring property and shall prepare or obtain an analysis to determine the most economical alternative. If CVCOG chooses to lease an asset then it must prepare a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset.
- f. Specifications – CVCOGs program or subrecipient specifications shall clearly describe the products or services to be procured and shall state how the proposals will be evaluated. Specifications shall not be exclusionary, discriminatory, unreasonably restrictive or otherwise in violation of Federal or State laws, regulations, or guidelines.

1.3.8. Federal Requirements That May Affect Acquisitions

CVTD shall not use FTA assistance to support acquisitions that do not comply with all applicable Federal requirements. For every procurement and contract that is funded with FTA assistance, CVTD shall reference all applicable Federal and State requirements that shall apply to the procurement and contract. CVTD will use FTA C4220.1F, Appendix D, to determine applicability of the specific language of a clause that should be used. Additionally, the following procurement philosophies and principles may also be applied to CVCOG subrecipient

acquisitions if applicable and not contrary to Federal or State Law, guidelines or regulations as determined by Procurement Staff.

Specific Federal requirements that may apply to procurements and contracts and that are not referenced elsewhere in this Procurement Manual include, but are not limited to, the following:

- a. Administrative Restrictions on the Acquisition of Property and Services – The following Federal laws and regulations impose administrative requirements, many of which will affect specific third party procurements.
 - (1) Federal Cost Principles – The Common Grant Rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable. The Federal cost principles that are applicable are OMB Guidance for Grants and Agreements, “Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87),” [2 CFR Part 225] and FAR Part 31.
 - (2) Payment Provisions – CVCOG may use its own funds to finance its contracts; however, if it is intended to use Federal assistance, expecting to be reimbursed with Federal assistance, or dedicates its local share funds to support contract costs it has financed, then the following requirements shall apply to its contract payment provisions:
 - a. Agency Support for the Project – program agency must indicate its general interest in the project before CVCOG may use assistance to finance or reimburse project costs, or use local share funds for project costs. Projects specific to: FTA expresses its general interest in the project when it has taken one of the following actions:
 1. Award Made – FTA has awarded Federal assistance through a grant or cooperative agreement for the underlying project;
 2. Pre-award Authority – FTA has provided pre-award authority for the underlying project through a Federal Register notice;
 3. Letter of No Prejudice – FTA has issued a letter of no prejudice for the underlying project.
- (a) Advance Payments – Advance payments are payments made to a contractor before the contractor incurs contract costs. CVCOG may use its local share funds for advance payments; however, if there is no automatic pre-award authority for its project, then advance payments made with local share funds before Federal assistance has been awarded, or before a letter of no prejudice has been issued or other pre-award authority has been provided, or before Federal or FTA approval for the specific advance payment has been obtained,

are ineligible for reimbursement. The following principles and restrictions apply:

1. Use of Federal, Agency or FTA Assistance Prohibited – CVCOG may not use Federal or agency assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable.

2. Exceptions for Sound Business Reasons – CVCOG may make an exception to the prohibition against advance payments if it can provide sound business reasons for doing so and has obtained Federal, Agency or FTA’s advance written concurrence.

- a. Adequate Security – Adequate security for the advance payment is an essential pre-condition to Federal, Agency or FTA’s concurrence in the use of Federal, FTA or local share funds.
- b. Customary Advance Payments – It is recognized that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, CVCOG may use Federal, Agency or FTA assistance to support or reimburse the costs of such acquisitions. Specific agency ~~Federal~~ ~~or FTA~~ concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.

(b) Progress Payments – Progress payments are payments for contract work that has not been completed. CVCOG may use specific agency ~~Federal~~ ~~or FTA~~ assistance to support progress payments provided CVCOG obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

1. Adequate Security for Progress Payments – Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect CVCOG’s financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances.
2. Adequate Documentation – Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.
3. Percentage of Completion Method – The Common Grant Rules require that any progress payments for construction contracts be made on a

percentage of completion method described therein. CVCOG, however, may not make progress payments for other than construction contracts based on this percentage method.

1. Protections Against Performance Difficulties – CVCOG shall include provisions in its third party contracts that will reduce potential problems that might occur during contract performance. CVCOG shall include provisions in its third party contracts that address the following:

- a. Changes – CVCOG shall include provisions that address changes and changed conditions in all third party contracts except for routine supply contracts.

- b. Remedies – CVCOG shall include provisions that address remedies in its third party contracts. Provisions related to remedies may include provisions for:

- (1) Liquidated Damages – CVCOG may use liquidated damages if CVCOG reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. Rate and measurement standards must be calculated to reasonably reflect CVCOG's costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages may be established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The contract file must include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless the specific agency ~~FTA~~ permits otherwise.

- (2) Violation or Breach – Third party contracts exceeding \$100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third party contractor.

- (3) Suspension of Work – CVCOG may include provisions pertaining to suspension of work in its third party contracts.

- (4) Termination – Termination for cause and termination for convenience provisions must be included in third party contracts exceeding \$10,000.

- b. Socio-Economic Requirements for the Acquisition of Property and Services – The following Federal laws and regulations imposing socio-economic requirements may affect a specific procurement:
- (1) Labor – The following Federal labor protection laws and regulations may affect the types of property and services that may be acquired with FTA assistance:
 - a. Wage and Hour Requirements – For contracts in excess of \$100,000 that include labor performed by mechanics and/or laborers, CVCOG shall include contract provisions related to wage and hour requirements. CVCOG shall include provisions in its third party contracts requiring the contractor to compute the wages of every mechanic and laborer based on a standard workweek of 40 hours. Work in excess of the standard workweek is permitted if the worker is compensated at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the workweek.
 - b. Fair Labor Standards – The Fair Labor Standards Act [29 U.S.C. Sections 201 et seq.] applies to employees performing work involving commerce.
- c. Rolling Stock–Special Requirements (specific but not limited to CVTD) – The following Federal laws and regulations impose requirements that may affect rolling stock procurements. CVCOG will comply with the following requirements when using Federal funds.
- (1) Accessibility – Rolling stock must comply with the accessibility requirements of DOT regulations, “Transportation Services for Individuals with Disabilities (ADA)” [49 CFR Part 37], and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles” [36 CFR Part 1192 and 49 CFR Part 38].
 - (2) Transit Vehicle Manufacturer Compliance with DBE Requirements – Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 CFR Section 26.49 requires the TVM to submit a certification that it has complied with FTA’s DBE requirements.
 - (3) Minimum Service Life – CVCOG shall maintain satisfactory continuing control of Federal or FTA assisted property. For buses and certain other vehicles, FTA has established minimum service life policies that may affect the quantity of vehicles that CVCOG may acquire.

- (4) Spare Ratios – CVCOG shall not acquire an excessive number of spare vehicles not regularly used in public transportation service.
 - (5) Air Pollution and Fuel Economy – Each third party contract to acquire rolling stock must include provisions to ensure compliance with applicable Federal air pollution control and fuel economy regulations, such as EPA regulations, “Control of Air Pollution from Mobile Sources” [40 CFR Part 85]; EPA regulations, “Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines” [40 CFR Part 86]; and EPA regulations, “Fuel Economy of Motor Vehicles” [40 CFR Part 600].
 - (6) Pre-award and Post Delivery Review – Each third party contract to acquire rolling stock must include provisions to ensure compliance with applicable requirements of 49 U.S.C. Section 5323(m) and FTA regulations, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases” [49 CFR Part 663], that do not conflict with 49 U.S.C. Section 5323(m).
 - (7) Bus Testing – Each third party contract to acquire a new bus model or a bus with significant alterations to an existing model must include provisions to assure compliance with applicable requirements of FTA regulations, “Bus Testing” [49 CFR Part 665].
 - (8) In-State Dealers – CVCOG may not limit third party bus procurements to in-State dealers [49 U.S.C. Section 5325(i)].
 - (9) Basis for Contract Award – As permitted by 49 U.S.C. Section 5325(f), CVCOG may award a third party contract for rolling stock based on initial capital costs, or based on performance, standardization, life cycle costs, and other factors, or by selection through a competitive procurement process.
 - (10) Five-Year Limitation – CVCOG may enter into a multi-year contract to buy rolling stock with an option not exceeding five (5) years to buy additional rolling stock or replacement parts [49 U.S.C. Section 5325(e)(1)]. CVCOG may not exercise that option later than five (5) years after the date of its original contract.
- d. Public Transportation Services—Special Requirements (specific but not limited to CVTD) – Although the Common Grant Rules refer to the following Federal requirements in the context of federally assisted procurements, these requirements will affect how a third party contractor implements its contract to provide public transportation services financed with Federal assistance. Consequently, CVTD must include provisions in its third party contract ensuring compliance with the following requirements, or CVTD must obtain the third party contractor’s

agreement in another form, as a matter of contractor responsibility, to ensure compliance with the following:

- (1) Protections for Public Transportation Employees – When CVTD acquires public transportation services from a third party contractor, the terms of CVTD’s DOL certification of public transportation employee protective arrangements will apply to work under the contract provided by those employees covered by the certification, which is required by 49 U.S.C. Section 5333(b) and implementing DOL guidelines, “Section 5333(b), Federal Transit Law” [29 CFR Part 215]. Consequently, the third party contractor must comply with the terms of that DOL certification. The Fair Labor Standards Act [29 U.S.C. Sections 201 et seq.] also applies to public transportation employees performing work involving commerce.
- (2) Drug and Alcohol Testing – A third party contractor providing services involving the performance of safety sensitive activities must comply with 49 U.S.C. Section 5331 and FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations” [49 CFR Part 655].
- (3) Accessibility – A third party contractor providing public transportation services must operate its services in compliance with 42 U.S.C. Sections 12101 et seq. and DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” using facilities and equipment that comply with 49 CFR Part 37; and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles” [36 CFR Part 1192 and 49 CFR Part 38]. Private entities must comply with the requirements of 49 CFR Part 37 applicable to public entities with which they contract to provide public transportation services.
- (4) Protection of Animals – A third party contractor providing services involving the use of animals must comply with the Animal Welfare Act [7 U.S.C. Sections 2131 et seq.] and Department of Agriculture regulations, “Animal Welfare” [9 CFR Subchapter A, Parts 1, 2, 3, and 4].
- (5) Charter Service Restrictions – A third party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support any charter service operations except as permitted by 49 U.S.C. Section 5323(d) and FTA regulations, “Charter Service” [49 CFR Part 604].
- (6) School Bus Restrictions – A third party contractor performing services using FTA assisted facilities or equipment may not use those facilities or that equipment to support exclusive school bus operations except as permitted by 49 U.S.C. Sections 5323(f) or (g) and FTA regulations,

“School Bus Operations” [49 CFR Part 605], to the extent consistent with 49 U.S.C. Sections 5323(f) or (g).

- e. Architectural Engineering (A&E) and Related Services—Special Requirements – Federal laws and regulations impose the following requirements on A&E and related procurements which CVTD will comply with:
- (1) Qualifications-Based Requirements – For projects related to or leading to construction, CVCOG must use the qualifications-based procurement procedures of 40 U.S.C. Chapter 11 (Brooks Act procedures) when contracting for A&E services and other services described in 49 U.S.C. Section 5325(b), which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services.
 - (2) Relation to Construction – The nature of the services to be performed and its relationship to construction, not the nature of the prospective contractor, determines whether qualifications-based procurement procedures may be used.
 - a. Purpose of Services – CVCOG interprets 49 U.S.C. Section 5325(b) to authorize the use of qualifications-based procurement procedures only for those services that directly support or are directly connected or related to construction, alteration, or repair of real property.
 - b. Requirements in the Context of a Construction Project – A project involving construction (including an ITS project) does not always require the use of qualifications-based procurement procedures. Whether qualifications-based procurement procedures may be used depends on the actual services to be performed in connection with the construction project.
 - c. Type of Contractor Not Determinative – The nature of the firm performing the services does not determine whether it will be selected through the use of qualifications-based procurement procedures.
 - (3) Equivalent State Law – As amended by the SAFETEA-LU Technical Corrections Act, 49 U.S.C. Section 5325(b)(1) requires A&E services to be procured using either Brooks Act procedures or an equivalent qualifications-based requirement adopted by a State before August 10, 2005 when selecting contractors using qualifications-based procurement procedures.
 - (4) Special Requirements for Indirect Cost Rates – SAFETEA-LU amended 49 U.S.C. Section 5325 to require the acceptance of FAR indirect cost

rates for applicable one-year accounting periods if those rates are not currently in dispute. After the indirect cost rates are accepted as required, CVTD must use those indirect cost rates for contract estimates, negotiation, administration, reporting, and payments, with administrative or de facto ceiling limitations.

f. Construction--Special Requirements – The following Federal laws and regulations impose requirements that may affect agency assisted construction projects:

- (1) Bonding – The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold unless the funding agency~~FTA~~ determines that other arrangements adequately protect the Federal interest. CVCOG’s bonding policies are as follows:
 - a. Bid Guarantee – Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to five percent (5%) of its bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.
 - b. Performance Bond – Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for one hundred percent (100%) of the contract price. A “performance bond” is obtained to ensure completion of the obligations under the third party contract.
 - c. Payment Bond – The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for one hundred percent (100%) of the contract price. A “payment bond” is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. CVCOG has determined that payment bonds in the following amounts are adequate to protect agency interest and will accept a local bonding policy that meets the following minimums:
 1. Less Than \$1 Million – Fifty percent (50%) of the contract price if the contract price is not more than \$1 million;
 2. More Than \$1 Million but Less Than \$5 Million – Forty percent (40%) of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 3. More Than \$5 Million – Two and one half million dollars (\$2,500,000) if the contract price is more than \$5 million (\$5,000,000).

- d. Reduced Bonding – Specific funding agencies or FTA will accept a local bonding policy that conforms to the minimums described above. Agencies may reserve the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. If CVCOG wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project, it should submit its policy and rationale to the funding agency FTA Regional Administrator.
 - (e) Excessive Bonding – Compliance with State and local bonding policies that are greater than agency bonding requirements do not require FTA approval; however, if “excessive bonding” requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements.
- (2) Seismic Safety – CVTD must include seismic safety provisions in its third party contracts for the construction of new buildings or additions to existing buildings as required by 42 U.S.C. Sections 7701 et seq., and DOT regulations, “Seismic Safety” [49 CFR Part 41 at Sections 41.117 and 41.120].
 - (3) Value Engineering – The Common Grant Rule for governmental recipients encourages them to use value engineering provisions in contracts for construction projects, and cautions that value engineering can be a pre-requisite for some Federal assistance awards.
 - (4) Equal Employment Opportunity – The Common Grant Rules require that third party construction contracts include provisions ensuring compliance with DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor” [41 CFR Parts 60 et seq.], which implement Executive Order No. 11246, “Equal Employment Opportunity,” September 24, 1965, as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” October 13, 1967.
 - (5) Prevailing Wages – Under 49 U.S.C. Section 5333(a), Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction projects. Third party contracts at any tier exceeding \$2,000 must include provisions requiring compliance with the Davis-Bacon Act [40 U.S.C. Sections 3141 et seq.], and implementing DOL regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction” [29 CFR Part

5]. The Davis-Bacon Act requires contractors to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. The Davis-Bacon Act also requires contractors to pay wages not less than once a week. CVTD must include a copy of the current prevailing wage determination issued by DOL in each contract solicitation and must condition contract award upon the acceptance of that wage determination. These requirements are in addition to the separate Wage and Hour Requirements addressed above.

- (6) Anti-Kickback – All third party construction and repair contracts exceeding \$100,000 require provisions for compliance with the Copeland “Anti-Kickback” Act, as amended [18 U.S.C. Section 874], and implementing DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States” [29 CFR Part 3]. The Copeland Anti-Kickback Act prohibits a contractor from inducing, by any means, any employee, to give up any part of his or her compensation to which he or she is otherwise entitled.
- (7) Construction Safety – All third party construction and repair contracts exceeding \$100,000 require provisions to ensure safety at construction sites so that no laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous as prohibited by the safety requirements of Section 107 of the Contract Work Hours and Safety Standards Act [40 U.S.C. Section 3704], and its implementing DOL regulations, “Safety and Health Regulations for Construction” [29 CFR Part 1926].
- (8) Labor Neutrality – Executive Order No. 13502, “Use of Project Labor Agreements for Federal Construction Projects,” February 6, 2009, rescinds Executive Order No 13202, “Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects,” February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. Section 251 note. Consequently, a recipient may now require the use of a project labor agreement (PLA) in its third party contract, and a third party contractor or subcontractor may continue to use a PLA should it choose to do so.
- (9) Preference for U.S. Property—Buy America – For any FTA assisted third party construction contract exceeding \$100,000, agency FTA’s Buy America requirements may require the third party contractor to provide property produced or manufactured in the United States for use in the

construction project that CVCOG ~~CVTD~~ acquires, unless the agency ~~FTA~~ has granted a waiver authorized by those regulations.

- (10) Accessibility – Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 et seq., DOT regulations, “Transportation Services for Individuals with Disabilities (ADA)” [49 CFR Part 37], and Joint ATBCB/DOT regulations, “Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles” [36 CFR Part 1192 and 49 CFR Part 38].

g. Research, Development, Demonstration, Deployment and Special Studies--
Special Requirements – Procurements of research-type services can involve circumstances that bring special Federal requirements into effect, including:

- (1) Patent Rights – CVCOG and CVTD’s third party contracts require provisions consistent with Department of Commerce regulations, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms” [37 CFR Part 401 (implementing 35 U.S.C. Sections 200 et seq.)], unless the Federal Government requires otherwise. Except in the case of an “other agreement” in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive royalty free license to use the resulting invention or patent to the invention for Federal Government purposes.
- (2) Rights in Data – The following conditions shall apply to rights in data requirements for FTA assisted research, development, demonstration, or special studies projects:
- a. Publication Restrictions – Except for its own internal use, neither CVCOG, CVTD nor the third party contractor may publish or reproduce subject data in whole or in part, or in any manner or form, without the advance written consent of the Federal Government, unless the Federal Government has released or approved the release of that data to the public.
 - b. Distribution of Data – Except for contracts for adaptation of automatic data processing equipment or data provided in support of a capital project, and third party contractors must agree that, in addition to the rights in data and copyrights that they must provide to CVCOG or funding agencies, agencies may make available to any recipient, subrecipient, third party contractor, or third party subcontractor, either license in the copyright to the subject data or a copy of the subject data. If, for any reason, the project is not completed, all data developed under the project is expected to be delivered as the agency may direct. In certain circumstances,

however, agencies may determine that it is in the public interest to take only those rights in data identified in the Common Grant Rules.

- (3) Export Control – If data developed in the course of a third party contract is subject directly or indirectly to U.S. Export Control regulations, that data may not be exported to any countries or any foreign persons, without first obtaining the necessary Federal license or licenses and complying with any applicable Department of Commerce, Export Administration Regulations [15 CFR Part 730].
 - (4) Protection of Human Subjects – A third party contractor providing services involving the use of human subjects must comply with 42 U.S.C. Sections 289 et seq., and DOT regulations, “Protection of Human Subjects” [49 CFR Part 11].
 - (5) Protection of Animals – A third party contractor providing services involving the use of animals must comply with the Animal Welfare Act, 7 U.S.C. Sections 2131 et seq., and Department of Agriculture regulations, “Animal Welfare” [9 CFR Subchapter A, Parts 1, 2, 3, and 4].
- h. Audit Services – In general, the procurement procedures in the CVCOG Procurement Manual apply to the acquisition of audit services financed with agency assistance; however, the following considerations are especially important in procurements of audit services:
- (1) Single Audit Act – Each recipient that spends \$500,000 or more in Federal awards in a single year must obtain an audit as required by the Single Audit Act of 1984, as amended [31 U.S.C. Sections 7501 et seq.], and must ensure compliance with OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” as revised.
 - a. Organizational Conflicts of Interest – The auditor selected must be independent of the recipient.
 - b. Eligibility of Costs – If programs spend \$500,000 or more in Federal awards in a single year it may charge the costs for audits required by the Single Audit Act to its project as direct or indirect costs as permitted by applicable Federal Cost Principles.
 - (2) Other Project Audits – Before procuring audit services for a specific contract or project, CVCOG should be aware of the following:
 - a. Organizational Conflicts of Interest – In general, CVCOG must select an auditor that is independent of the third party contractor to be audited.
 - b. Verification of Indirect Costs – Federal verification of a contractor’s indirect cost rates, such as provisional overhead

(burden) and General & Administrative (G&A) rates, may be required. To the extent possible, relevant information available through undisputed audits of the contractor by other recipients should be used.

- c. Duplication of Services – To prevent duplication and ensure the eligibility of particular audit services for Federal participation, CVCOG should contact the funding agency before undertaking an audit. 49 U.S.C. Section 5325(b)(3) requires that FAR Part 31 cost principles be used to audit A&E contracts. In addition, 49 U.S.C. Section 5325(b)(3) requires CVCOG, CVTD and its A&E contractors and subcontractors to accept indirect cost rates established under FAR cost principles if those rates are not under dispute. CVCOG should not obtain duplicative audits because they are likely to produce disparate indirect cost rates and may be ineligible for Federal assistance. CVCOG should seek guidance from the cognizant Federal auditor or agency that approved the third party contractor’s indirect cost rates before entering into audit contracts.
- d. Eligibility of Costs – Costs of third party contract audits and proposal evaluations are eligible for reimbursement by funding agencies and programs as a direct or indirect charge as permitted by applicable Federal cost principles. Specific agencies may reserve the right to disallow payments for duplicative audit charges.

2. SOLICITATION, EVALUATION, AND CONTRACT AWARD

2.1.1. Competition Required

As a recipient of Federal assistance, CVCOG must use third party procurement procedures that provide full and open competition. Third party contract awards may be made on the basis of:

- a. Solicitation of Competitive Price Quotes, Bids or Proposals – Compliance with the solicitation procedures described below will fulfill requirements for “full and open competition”.
- b. Receipt and Evaluation of Unsolicited Proposals – CVCOG may enter into contracts based on an unsolicited proposal when authorized by applicable Federal or State Law, guidelines, or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, CVCOG must seek competition.

- c. Prequalification – CVCOG programs or subrecipients may prequalify bidders, offerors and products for procurement purposes; however, CVCOG is not required to do so. The decision of whether to require prequalification for eligibility to participate in a procurement shall be made separately ~~for every procurement~~ and shall be approved by the Executive Director.

CVCOG subrecipients may prequalify bidders, offerors and products for procurement purposes if:

- (1) CVCOG Procurement ensures that all prequalification lists it uses are current;
- (2) CVCOG Procurement ensures that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition; and
- (3) CVCOG permits potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). CVCOG and its subrecipients or programs are not required to hold a particular solicitation open to accommodate a potential supplier that submits products for approval before or during that solicitation nor must CVCOG expedite or shorten prequalification evaluations of bidders, offerors, or products presented for review during the solicitation period.

2.1.2. Independent Cost Estimate (ICE)

For every procurement a written independent estimate of cost prior to receiving price quotes, bids, or proposals must be submitted. If the item or service to be procured is a commercial product, requiring activities can develop an ICE based upon catalog or advertised prices. If purchasing vehicles, requiring activities can gather pricing information from other recipients to develop an ICE. For construction projects, the development engineers should provide the ICE for the project. To develop an ICE for an A&E contract, subrecipients or programs may need to obtain or acquire the ability to build up a cost proposal similar to that which will be proposed by the A&E.

2.2. Sources of Acquisition

CVCOG subrecipients or programs may acquire products and services from the following sources:

- a. Open Market – The open market shall be the primary source of acquisition. Methods of procurement for acquisition of products and services from the open market are specified below.

- b. State Government Purchasing Contracts – CVCOG subrecipients or programs may acquire products and services from state contracts that have been established for the purpose of consolidating volume purchases for products and services. Subrecipients may acquire those products and services in lieu of competitively procuring such products and services after assuring the state contracts comply with the requirements of federal and state laws, guidelines, regulations, and/or FTA C4220.1F. (FTA does not require the recipient to purchase from state contracts.) When obtaining products and services from State contracts, CVCOG Procurement is responsible for ensuring compliance with all federal requirements and inclusion of all required clauses and certifications, whether in the Master State Contract or in purchase documents. Evaluation of other state contract vendors shall be required where applicable to determine cost or price fair and reasonable.
- c. Shared Use – CVCOG may enter into agreements for shared use of products and services with other entities. If CVCOG shares the use of products and services acquired with Federal assistance then CVCOG shall be responsible for ensuring that the agreement complies with all Federal requirements and that the solicitation document and contract for the products and services includes all required clauses and certifications.
- d. Joint Procurements – CVCOG subrecipients or programs may participate in joint procurements whereby one or more other entities agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of products or services. The following requirements apply to participation in joint procurements:
 - (1) Solicitation documents may not be drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of the contract.
 - (2) CVCOG is responsible for ensuring that the joint procurement solicitation and contract complies with all Federal requirements and that the solicitation document and contract includes all required clauses and certifications.
- e. Existing Contracts – Subrecipients may use existing contract rights as an acquisition source. An “existing contract” means a contract that, when formed, was intended to be limited to the original parties thereto. The following requirements apply to the use of existing contract rights as an acquisition source:
 - (1) Permissible Actions – Within the conditions set forth below, programs may use existing contract rights held by another recipient of agency assistance and may be applicable to other recipients as determined:

- a. Exercise of Options – Subrecipients or programs may use contract options held by another recipient of agency assistance with the following limitations:
1. Consistency with the Underlying Contract – Subrecipients must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
 2. Price – Subrecipients may not exercise an option unless it has determined that the option price is better than prices available in the open market, or that when it intends to exercise the option, the option is more advantageous.
 3. Awards Treated as Sole Source Procurements – The following actions constitute sole source awards:
 - (a) Failure to Evaluate Options Before Awarding the Underlying Contract – If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
 - (b) Negotiating a Lower Option Price – Exercising an option after CVCOG has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured.
 4. Assignment of Contract Rights (“Piggybacking”) – If a recipient of Federally funded assistance finds that it has inadvertently acquired contract rights in excess of its needs, it may assign those contract rights to another subrecipient if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. Subrecipients may use contractual rights through assignment from another recipient of Federally funded assistance after first determining the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. CVCOG need not perform a

second price analysis if a price analysis was performed for the original contract; however, CVCOG must determine whether the contract price or prices originally established are still fair and reasonable before using those rights. CVCOG and its subrecipients or programs shall be responsible for ensuring the contractor's compliance with Buy America requirements and execution of all the required pre-award and post delivery Buy America review certifications. Before proceeding with the assignment, however, CVCOG shall review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities that the program seeks, do not exceed the amounts available under the assigning recipient's contract.

- (2) Impermissible Actions – CVCOG may not use Federal assistance to finance:
- a. Improper Contract Expansion – A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient's reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.
 - b. Cardinal Changes – A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change or "tag-on". A change within the scope of the contract is not a cardinal change or "tag-on".

2.3. Solicitation Requirements and Restrictions

Every procurement solicitation issued above the micro-purchase level must include the following information and be advertised in local/state publication papers or electronic advertisement websites for all procurements in excess of \$25,000 when not procured from state contracts:

- a. Description of the Property or Services - The solicitation and the contract awarded thereunder must include a clear and accurate description of technical requirements for the products or services to be acquired in a manner that provides for full and open competition.

- (1) Requirements should be described in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications should be avoided if at all possible; however, there is no prohibition against their use when appropriate.
- (2) Additional quantities or options above stated needs at the time of acquisition may not be added to contracts solely to allow assignment of those quantities or options at a later date.
- (3) When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a “brand name or equal” description may be used to define the functional and physical salient characteristics of a specific type of property. The salient characteristics of the named brand that bidders or offerors must provide must be identified.
- (4) Solicitations with requirements that contain features that unduly restrict competition may not be used. Such features include:
 - a. Excessive Qualifications – Imposing unreasonable business requirements for bidders or offerors.
 - b. Unnecessary Experience – Imposing unnecessary experience requirements for bidders and offerors.
 - c. Improper Prequalification – Using prequalification procedures that conflict with the prequalification standards described above (see 2.1).
 - d. Retainer Contracts – Making a noncompetitive award to any person or firm on a retainer contract with CVCOG or specific programs if that award is not for the property or services specified for delivery under the retainer contract.
 - e. Excessive Bonding – Imposing unreasonable restrictive bonding requirements on bidders and offerors in excess of federal, agency and state requirements.
 - f. Brand Name Only – Specifying only a “brand name” product without allowing offers of an “equal” product, or allowing an “equal” product without listing the functional and physical salient characteristics that the “equal” product must meet to be acceptable for award.
 - g. In-State or Local Geographic Restrictions – Specifying in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by state or local laws or regulations, shall

be taken into consideration based on established federal or state provisions, rules, or regulations. Geographic location may be a selection criterion in the procurement of A&E services if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.

- h. Organizational Conflicts of Interest – Engaging in practices that result in organizational conflicts of interest. An organizational conflict of interest occurs when any of the following circumstances arise:
 - (1) Lack of Impartiality or Impaired Objectivity – When the bidder or offeror is unable, or potentially unable, to provide impartial and objective assistance or advice due to other activities, relationships, contracts, or circumstances.
 - (2) Unequal Access to Information – When the bidder or offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - (3) Biased Ground Rules – When during the conduct of an earlier procurement, the bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- i. Remedies - CVCOG shall analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award. One way to mitigate potential organizational conflict of interest is to include a clause similar to Attachment C in the solicitation and resultant contract.
- j. Urgent and Compelling - CVCOG may upon determination, necessity and documentation of file proceed with an acquisition be it for goods or services above the micro-purchase threshold should the need arise based on mission and/or task. CVCOG Procurement shall use guidelines from the FAR, FTA, Federal and State Law and DOT on how to proceed.

b. Evaluation Factors –The solicitation must identify all factors to be used in evaluating bids or proposals and their relative order of importance. CVCOG Procurement shall conduct a public bid opening for all sealed bids. Contracts shall be awarded to the lowest, responsive and responsible bidder considering price and other price-related factors set forth in the solicitation.

-Responsible Bidder (The term responsible refers to a bidder's financial resources,

judgment, skill, integrity, and ability to fulfill successfully the requirements of the contract) The five principal criteria used to determine a bidder's responsibility are the following:

- Technical status as a manufacturer, supplier or construction contractor
- Financial resources and status (use Dunn and Bradstreet Report)
- Skill, experience, and staffing levels
- Prior conduct and performance of a contract
- Contractor integrity and compliance with public policy

(CVCOG Procurement shall make the determination as to whether or not a bidder is considered responsible.)

c. Contract Type Specified – The solicitation must state the type of contract that will be awarded. CVCOG may review the Federal Acquisition Regulation (FAR) Part 16 to determine the best type of contract for a specific requirement. The following contract types are prohibited or restricted:

- (1) Cost plus Percentage of Cost type contracts are prohibited.
- (2) Time and Materials type contracts may be used only after a written determination is made that no other contract type is suitable. In addition, the contract between CVCOG and the Contractor must specify a ceiling price that the Contractor may not exceed except at its own risk.

d. Other Federal Requirements Affecting the Property or Services to be Acquired – The solicitation and resulting contract must identify those Federal requirements that will affect contract scope and performance.

e. Other Federal Requirements Affecting the Bidder or Offeror and the Contractor – The solicitation and resulting contract must identify all Federal requirements that a bidder or offeror must fulfill before and during contract performance.

f. Reservation of Right to Award to Other Than the Low Bidder or Offeror – The solicitation must specifically reserve CVCOG or CVTDs right to award a contract to other than the low bidder or offeror.

g. Reservation of Right to Reject All Bids or Offers – The solicitation must specifically reserve CVCOG or CVTD's right to reject all bids or offers.

2.4. Evaluation Requirements

The following standards shall apply to all evaluations of bids or proposals conducted by CVCOG:

- a. General - When evaluating bids or proposals received in response to a solicitation, CVCOG shall consider all evaluation factors specified in the solicitation documents and shall evaluate the bids, offers or proposals only on the evaluation factors included in those solicitation documents. CVCOG may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation.
- b. Options – The following standards shall apply when awarding contracts that include options:
 - (1) Evaluation Required - In general, evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.
 - (2) Evaluation Not Required – It is not necessary to evaluate bids or offers for any option quantities when it is not intended to exercise those options after the contract is awarded or if it determines and documents that evaluation would not otherwise be in its best interests.

2.5. Contract Award Requirements

The following standards shall apply to all contract award decisions made:

- a. Award to Other Than the Lowest Bidder or Offeror – CVCOG may award a contract to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. Further, award of a contract to other than the offeror whose price proposal is lowest, when stated in the evaluation factors of the solicitation. In both cases, a statement shall be included in solicitation documents reserving the right to award the contract to other than the low bidder or offeror.
- b. Award Only to a Responsible Bidder or Offeror – Only award contracts to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract and who demonstrate that its proposed subcontractors also qualify as responsible. Consider such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources when making a determination of contractor responsibility. Also ensure that the contractor is not listed as a debarred or suspended contractor in the System for Award Management (SAM), which is maintained by the General Services Administration (GSA), at the time of contract award. Entities that are listed as debarred or suspended contractors on the EPLS may not be determined to be responsible contractors.
- c. Rejection of Bids and Proposals – CVCOG may reject all bids or proposals submitted in response to an Invitation for Bids or Request for Proposals. A statement shall be included in solicitation documents reserving the right to reject all bids or proposals.

- d. Extent and Limits of Contract Award – The selection of a contractor to participate in one aspect of a project does not, by itself, constitute a sole source selection of the contractor’s wholly owned affiliates to perform other work in connection with the project.
- e. Approval of Contracts – All contracts must be signed by the Executive Director, or designated representative(s). Designee shall have a limit of \$10,000, contract vehicles above the \$10,000 threshold shall then fall upon the Chairman of the Board, CVCOG in the Executive Directors absence. All administrative actions to include administrative modification shall fall upon Procurement.

3. METHODS OF PROCUREMENT

3.1. Micro-Purchases

- a. Definition – Micro-purchases are those purchases of products and services that cost \$2,999.99 or less.
- b. Approval Authority – Micro-purchases must be approved in writing by one of the following:

Up to \$999.99	Program Director
\$1000 - \$2999.99	Executive Director
- c. Required Competition – None. Programs may acquire products and services valued at less than \$1000 without obtaining competitive quotations. Micro-purchases should be distributed equitably among qualified suppliers. Purchases between \$1000 and \$3000 shall have documentation from a minimum of three vendors for price justification.
- d. Prohibited Divisions – The size or dollar value of procurements may not be divided or reduced merely to come within the micro-purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBE and/or HUBZone entities, small and minority firms and women’s business enterprises in federally assisted procurements.
- e. Documentation – Every micro-purchase above \$999.99 must be accompanied by a written determination that the price is fair and reasonable and a description of how that determination was made if not competed.
- f. Special Considerations
 - (1) Micro-purchases are exempt from Buy America requirements.
 - (2) Davis-Bacon Act and prevailing wage requirements shall apply to construction contracts or projects exceeding \$2,000, even when micro-purchase procurement procedures are used to acquire construction services (unless otherwise amended by the Department of Labor).

3.2. Small Purchases

- a. Definition – Small purchases are those purchases of products and services, including construction services that cost greater than \$3,000 but not more than \$100,000. Public advertisement of procurements (if not acquired from state contracts) shall be required in excess of \$25,000, documented and kept on file.
- b. Approval Authority – Shall lie with
 - (1) \$3000.00 - \$24,999.99 Executive Director or Chairman of the Board
 - (2) \$25,000 and above Approved by the Board of Directors and executed by Executive Director or Chairman of the Board (or Executive Directors designated signatory authority)
- c. Required Competition – Price or rate quotations must be requested from an adequate number of qualified sources. For small purchases 3 price quotes are optimal, however, in the event a suitable number of Contractors are not available, a price fair and reasonable determination shall be obtained and the file documented.
- d. Prohibited Divisions – The size or dollar value of procurements may not be divided or reduced merely to come within the small purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBE, small and minority firms and women’s business enterprises in federally assisted procurements.
- e. Documentation – Small purchases must be accompanied by the following.
 - (1) For purchases of goods and services that cost greater than \$3,000 but not more than \$15,000, 3 price quotes (written or summarized verbal quotes) shall be adequate documentation.
 - (2) For purchases of products and services that cost greater than \$15,000 but not more than \$100,000, three (3) written price quotes shall be adequate documentation.
- f. Special Considerations
 - (1) Products and services may be acquired directly from State contract vendors in lieu of competitively procuring such products and services itself through the small purchase method of procurement. However, a price fair and reasonable determination shall be included in the contract file.
 - (2) Small purchases are exempt from Buy America requirements. However Buy America Act shall be reviewed to ensure compliance.

3.3. Large Purchases

- a. Procurement Methods – There are two primary methods of procurement for large purchases of products and services:
 - (1) Sealed Bid method; and
 - (2) Competitive Proposal method.

- b. Required Competition – Formal bids and competitive proposals must be publicly advertised.
 - (1) For large purchases by the sealed bid method of procurement, two or more responsible bidders must be willing and able to compete effectively for the business.
 - (2) For large purchases by the competitive proposal method of procurement, more than one source should be willing and able to submit an offer or proposal.
- c. Documentation – Every large purchase must, at a minimum, be accompanied by a written independent cost estimate, formal bids or proposals, a written cost or price analysis as appropriate, a written justification and detailed rationale for contractor selection (including application of evaluation criteria) and a written determination of the responsibility of the contractor. Additional documentation requirements are dependent upon the formal procurement method that is utilized to make the purchase.
- d. Special Considerations
 - (1) Products and services may be acquired directly from State contract vendors in lieu of competitively procuring such products and services itself through the sealed bid and competitive proposal methods of procurement. However, a price fair and reasonable determination shall accompany the contract file.

3.4. Sealed Bids

- a. Definition – The sealed bid method of procurement is a formal method in which bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids, is lowest in price. The vehicle through which bids are solicited is an Invitation for Bids (IFB). The IFB document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a bid, and the forms on which bids must be submitted.
- b. When Appropriate – The sealed bid method of procurement is the preferred method for acquiring products and services, including construction services that cost greater than \$100,000. The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:
 - (1) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.
 - (2) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.
 - (3) Fixed Price Contract – The procurement generally lends itself to a firm fixed price contract.

- (4) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
- (5) Discussions Unnecessary – Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price-related factors alone.
- c. Requirements for Sealed Bids – The following requirements apply to the sealed bid method of procurement:
 - (1) Publicity – The Invitation for Bids must be publicly advertised.
 - (2) Adequate Sources – Bids must be solicited from an adequate number of known suppliers.
 - (3) Adequate Specifications – The Invitation for Bids, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
 - (4) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of bid opening.
 - (5) Public Opening – All bids must be publicly opened at the time and place prescribed in the Invitation for Bids.
 - (6) Fixed Price Contract – A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allowed for award of a fixed price incentive contract or the inclusion of an economic price adjustment provision.
 - (7) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.

3.5. Competitive Proposals

- a. Definition – The competitive proposal method of procurement is a formal method in which written proposals are publicly solicited and a contract is awarded to the responsible offeror whose proposal, taking into consideration price and other factors, is considered to be the most advantageous or that is considered to be the “best value”. The vehicle through which proposals are solicited is Request for Proposals (RFP). The RFP document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a proposal and the forms on which proposals must be submitted, if applicable.
- b. When Appropriate – The competitive proposal method of procurement is appropriate for the acquisition of products and services that cost greater than \$100,000 when the nature of the procurement does not lend itself to sealed bidding and it is expected that more than

one source will be willing and able to submit a proposal. The competitive proposal method of procurement may also be used for small purchases if it is determined to be appropriate. The competitive proposal method of procurement is appropriate when any of the following circumstances are present:

- (1) Type of Specifications – The products or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
 - (2) Uncertain Number of Sources – Uncertainty about whether more than one bid will be submitted in response to an Invitation for Bids.
 - (3) Price Alone Not Determinative – Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors.
 - (4) Discussions Expected – Separate discussions with individual offerors are expected to be necessary after they have submitted their proposals.
- c. Requirements for Competitive Proposals – The following requirements apply to the competitive proposal method of procurement:
- (1) Publicity – The Request for Proposals must be publicly advertised.
 - (2) Evaluation Factors – All evaluation factors and their relative importance must be specified in the solicitation, but numerical or percentage ratings or weights need not be disclosed.
 - (3) Adequate Sources – Proposals must be solicited from an adequate number of qualified sources.
 - (4) Evaluation Method – A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
 - (5) Price and Other Factors – An award should be made to the responsible offeror whose proposal is most advantageous or that represents the “best value” with price and other factors considered.
 - (6) Best Value – Award may be made to the offeror whose proposal provides the greatest value to CVCOG. To do so, the solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for award. Determination shall be based on which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

3.6. Two-Step Procurements

Two-step procurement procedures may be used in both sealed bid and competitive proposal procurements, provided the opportunity for full and open competition is retained.

- a. Review of Technical Qualifications and Approach – The first step is a review of the prospective contractors’ technical approach to requests and their technical qualifications to carry out that approach followed by the establishment of a competitive range consisting of prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications. Technical discussions are conducted with prospective contractors in the competitive range. Guard against addressing cost/price issues during this phase.
- b. Review of Bids and Proposals Submitted by Qualified Prospective Contractors – The second step consists of soliciting and reviewing complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, bids or proposals must be solicited from at least three qualified prospective contractors. Bids and proposals shall be evaluated in accordance with the requirements of **Sections 3.4 or 3.5** above respectively.

3.7. Architectural and Engineering (A&E) Services and Other Services

- a. Qualifications-Based Procurement Procedures Required – CVCOG must use qualifications-based procurement procedures to acquire architectural and engineering (A&E) services as well as certain other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. In addition to A&E services, other services that must be procured by qualifications-based procurement procedures include: program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.
- b. Qualifications-Based Procurement Procedures Prohibited – Unless FTA determines otherwise in writing, qualifications-based procurement procedures may not be used to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Qualifications-based procurement procedures may not be used for actual construction, alteration or repair to real property.
- c. Audits – Third party contracts and subcontracts for services procured using qualifications-based procurement procedures must be performed and audited in compliance with FAR Part 31 cost principles.

3.8 Construction Projects – Design-Bid-Build Method

- a. Definition – Procurement method for construction projects requiring separate contracts for design services and for construction services.

- b. Design Services – For design services, qualifications-based procurement procedures described above in compliance with applicable Federal and State law and regulation shall be used.
- c. Construction – Depending on the estimated dollar value of the construction contract, either the sealed bid method of procurement or small purchase procedures to procure construction services or the RFP process shall be used.

3.9. Construction Projects – Design-Build Method

- a. Definition – Procurement method consisting of contracting for design and construction simultaneously with contract award to a single contractor, consortium, joint venture, team, or partnership that will be responsible for both the project’s design and construction.
- b. Procurement Method Determined by Value – Because both design and construction are included in a single procurement, CVCOG must use the procurement method appropriate for the services having the greatest cost for the entire procurement, even though other necessary services would not typically be procured by that method. If construction costs are predominant then the sealed bid or competitive method of procurement to select the contractor. If design costs are predominant then use qualifications-based procurement procedures to select the contractor.
- c. Selection Processes – Design-build procurement using a single step or the two-step procurement method may be structured.

3.10. Architect and Engineering.

Definition – Professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services or nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property. Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiable perform, including studies, investigations, surveying and mapping, tests evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating maintenance manuals, and other related services.

- a. Procurement Method – negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which is determined to be fair and reasonable to the Government. In making such determination, take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

- (1) Should CVCOG be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price determined to be fair and reasonable, negotiations with that firm should be formally terminated; then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, CVCOG should then undertake negotiations with the third most qualified firm.
- (2) Should CVCOG be unable to negotiate a satisfactory contract with any of the selected firms, select additional firms in order of their competence and qualification and continue negotiations in accordance with the Brooks Act until an agreement is reached.

3.11. Procurement by Other than Full and Open Competition

- a. When Appropriate – Noncompetitive procurement procedures may only be used when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances is present:
 - (1) Competition Adequacy – After soliciting several sources and receiving an inadequate response, specifications shall be reviewed to determine if they are unduly restrictive or if changes can be made to encourage submission of more price quotes, bids or proposals. If it is determined the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, the original competition may be determined to be adequate and complete the purchase from among the sources that submitted a price quote, bid or proposal. A cost analysis must be performed in lieu of a price analysis when this situation occurs.
 - (2) Sole Source – When products or services available from only one responsible source, and no other products or services will satisfy its requirements, a sole source award may be made after the requiring activity submits a sole source justification. In addition, when an existing contractor makes a change to its contract that is beyond the scope of that contract, a sole source award must be justified. Sole source awards are only appropriate when one of the following conditions apply:
 - a. Unique Capability or Availability – The products or services are available from only one source if one of the conditions described below is present:
 - (1) Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from

another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available only from one source and is not available from another source.

(2) Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.

(3) Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.

(4) Unacceptable Delay – In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling needs.

b. Single Bid or Proposal – Upon receiving a single bid or proposal in response to a solicitation, a determination of adequate competition shall be included in the file. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

(1) Adequate Competition – Competition is adequate when the reasons for a single response were caused by conditions beyond the requiring activities control.

(2) Inadequate Competition – Competition is inadequate when the reasons for a single response were caused by conditions within the requiring activities control.

(3) Unusual (Urgent) and Compelling Urgency – CVCOG may limit the number of sources from which it solicits bids or proposals when such an unusual and urgent need for the products or services that CVCOG would be seriously injured unless it were permitted to limit the solicitation. CVCOG may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from full and open competitive solicitation for the products or services.

(4) Authorized by FTA – CVCOG may request permission from FTA to allow it to use noncompetitive proposals for a particular procurement.

b. When Prohibited – Less than full and open competition is not justified based on:

- (1) Failure to Plan – lack of advance planning, or
 - (2) Limited Availability of Federal Assistance – Concerns about the amount of Federal assistance available to support the procurement.
- c. Procurement Procedures – The following requirements apply with a procurement utilizing less than full and open competition:
- (1) Potential Sources – Solicit offers from as many potential sources as is practicable under the circumstances.
 - (2) Sole Source Justification – Requiring activities must justify all sole source procurements in writing. Sole source procurement justifications must describe the reasons why a sole source procurement is appropriate, state which of the authorized justifications listed in FTA 4220.1F, Chapter VI, is applicable for FTA funded procurements, include a cost analysis, be approved by Procurement and signed by the Executive Director. If the decision to solicit an offer from only one source, it must be justified in writing. The written justification must include the same elements as a sole source justification.
 - (3) Cost Analysis – Prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. A price analysis shall not be adequate to justify a sole source purchase.
 - (4) Pre-award Review – Submit written justification for the proposed sole source procurement to FTA for pre-award review if FTA so requests for FTA funded procurements.
- d. Exception for Procurement Activities Using Non-FTA Funds for Transit Related Activities – When it is determined by the Executive Director to be in the best interest -, noncompetitive procurement procedures may be utilized to acquire professional or other transportation-related services that do not involve the use of FTA financial assistance. Any such determination must be made in writing and signed by the Executive Director.

4. COST AND PRICE ANALYSIS

DEFINITIONS

Cost Analysis – A cost analysis entails the review and evaluation of the separate cost elements and the proposed profit of an offeror's cost or pricing data and the judgmental factors applied in estimating the costs. A cost analysis is generally conducted to form an opinion on the degree to which the proposed cost, including profit, represents what the performance of the contract should cost, assuming reasonable economy and efficiency.

Price Analysis – A price analysis involves examining and evaluating a proposed price without evaluating its separate cost and profit elements Price analysis is based essentially on data that is verifiable independently from the offeror’s data.

4.1. Independent Cost Estimate and Cost and Price Analysis

- a. Independent Cost Estimate – A written independent estimate of cost prior to receiving price quotes, bids or proposals. In the event commercial products or goods are sought, identification of commercial off the shelf items are acceptable through electronic means and shall be identified by the requiring activity.
- b. Cost or Price Analysis – A cost or price analysis in connection with every procurement action above the micro-purchase level, including contract modifications shall be required to support justification. For micro-purchase, a determination must be made that the price is fair and reasonable and how this determination was derived.
 - (1) Price Analysis – If it is determined that competition was adequate, a written price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.
 - (2) Cost Analysis – Procurement must perform or obtain a cost analysis when:
 - a. A price analysis will not provide sufficient information to determine the reasonableness of the contract cost;
 - b. When the offeror submits elements of the estimated cost;
 - c. When only a sole source is available, even if the procurement is a contract modification; or
 - d. In the event of a change order.

4.2. Contract Administration Requirements and Considerations

- a. Staff Responsibilities – Staff responsibilities for the administration of third party contracts shall include:
 - (1) Procurement – Prior to execution of third party contracts, shall designate a Project Manager to serve as principal contact with the contractor and as the primary administrator of the contract. The designated Project Manager for each contract shall have responsibility for overseeing the work performed by the contractor; reviewing and approving deliverables and invoices from the contractor; determining percentage of contract completion for progress payments (if applicable); making recommendations on the exercise of contract options (if applicable); recommending contract changes; preparing justifications for contract changes; performing independent cost estimates and assisting in preparing cost or price analyses for contract changes; making recommendations on

approval or rejection of subcontractors; assisting with the resolution of contract disputes; making recommendations on contract termination or other contractor disciplinary actions; reporting on contract status to Procurement; maintaining complete contract files in coordination/conjunction with the Procurement/Purchasing Office; and other contract administration duties that may be necessary.

- (2) **Contracts and Compliance Office** – The Procurement Office shall have responsibility for assisting the Project Manager with contract administration duties as needed; ensuring contractor compliance with insurance requirements; preparing contract modification documents upon recommendation by Project Manager; assisting in negotiating contract modifications with contractors; securing review and approval of contract modifications by Procurement and the Executive Director; assisting the Procurement Officer in contract disputes; terminating contracts; enforcing contractor disciplinary actions; securing title to partially completed work products before partial payment (if applicable); maintaining complete contract files in coordination/conjunction with the Project Manager; performing contract close-out; and other contract administration duties that may be necessary.
- (3) **DBE Compliance Officer** – The DBE Compliance Officer shall have responsibility for monitoring and reporting participation in the contract by certified DBE firms; assisting contractor with identifying certified DBE firms to serve as subcontractors; approving replacement DBE subcontractors; maintaining records related to DBE participation in the contract; and other contract administration duties related to DBE compliance that may be necessary.
- (4) **Other CVTD Staff** – Other CVTD staff that may have responsibilities related to contract administration to include, but are not limited to: Executive Director, Chief Counsel, Directors of Finance and Administration and Accounts Payable staff.

b. **Period of Performance** – It is expected to use sound business judgment and be judicious in establishing and extending the period of performance for contracts. Periods of performance shall be specified, including start and completion or delivery dates, in every third party contract.

- (1) **General Standards** – The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract.

- (2) Federal Restrictions – Except for procurements of rolling stock and replacement part contracts, which are limited by law to five (5) years, other third party contracts are not encumbered by Federal requirements restricting the maximum periods of performance. Nevertheless, the duration of contracts shall be reasonable and in accordance with CVCOG policies and procedures.
 - (3) Time Extensions – Consistent with the general tone of FTA Circular 4220.1F for transit and other laws, regulations, and policies for other CVCOG programs, contract time extensions shall be considered in light of whether they are permissible changes or impermissible cardinal changes. Once a third party contract is awarded, an extension of the contract term length that amounts to a cardinal change will require Justification and Authorization documentation.
 - (4) Authority to Extend – Procurement shall make recommendations and provide documentation to the Executive Director on the execution of contract modifications based on documentation provided by the requiring activity and information obtained.
- c. Contents of Complete Contract Files – The following documents shall comprise the contents of a complete contract file for procurements above \$25,000 or the complexity of the project/contract as determined by Procurement for any dollar amount below \$25,000:
- (1) Written Record of Procurement History – CVCOG shall maintain written records detailing the history of the procurement, including records relating to:
 - a. Procurement Method – Procurement must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive and documents related to solicitation;
 - b. Contract Type – Procurement must state the reasons for selecting the contract type it used;
 - c. Contractor Selection – Procurement must state its reasons for contractor selection or rejection, including written justification when applicable and evaluation documents;
 - d. Contractor Responsibility – Procurement must provide a written determination of responsibility for the successful contractor when applicable;

- e. Cost or Price – Procurement must evaluate and state its justification for the contract cost or price, including the independent cost estimate and cost or price analysis; and
 - f. Reasonable Documentation – Retain documentation commensurate with the size and complexity of the procurement, including documents related to solicitation, receipt and evaluation of offers, and contract award, negotiation and execution.
- (2) Contract Administration and Close-Out Documents - Procurement shall maintain written records detailing the performance and close-out of the contract, including records relating to:
- a. Contractor Performance – CVCOG must maintain documents related to contractor adherence to budget and schedule, compliance with contract terms and conditions, DBE participation, progress reports, disputes and disciplinary actions;
 - b. Contract Deliverables – CVCOG must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables;
 - c. Contract Changes – CVCOG must maintain copies of all contract modifications, including documentation related to the determination of need, written justification and rationale, cost analysis, negotiation and execution;
 - d. Contract Payments – CVCOG must retain documentation of invoices, approval of payments, requests for modifications to invoices, determination of percentage of contract completion for partial payments (if applicable), and ownership of title to partial work products;
 - e. Contract Close-Out – CVCOG must retain documentation related to contractor performance and evaluation, approval of final deliverables and payments, transfer of title to complete work products to CVTD, and contract audit and final reconciliation.

5. PROTEST PROCEDURES FOR TRANSIT RELATED PROCUREMENTS

(Protest procedures may be modified to accommodate other CVCOG acquisitions)

5.1. Statement of Policy

CVTD is responsible for resolving all contractual and administrative issues, including protests of evaluations and contract awards, arising out of its third party procurements using good administrative practices and sound business judgment.

In general, FTA will not substitute its judgment for that of CVTD unless the matter is primarily a federal concern. Nevertheless, FTA can become involved in CVTD's administrative decisions when a CVTD protest decision is appealed to FTA, or when CVTD seeks to use FTA assistance to support the costs of settlements or other resolutions of protests, disputes, claims or litigation. CVTD shall give timely notification to FTA when it receives a third party procurement protest and will keep FTA informed about the status of any such protest. CVTD shall disclose all information about any third party procurement protest to FTA upon request. CVTD's procedure for addressing third party procurement protests is described. CVTD shall insert its protest procedure in all solicitation documents for products and services having an estimated value of \$100,000 or greater.

5.1.1. CVCOG/CVTD Staff Responsibilities

- a. CVCOG Procurement Officer – Responsibilities include: ensuring that Protest Procedure are included in all solicitation documents for products and services having an estimated value of \$100,000 or greater; and providing information to and assisting the Executive Director and Chief Counsel with the resolution of protests.
- b. Executive Director – Responsibilities include: receiving and reviewing all procurement protests; and issuing the official CVCOG response to all procurement protests and appeals.
- c. Counsel – Responsibilities include: reviewing all procurement protests; and advising and assisting the Executive Director as needed with the resolution of all procurement protests.

5.1.1.1. Solicitation Provision

CVCOG shall insert the following provision in all solicitation documents for products and services having an estimated value of \$100,000 or greater:

- a. Pre-Proposal Protests – All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Executive Director as specified below not later than 10 business days prior to the deadline for submission of bids/proposals.

The Executive Director may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the Executive Director as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the Executive Director shall be the final agency decision on the matter but shall be subject to judicial review or review by the funding agency counsel.

- b. Pre-Award Protests – With respect to protests made after the deadline for submission of bids/proposals but before contract award by CVCOG, protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, CVCOG’s failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Executive Director as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by CVCOG.

The Executive Director may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that CVCOG shall announce the contract award. The decision by the Executive Director shall be the final agency decision on the matter but shall be subject to judicial review or review by agency counsel as specified below.

- c. Requirements for Protests – All protests must be submitted to CVCOG in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and information of the Protestor, be signed by the Protestor, and be notarized. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by CVCOG.

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to:

Executive Director, Concho Valley Transit District
c/o Procurement
2801 W. Loop 306, Suite A or P.O. Box 60050
San Angelo, TX 76904 San Angelo, TX 76906

- d. Protest Response - The Executive Director shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, CVCOG will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by U.S. Postal Service shall be the official response to the protest and CVCOG will not be responsible

for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

- e. Review of Protests by Agency – All protests involving contracts financed with federal assistance shall be disclosed to the funding agency in accordance with agency directives. Protesters shall exhaust all administrative remedies with CVCOG prior to pursuing protests with funding agencies. Agencies may limit its reviews of protests to: a grantee’s failure to have or follow its protest procedures; a grantee’s failure to review a complaint or protest when presented an opportunity to do so; or violations of federal or state law or regulation. Appeals to agencies must be received by the cognizant funding agency procedures within specified times per agency protocols.

6. DIVERSITY PARTICIPATION

6.1. Policy

It is the policy of CVCOG and all associated programs that small businesses and minority-owned businesses have a fair and equal opportunity to participate in purchases. CVCOG encourages minority-owned businesses to participate in its procurements as both Offerors and subcontractors. CVCOG further encourages majority-owned businesses to include minority-owned businesses as subcontractors in its bids/proposals when appropriate.

6.2. Participation by Disadvantaged Business Enterprises

CVCOG has established a Disadvantaged Business Enterprise (DBE) program in accordance Concho Valley Council of Governments procurement policy and regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26 for transit related activities and Uniform Grant Management Standards (UGMS) for other programs. As a condition of receiving financial assistance from the Federal Transit Administration (FTA), CVTD has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of CVCOG to ensure that DBEs, as defined in 49 CFR Part 26 and UGMS, have an equal opportunity to receive and participate in federally assisted contracts.

It is also policy:

- To ensure nondiscrimination in the award and administration of federally assisted contracts;
- To create a level playing field on which DBEs can compete fairly for federally assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 and UGMS eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in federally assisted contracts;
- To assist the development of firms so that they can compete successfully in the market place outside the DBE Program; and

- To provide appropriate flexibility in establishing and providing opportunities for DBEs.

CVCOG has a designated DBE Compliance Staff Member(s) who is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by CVCOG in its financial assistance agreements. To this end, CVCOG shall not discriminate on the basis of race, age, color, sex or national origin in the award, administration and performance of any federally assisted contract or in the administration of its DBE Program and shall take all necessary and reasonable steps to ensure nondiscrimination.

CVCOG's third party contractors for federally assisted contracts are also required to carry out applicable requirements of 49 CFR Part 26, other Federal Laws, regulations, State Laws and UGMS in the award and administration of subcontracts. Specific DBE related requirements for third party contractors for federally assisted contracts include:

The contract between CVCOG and the Contractor as well as each subcontract the Contractor signs with a subcontractor must include the following assurance (see 49 CFR 26.13(b)):

“The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, or national origin in the performance of this contract. The contractor, sub recipient or subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts. Failure by the contractor, sub recipient or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as CVCOG deems appropriate.”

- Contractors will be required to report their DBE participation at least quarterly to CVCOG throughout the contract term;
- Contractors are required to pay their subcontractor(s) performing work related to their contract with CVCOG for satisfactory performance of that work no later than 15 calendar days after the Contractor's receipt of payment for that work from CVTD.
- Contractors may not hold retainage from their subcontractors.
- Contractors must promptly notify CVCOG, whenever a DBE subcontractor performing work related to their contract with CVCOG is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work.
- Contractors may not terminate any DBE subcontractor and perform that work through their own forces or those of an affiliate without prior written consent of CVCOG.

The steps for ensuring maximum utilization of small and minority firms and women's business enterprises identified shall also be used to ensure maximum utilization of DBE firms.

6.3. Participation by Small and Minority Firms and Women's Business Enterprises

All appropriate steps shall be taken to ensure that all programs ~~it~~ use small and minority firms and women's business enterprises to the fullest extent practicable, including:

- a. Notice – Procurement shall make information available to potentially qualified firms about procurement opportunities. Make reasonable efforts to include these contractors on solicitation lists and request their participation when they are potential sources.
- b. Contract Size – To foster greater participation of small and minority firms and women's business enterprises, CVCOG may divide total requirements into smaller tasks or quantities, when economically feasible.
- c. Delivery Schedule – Requiring activities will specify delivery schedules that encourage the participation of small and minority firms and women's business enterprises.
- d. Small Business Administration and the Department of Commerce Minority Business Development Agency – Procurement will use the services and assistance of the Small Business Administration and the Department of Commerce's Minority Business Development Agency to encourage and increase the participation of small and minority firms and women's business enterprises.
- e. Subcontracting Opportunities – CVCOG will require its prime third party contractors to include the preceding provisions (a-d) in Federally assisted subcontracts.

7. Ratification of Unauthorized Commitments

7.1. "Ratification," as used in this subsection, means the act of approving an unauthorized commitment by an official who has the authority to do so.

7.2. "Unauthorized Commitment," as used in this subsection, means an agreement that is not binding solely because the CVCOG representative who made it lacked the authority to enter into that agreement on behalf of CVCOG.

a. Subject to the limitations in paragraph (c) of this subsection, the Executive Director, unless a higher level official is designated by the agency, may ratify an unauthorized commitment.

b. Unauthorized commitments that would involve claims subject to resolution under 41 U.S.C. chapter 71, Contract Disputes, should be processed in accordance with established policies and procedures for Disputes and Appeals. In the event of ambiguity the Procurement Officer shall provide the Executive director with guidance from established Laws, regulations, or other instruction.

7.3. Limitations. The authority in paragraph 7.2 (1) of this subsection may be exercised only when—

- a. Supplies or services have been provided to and accepted by CVCOG, or CVCOG otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;
- b. The ratifying official has the authority to enter into a contractual commitment;
- c. The resulting contract would otherwise have been proper if made by an appropriate authority;
- d. The Procurement Officer reviews the unauthorized commitment and determines the price to be fair and reasonable;
- e. The Procurement Officer recommends payment and/or legal counsel concurs in the recommendation;
- f. Funds are available and were available at the time the unauthorized commitment was made; and
- g. The ratification is in accordance with any other limitations prescribed CVCOG procedures.

7.4. Non-Ratifiable Commitments - Cases that are not ratifiable under this subsection may be subject to resolution as recommended under claim procedures, or as authorized.

7.5. Duties and Responsibilities

- a. Individual committing unauthorized obligation provides written statement explaining all pertinent facts and circumstances surrounding act with supporting related documents
- b. Program Director shall review individuals statement surrounding facts and circumstances
 - 1. Program Director completes statement inclusive of chronological history and supporting information for contract file
 - 2. Program Director shall make recommendations and/or disciplinary action as necessary
 - 3. Program Director shall provide funding if applicable
- c. Finance shall determine availability of funds

- d. Procurement shall provide recommendation to Ratifying Official (Executive Director)
- e. Ratifying Official shall provide written documentation

8. Unusual and Compelling Urgency

8.1. Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat. If a situation arises in which compliance with normal procurement practices is impractical or contrary to the public interest, an emergency purchase may be warranted to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state.

Notwithstanding the immediate nature of an emergency, all procurements conducted as emergencies should be made as competitive as possible under the circumstances. If an emergency exists, a written determination of the basis for the emergency and for the selection of a particular vendor shall be included in the procurement file accordingly.

8.2. Application -

- a. An unusual and compelling urgency precludes full and open competition, and
- b. Delay in award of a contract would result in serious injury, financial or other to the Government to include verbiage in section 8.1

8.3. Limitations –

- a. Contracts awarded using this authority shall be supported by written justifications and approvals
- b. Agencies shall request offers from as many potential sources as is practicable under the circumstances

9. Appropriations

- a. Generally grant funds are awarded to an agency for one to five years and shall be identified in awarding documents. Programs shall be responsible for maintaining fiscal responsibility of awarded funds and shall encumber funds accordingly.
- b. Awarded funds shall be utilized for authorized acquisitions in accordance with proper policies and procedures. Programs shall ensure proper planning to ensure expenditure of funds

10. Payments

10.1. CVCOG shall pay the Contractor, upon the submission of proper invoices, the prices stipulated in the contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided for in contract:

- a. The amount due on the deliveries warrants it; or
- b. The Contractor requests payment based on any other term or condition

10.2. Advanced payments beyond fiscal years shall only be authorized under contract with the written authorization of the Executive Director.

10.3. All other payments shall be based on contract terms and conditions.

11. Electronic Records

11.1. Electronic Commerce (e-commerce) is the buying and selling of goods and services, or the transmitting of funds or data, over an electronic network, primarily the internet. For the purposes of CVCOG these business transactions occur CVCOG/business-to-business.

- a. e-commerce may take place as a critical element in the management of CVCOG, and may be implemented as part of a management framework that may address finance, procurement, human capital, and other challenges to improve the performance of CVCOG.
- b. e-commerce may promote increased opportunities for citizen participation in CVCOG
- c. CVCOG shall in the event of e-commerce ensure the protection of such records in accordance with 2 CFR, 49 CFR, Open Records ACT, Freedom of Information ACT and the requirements of any other grant management or law that may be applicable.
- d. Electronic records if instituted, CVCOG shall be required to ensure security protections commensurate with the requirements for hard (paper) copies unless otherwise directed. In the event direction is not identified
- e. Electronic Signatures (e-sign) if used shall be protected and controlled and shall be as legally valid as a traditional signature written in ink on paper

(1) e-sign records shall accurately reflect information contained in applicable contracts, notices or disclosures and remain accessible to all persons who are legally entitled to access for the period required by law in a form that is capable of being accurately reproduced for later reference.

(2) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form.

(3) a contract relating so such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

11.2. Preservation of Rights and Obligations (this section does not)-

a. e-commerce does not limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law other than a requirement that contracts or other records be in written, signed, or in non-electronic form upon request of the other party.

b. require any person to agree to use or accept electronic records or electronic signatures, other than a governmental agency with respect to a record other than a contract to which it is a party.

ATTACHMENT A PROCUREMENT PLAN

Procurement Planning

Grantees should perform procurement planning and conduct market research for all procurements. The complexity, urgency, and dollar amount of the procurement should determine the extent of the planning required. The planning should integrate the efforts of all stakeholders responsible for the significant aspects of the procurement. The purpose of this planning is to ensure the grantees meets the needs in the most effective, economical, and timely manner.

PROCUREMENT PLAN

1. Procurement background and objectives.

Statement of Need.

Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the procurement. Discuss feasible procurement alternatives, the impact of prior procurements on those alternatives, and any related grantee in-house efforts.

Applicable Conditions.

State all significant conditions affecting the acquisition such as requirements for compatibility with existing or future systems and programs and any known cost, schedule, and capability or performance constraints.

Cost.

Set forth the established cost goals for the acquisition and rationale supporting them. (At this time the estimated cost will be a budget figure, not an “independent cost estimate.” (ICE)). The ICE would be developed after the final statement of work has been completed and approved.

Capability or Performance.

Specify the required capabilities or performance characteristics of the supplies or performance standards of the services being acquired and state how they are related to the need.

Delivery or Performance-period Requirements.

Describe the basis for establishing delivery or performance-period requirements. Explain and provide reasons for any urgency if it results in concurrency of development and production or constitutes justification for not providing for full and open competition.

Trade-Offs.

Discuss the expected consequences of trade-offs among the various costs, capability, or performance and schedule goals.

Risks.

Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrency of development and production is planned, discuss its effect on cost and schedule risks.

Industry Early Participation.

If the grantees elect to involve industry in the early planning states of the procurement, make sure all interested parties are provided equal opportunity to participate. Some methods of early participation include using draft solicitations, pre-solicitation conferences, and other means of stimulating industry involvement during design and development in recommending the most appropriate application and tailoring of the contract requirements.

2. Plan of Action

Sources.

Indicate the prospective sources of supplies or services that can meet the need. (A good market survey should provide you with this information.) Grantees are encouraged to utilize state and local governmental agreements for procurement of the use of common goods and services. Grantees are also encouraged to jointly procure goods and services with other grantees.

Competition.

Describe how competition will be sought, promoted, and sustained throughout the course of the procurement. If full and open competition is not contemplated, cite the justification and who has the authority to approve the justification. Describe how competition will be sought, promoted, and sustained for spares and repair parts.

Identify Key Logistic Milestones.

Identify the key logistic milestones, such as technical data, delivery, schedule, and software technical codes. Identify any known barriers to full and open competition and the effect to overcome these barriers when the complexity of the contract action warrants the establishment of milestones

3. Source-selection Procedures.

Discuss the source selection procedures for the procurement; include the timing for submission and evaluation of proposals and the relationship of evaluation factors to the attainment of the procurement objectives.

4. Procurement Considerations.

Discuss contract type selection, including options or other special contacting methods, any special clauses, special solicitation provisions, or FTA directions received, and if sealed bidding or negotiation will be used.

5. Budget and Funding.

Include budget estimates, explain how they were derived, and discuss the schedule for obtaining adequate funds, (i.e., grantees, FTA, state, local) and the time they are required.

6. Product or Service Description.

Explain the choice of product or service description type or specifications to be used in the procurement, (i.e., Functional, Performance, or Design).

7. Management Information Required.

Discuss, as appropriate, what management system will be used by the grantee to monitor the contractor's efforts.

8. Test and Evaluation.

To the extent applicable, describe the test program of the contractor and the grantee. Describe the test program for each major phase of the system procurement. (i.e., bus purchase, rail system, and major construction contracts).

9. Logistic Considerations.

Describe the assumptions to determine contractor or grantee support, both initially and over the life of the procurement, including consideration of the contractor or grantee maintenance and servicing ability. Consider the reliability, maintainability, and quality assurance requirements, including any planned use of warranties. Describe the requirement for contractor data and data rights, their estimated cost, and the use to be made of the data.

10. Grantee-Furnished Property.

Indicate any property to be furnished to contractors, including material and facilities, and discuss any associated considerations, such as its availability or schedule for its acquisition.

11. Grantee-Furnished Information.

Discuss any grantee information, such as manuals, drawings, and test data, to be provided to prospective offeror and contactors. Indicate which information requires additional controls to monitor access and distribution.

12. Environmental and Energy Conservation Objectives.

Discuss all applicable environmental and energy conservation objectives associated with the procurement. Discuss the applicability of an environmental assessment or environmental impact statement, the proposed resolution of environmental issues, and any environment-related requirements to be included in solicitations and contracts.

13. Contract Administration.

Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement's performance criteria will be enforced.

14. Milestones for the Procurement Cycle.

Address the following steps and any other appropriate areas.

a. Procurement Plan Approval.

The procurement plan is generally concurred on by all personnel that contributed to the building of the plan before approval by the General Manager or other appropriate approving official.

b. Statement of Work.

Discuss the statement of work preparation and the estimated date of its completion.

c. Specifications.

The specification preparations for major procurements are generally accomplished by a consultant contractor. Discuss when this contract has/will be awarded and the time for completion. Address how the organizational conflict of interest issues will be handled.

d. Data Requirements.

Discuss the need for data and how it will be acquired.

e. Purchase Request.

Indicate the date the purchase request (PR) package will be provided to procurement. This package should include assurances that funds are/will be available when needed. Also, an independent cost estimate (ICE) should be included with the PR and must be submitted before bids or proposals are received.

f. Justification and Approval.

If other than full and open competition procedures will be used, an appropriate grantee official must sign the justification. For major procurements the Board normally will approve the release of the solicitation.

g. Completion of the RFP/IFB.

Indicate the number of workdays required to prepare the solicitation package after receipt of all necessary information.

- h. Issuance of Public Notification.
Most grantees issue their public announcements for 30 days in local newspapers and 45 to 60 days in national publications before the solicitation is released. The more interest the grantee has in their requirements, the more beneficial it is. CVCOG shall publish a minimum of twice in a local paper seven days apart.
- i. Issuance of the Solicitation.
The solicitation will establish the date when bids or proposals are due. Be sure you allow sufficient time for the bidders or offerors to prepare their bid/proposals. Allow 30 to 45 days for most construction projects and longer (60-plus days) for rail systems. For large, complex construction projects a pre-bid/pre-proposal conference should be held. Leave sufficient time between pre-bid/pre-proposal conferences to allow industry to adjust their bids/proposals before the due date.
- j. Evaluation of Proposals, Audits, and Field Reports.
The negotiated procedure usually requires substantially more time to evaluate and hold discussions, as necessary, than the sealed bidding procedure. Some requirements may require a field report/pre-award survey, so remember to build this extra time into your milestone.
- k. Beginning and Completion of Negotiations.
Depending upon the number of responses to your RFP and the complexity of the negotiations, more than one round of discussions may be required. After discussions are complete, you need to establish a due date for revised final proposals/BAFOs. Take this into consideration when establishing your milestone.
- l. Contract Preparation, Review, and Board approval.
Contract preparation, staff review, legal review, and Board approval need to be addressed when establishing your milestones.
- m. Contract Award.
Once the contract has been awarded, the contractor must be given time to provide insurance documents, bonds, etc. before the Notice to Proceed (NTP) issued when necessary. Some requirements may necessitate a substantial mobilization period which also needs to be considered when establishing a milestone chart.
- n. Stakeholders' signatures and the Approval Authority.
When your acquisition plan is completed, the Stakeholders should have their signatures on the acquisition plan along with that of the final approving authority, including the date of their signature. This is shown in the example below,
- o. Milestone Chart. List Approval/Action. Appendix A Stakeholders Signature and Date•

(i.e. Procurement, DBE, Executive Staff)
Approval and Date

Executive Director

Appendix A
Milestone Chart (Sample)

Planned Date	Actual Date	Running Date
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Statement of need:
Market Survey:
List of Sources:
Product or Service Description (SOW):
Independent Cost Estimated:
Source Selection Procedures:
Evaluation Factors Established:
Source Selection Plan:
Contract Administration Plan:
Procurement Plan Approved:
Purchase Request Provided to Procurement:
RFP/IFB:
Issuance of Public Notification:
Issuance of Solicitation:
Pre-bid/Pre-proposal Conference:
RFP/IFB Due Date:
Evaluation of Bids I Proposals:
Negotiation:
Contractor Selected:
Contract Preparation, Review, and Approval:
Board Approval (if necessary):
Contract Award:
Debriefing of Offerors:
Notice to Proceed: