



CONCHO VALLEY
COUNCIL OF GOVERNMENTS

PROCUREMENT POLICY

**This policy document is the exclusive property of
The Concho Valley Council of Governments
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1. **INTRODUCTION**

1. **Purpose:**

The purpose of this Procurement Policy is to establish procedures for staff of the Concho Valley Council of Governments, hereby known as CVCOG, to follow in connection with the purchase of goods or services. The procedures set forth within this Procurement Policy are designed to ensure timely and efficient acquisition of goods and/or services at the best value for the CVCOG that are consistent with good business practices and to assure full and open competition among vendors interested in doing business with the CVCOG. Unless stated otherwise, these procurement procedures shall apply to every purchase of goods or services, regardless of the funding source or payment method.

2. **Applicability:**

This procurement policy applies to the purchase of goods and/or services by the CVCOG, for itself, and for any of the following entities:

- 1) Area Agency on Aging (AAA)
- 2) Foster Grandparents Program (FGP)
- 3) Retired & Senior Volunteer Program (RSVP)
- 4) Senior Companion Program (SCP)
- 5) 2-1-1 Texas (211)
- 6) Criminal Justice (CJ)
- 7) Concho Valley Testing & Training Center (CVTTC)
- 8) Homeland Security (HSEC)
- 9) Head Start (HS)
- 10) Regional 9-1-1 (911)
- 11) Regional Services (RS)
- 12) Concho Valley Transit District (CVTD)
- 13) Aging and Disability Resource Center (ADRC)
- 14) Concho Valley Economic Development District (CVEDD)

3. **Procurement Responsibilities:**

a. **Promulgation of Procurement Policy:**

- i. The CVCOG Board of Directors, hereby known as the “Board,” will review and adopt this Procurement Policy and any amendments, by resolution of the Board.
- ii. Adopted as of April 14, 2021

b. Administrative Policy:

- i. The Executive Director is the CVCOG's Contracting Officer, and as such, shall have the responsibility for the administration and proper implementation of this policy.
- ii. The Executive Director, through the Director of Finance, has delegated specific responsibilities for the administration of procurement policies and procedures to the Procurement Department. This includes development of standard forms and documents for use in procurement transactions, current Terms and Conditions for contracts, procedures for procurements, etc.

c. CVCOG Employees:

- i. Each CVCOG employee shall comply with the provisions of this policy, unless otherwise directed in advance by the Executive Director or the CVCOG Executive Board.
- ii. For contracts requiring monitoring and management, a CVCOG employee shall serve as a contract manager. This employee will be responsible for monitoring the contractor's performance to ensure that CVCOG receives goods and/or services in accordance with the terms and conditions of the contract and that CVCOG receives the best value available.
- iii. 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, CVTD or CVEDD.

iv. Conflict of Interest:

1) It shall be a breach of ethical standards for any CVCOG employee who participates directly or indirectly in a procurement when the employee know:

- a. 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;
- b. 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
- c. 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.

2) Discovery of Actual or Potential Conflict of Interest (Disqualification and Waiver):

- a. Upon discovery of an actual or potential conflict of interest, an employee participating directly or indirectly in a procurement shall:

- i. Promptly file a written statement of disqualification with the Executive Director; and
 - ii. Withdraw from further participation in the procurement.
- 3) 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.
- 4) Any employee who fails to comply with the provisions of this paragraph may be subject to disciplinary action.
- v. Employee Disclosure Requirements:
 - 1) 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.
 - 2) 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.
- vi. Code of Conduct:
 - 1) All CVCOG employees, officers, agents, and/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.
 - 2) Penalties, sanctions, or other disciplinary action for violation of the CVCOG code of conduct will be issued by the Executive Director.

4. **Federal Requirements:**

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.

a. **Applicable 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):

i. 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.

ii. 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.

iii. Other Federal Requirements (CVTD Specific):

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 statues 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.

iv. Waivers:

Request for waivers of Federal requirements should be addressed to the funding agency.

5. State and Local Laws/Requirements:

In accordance with the Common Grant Rules, CVCOG, CVTD, and CVEDD 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, CVTD, and/or CVEDD 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.

6. Term Requirements (CVTD Specific):

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 policies for commodities, utilities or other types of procurements.

7. Related Requirements:

a. CVCOG Organizational Documents:

- i. The CVCOG was established under Texas Local Government Code, Chapter 391, and it authorizes CVCOG to purchase goods and/or services, and to make contracts that incur the liabilities thereof.
- ii. Furthermore, the Executive Director of the CVCOG is responsible for ensuring that full and accurate accounts of receipts and disbursements are kept. In regard to the purchase of goods and/or services, the Board's approval of the Policy shall serve as its delegation of such record-keeping responsibilities to the Director of Finance and the Procurement department.

b. Executive Director:

- i. The Concho Valley Council of Governments (CVCOG), its programs, Concho Valley Transit District (CVTD), and the Concho Valley Economic Development District (CVEDD) reports to the Concho Valley Council of Governments Executive Director who is appointed by CVCOG Board of Directors. The Executive Director is granted authority by the Board to enter into contracts and agreements in accordance with (IAW) Federal rules, laws, guidelines and regulations as advised and guided by Procurement Policy.
- ii. Pursuant to this Policy, the Executive Director shall execute all contracts entered into on behalf of CVCOG, unless the signing and execution thereof has been expressly delegated to another officer, employee, and/or agent of the CVCOG.

c. Board of Directors:

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

d. Administrative:

- i. The Executive Director shall have the authority to issue interpretations of this Policy, to issue directives, and to make decisions in circumstances where such authority is not otherwise specifically reserved to the Board.
- ii. 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 sub-recipients, if any, have made final payment and all other pending matters are closed.
 - 1) 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.

e. Requirements of Specific Awards:

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

- i. Where a source of funding for a contract resulting from a particular procurement transaction consists of federal or state funding, and where specific conditions or related requirements (such as: specific contractor selection procedures, or specific levels/methods of competition) are mandated in connection with the expenditure of such funding, then if the awarding agency's mandated conditions or requirements are more specific, or more restrictive than those set forth in this policy, CVCOG will comply with the awarding agency's conditions and requirements.

2. CONTRACT INFORMATION

1. 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:

- i. 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.
- ii. 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 is to be 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.

i. Unnecessary Reserves:

CVCOG shall limit the acquisition of federally assisted property and services to the amount it needs to support its operations.

ii. Acquisition for Assignment Purposes:

- 1) 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:
- 2) 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.
- 3) The general limit on assignments does not preclude CVCOG or its programs or sub-recipients 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 sub-recipients shall not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.

d. Options:

CVCOG programs or sub-recipients 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:

CVCOG's program or sub-recipient 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.

2. Required Documentation:

- a. All procurements conducted on behalf of CVCOG will have required documentation to substantiate the procurement and use of funds.
- b. Any procurement requests submitted to the procurement office missing documentation may be subject to rejection and sent back to the requesting department for clarification and/or correction.
- c. Specific Documents:
 - i. Independent Cost Estimate (ICE):
 - 1) An ICE is a tool for you to use to communicate to management, the purchasing department, etc. that you have done market research on the items/services you want to procure and you have an estimated cost and justification for the procurement.
 - 2) The ICE should address the need, scope, and justification of each procurement; moreover, the ICE provides a statement that the budget has been reviewed by the department for the finance office.
 - 3) Definitions:
 - a. Need: A lack of something wanted or deemed necessary (commodity or service).
 - b. Scope: Estimated Amount
 - c. Justification: A reason, fact, circumstance or explanation of why you need the commodity or service
 - 4) Per the National Transit Institute (NTI), “an ICE is a benchmark for evaluating the reasonableness of the contractor’s proposed cost or price, and may range from a simple budgetary estimate to a complex estimate, based on inspection of the product, review of drawings or specifications, and prior procurement data. An ICE is an independent assessment of what you would expect to pay for goods or services, based on a reliable source, such as paid historical prices, industry standard, or market research.”
 - 5) An ICE is needed for every procurement unless:
 - a. If an ICE is attached to a contract in the Contract Management System, another and/or subsequent ICE documents are not needed when paying against the contract. For example, if an RFP is awarded to a vendor, an ICE is included in the contract paperwork when the RFP is processed.
 - i. If multiple payments are made against the contract, ICEs are not needed with the subsequent paperwork.
 - b. Travel documents do not need an ICE

ii. **System for Award Management (SAM):**

- 1) Contractors must be checked against the Federal database to ensure that they are not 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.
 - a. Entities that are listed as debarred or suspended contractors cannot be contracted with. Another contractor must be selected as a replacement.
- 2) Regardless if a SAM is attached to a contract in the Contract Management System, another and/or subsequent SAM documents are required when paying against the contract.
 - a. For example, if an RFP is awarded to a vendor, a SAM is included in the contract paperwork when the RFP is processed.
- 3) When multiple payments are made against the contract, SAMs are needed with the subsequent paperwork as the SAM document checks with the federal government if the vendor is in good standing and not debarred at the time of payment.

iii. **Budget Printout:**

A copy of the associated budget that the department wishes to pay for the good or service.

3. **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:

a. **Written Record of Procurement History:**

CVCOG shall maintain written records detailing the history of the procurement, including records relating to:

i. **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;

ii. **Contract Type:**

Procurement must state the reasons for selecting the contract type it used;

iii. **Contractor Selection:**

Procurement must state its reasons for contractor selection or rejection, including written justification when applicable;

iv. Contractor Responsibility:

Procurement must provide a written determination of responsibility for the successful contractor when applicable;

v. 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

vi. 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.

b. Contract Administration and Close-Out Documents:

Procurement shall maintain written records detailing the performance and close-out of the contract, including records relating to:

i. 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;

ii. Contract Deliverables:

CVCOG must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables;

iii. 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;

iv. 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;

v. 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. Files will be adequately maintained, accessible, and retained 7-years unless otherwise determined.

4. **Award Criteria:**

Awards by CVCOG will be made based on best value criteria to responsive and responsible contractors.

- a. In determining the best value, the purchase price and whether the goods or services meet specifications are the most important considerations; however, the department may also consider:
 - i. installation costs;
 - ii. life cycle costs;
 - iii. the quality and reliability of the goods and services;
 - iv. the delivery terms;
 - v. indicators of probable vendor performance under the contract such as past vendor performance, the vendor's financial resources and ability to perform, the vendor's experience or demonstrated capability and responsibility, and the vendor's ability to provide reliable maintenance agreements and support;
 - vi. the cost of any employee training associated with a purchase;
 - vii. the effect of a purchase on agency productivity;
 - viii. the vendor's anticipated economic impact to the state or a subdivision of the State, including potential tax revenue and employment; and
 - ix. other factors relevant to determining the best value for the State in the context of a particular purchase (Division, 2018)
- b. **Responsive** contractors submit responses that conform in all material respects to the requirements stated in any portion of the solicitation, whether they are informal and/or formal.
 - i. **Responsiveness** is determined from the solicitation documents themselves, and, with very few exceptions, is determined with no discussions or further input from the contractor. Examples of responsiveness can include:
 - 1) Are the submitted response documents complete and is any part of the proposal intentionally or inadvertently ambiguous? Is it susceptible to two or more reasonable interpretations?
 - 2) Were all requested documents submitted?
 - 3) Was the submitted proposal document signed?
 - 4) Were all material representations and certifications completed and signed, including but not limited to, state or federal requirements?
- c. A **responsible** contractor is a company, which based on its responding proposal, references, and any other pertinent information, has demonstrated it has the ability, willingness, and integrity to perform successfully under the terms and conditions of the Award and any contract resulting from the solicitation.

- i. Examples of Contractor responsibility, as identified in other parts of the solicitation package, are:
 - 1) Demonstrable integrity, record of past performance, and financial and technical resources needed to meet the required delivery and performance schedule, taking into consideration all the Contractor's existing commercial and governmental business commitments.
 - 2) The necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them;
 - 3) Compliance with applicable licensing and tax laws and regulations;
 - 4) The necessary production, construction, and technical equipment and facilities, or the ability to obtain them.
 - 5) Compliance with Affirmative Action and Disadvantaged Business Program requirements; and
 - 6) Other qualifications and eligibility criteria necessary to receive an award under applicable laws and regulations.

5. **Changes to Contracts:**

During the course of contracts, including purchase orders, changes may need to be made. Changes can be minor administrative changes or they can be substantial changes that affect pricing, delivery, etc. When contract changes are necessary, please contact the procurement department.

a. **Types of Changes:**

i. **Administrative Changes:**

Administrative changes to contracts do not affect or alter the rights of either party in the contract. Examples include:

- 1) Changes in billing instructions or address
- 2) Corrections to typos not affecting the substance of the contract
- 3) Changes in agency personnel listed in the contract

ii. **Substantive Changes:**

- 1) Contractual changes that affect the rights of both parties.
- 2) Amendment(s) must be issued and accepted by both parties.
- 3) Examples include:
 - a. Change in price of the contract
 - b. Change in delivery schedule
 - c. Change in quantity

- d. Change in deliverables
- e. Change of terms and conditions

iii. Construction Changes:

- 1) If the contractor perceives that work is beyond the scope of the original contract, the contractor may claim the contract was “constructively” changed and may be entitled to additional compensation for the changes.
- 2) If a contract change(s) will overall increase the contract scope by ten percent or more, then the contract should be reviewed by the procurement department to see if it will need to be cancelled and rebid.
- 3) Per the Texas Procurement Manual:
“If the extent of the changes so substantially alters the original specifications that not re-advertising the revised specifications would deny a potential vendor an opportunity to respond to the revised specifications. If a revision is substantial, a new solicitation is needed to ensure compliance with the bidding statutes.”

6. Cancellation, Rejection, and/or Termination:

- a. Any solicitation, or any and all quotes, bids, or proposals received in response to a solicitation may be canceled or rejected when it would be in the CVCOG’s best interests to do so.
- b. The reasons for cancellation or rejection shall be set forth in writing and made part of the contract file; moreover, criteria for termination of a contract is listed in the terms and conditions of all contracts.
 - i. Termination for cause and/or convenience provisions must be included in third-party contracts exceeding \$5000.

7. Necessary Approvals:

- a. The Executive Director, or another delegated person serving in his/her place, shall not execute any contract involving an expenditure of \$25,000 or more (regardless of funding source) unless and until such contract has been approved by the board.
- b. In the event of a catastrophic disaster, such as tornado, flooding, and/or Act of God, the Executive Director has the authority to suspend the procurement levels and authority so emergency purchases can be conducted; however, the purchases should be within the public’s best interest to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the CVCOG.
 - i. Per the state, all procurements conducted as emergencies should be made as competitive as possible under the circumstances. The agency should make a reasonable attempt to obtain at least three informal bids.

8. **New Accounts & Membership:**

- a. To help track the number of online/local accounts and/or memberships under the CVCOG, the procurement division has created a New Account Form to avoid multiple departments having accounts/memberships with the same vendor.
- b. Prior to setting up an account with a vendor, please contact the procurement department to see if an account is already established and/or a request a copy of the form for account set up approval.

3. **PROCUREMENT METHODS**

1. **Purchasing Instruments:**

CVCOG uses the following instruments to authorize purchases and contractually bind CVCOG to a purchase of goods or services:

a. **Credit Cards:**

- i. The purpose of the Credit Card program is to establish a more efficient, cost-effective method of purchasing and paying for travel expenses.
- ii. The Credit Card program is not meant to be a substitute for our normal purchasing procedures, but may be used to enhance the procedures for travel and purchases made with approved vendors where a CVCOG account has not already been established (please see travel policy for more information.)
- iii. **A credit card cannot be used over \$5000 without prior approval in writing by the Executive Director.**
- iv. Please refer to the CVCOG Credit Card Guidelines for further instructions.

b. **Purchase Order:**

- i. A purchase order is a contract, approved by the Executive Director or a designated employee of the CVCOG, issued internally to a vendor to authorize the purchase of goods or services in specific quantities and prices.
- ii. For a purchase order to be valid, an offer and acceptance must be made between the CVCOG and the contractor. Given that CVCOG issues purchase orders internally, a contractor may request a Formal Procurement Statement be issued to formally execute in writing an offer and acceptance between the CVCOG and the contractor.
- iii. All documentation related to the procurement should be included in the purchase order file, such as ICE, bid tab (if necessary) quote, etc.
- iv. **Blanket Purchase Order:**
 - 1) A blanket purchase order (PO) is a commercial document issued by CVCOG/CVTD/CVEDD to a vendor to purchase a defined dollar amount of goods and services over a period of time.

- 2) Blanket POs are often used in place of standard POs when a buyer needs to place reoccurring orders with a seller over time, or when the exact quantities of goods desired are initially unknown.

v. **When to issue a requisition (REQ) versus a purchase order (PO)?**

- 1) If a procurement is expected to exceed the micro-purchase threshold, then a REQ must be created and then the PO is converted from the information in the REQ.
- 2) If a contract is issued via formal procurement:
 - a. When the contract is On-going service, for example T-Shirts, which programs buy in small quantities, a REQ is issued.
 - b. However, when a contract is created for one-time project, there is no REQ issued – issue a PO.
 - c. “Type of Contract” Key:
 - i. P – One-Time Purchase and expires when purchase is made (No REQ needed)
 - ii. D – On –Going Service (multiple year contract) (REQ needed)
 - iii. A – Blanket Purchase Agreement (Terminate at Will) (REQ needed)
 - iv. R – Request for Proposal
 - v. B – Invitation to Bid
 - vi. Q – Request for Quote

c. **Formal Written Contracts:**

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

d. **Task Orders:**

- i. The orders are orders for service contracts, such as construction and/or repairs that are issued against a vendor's contract (i.e. a contract must be in place).
- ii. The task order specifies to the vendor what work is to be done, the estimated timeline, and estimated cost.
- iii. A **task order form** must be completed and authorized by management prior to the service start date.
- iv. A **task order number**, which must be included on the task order form, is issued by the Procurement Department.
- v. Upon receipt of invoice, please send to procurement with a copy of the task order to issue a purchase order for payment.

2. **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:**

- i. 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.
- ii. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, CVCOG must seek competition.

c. **Prequalification:**

- i. CVCOG programs or sub-recipients 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 and approved by the Executive Director.
- ii. CVCOG sub-recipients 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).
 - a. CVCOG and its sub-recipients 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.

3. **Procurement Thresholds:**

a. **Minor or Micro Purchases:**

- i. Transit Purchases: \$0.01 to \$2,999.99
- ii. All Other Program Purchases: \$0.01 to \$4,999.99
- iii. No competitive quotes are required; however, it is recommended by the procurement department to practice good faith and award based on best value criteria as three bids and/or bid tabs are no longer required.

b. **Small Level Purchases:**

- i. Transit Purchases: \$3,000 to \$24,999.99
- ii. All Other Program Purchases: \$5,000 to \$24,999.99
- iii. CVCOG staff shall solicit written price or rate quotes from **at least three sources**.
- iv. The solicitation shall be in writing and shall contain sufficient detail to allow accurate pricing of the goods and or services to be procured.
 - 1) Please do not solicit bids via social media.

v. **HUB/DBE Requirements:**

At least two of the quotes are required/encouraged to be from **HUB and/or DBE contractor(s)** sources if they apply to the department funding:

1) **Historically Underutilized Business (HUB):**

- a. State agencies, such as 911 under the Commission on State Emergency, are constantly looking to work with businesses certified as Historically Underutilized Business (HUB) per the state of Texas.
- b. The goal of this good-faith effort is to actively involve HUBs in the Texas procurement process and ensure they receive a fair share of state business.
- c. Per the Comptroller, **a HUB is defined as:**

- i. A for-profit entity that has not exceeded the size standard prescribed by 34 TAC §20.294, and has its principal place of business in Texas, and
 - ii. At least 51 percent owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman and/or Service-Disabled Veteran, who reside in Texas and actively participate in the control, operations and management of the entity's affairs.
 - iii. Must be signed up and certified by the Texas Comptroller
- d. Please include copies of your HUB certification documentation in your RFP response.

2) **Disadvantaged Business Enterprises (DBE):**

- a. Concho Valley Transit District (CVTD) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26 (<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise>).
- b. CVTD has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, CVTD has signed an assurance that it will comply with 49 CFR Part 26.
- c. Per the federal government, **a DBE is defined as:**
 - i. A business that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
 - ii. A business whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
 - iii. **Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities.
 - 1. The social disadvantage must stem from circumstances beyond the individual's control.

2. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
3. Any individual in the following groups, members of which are presumed to be socially and economically disadvantaged:
 - a. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - b. “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. “Native Americans,” which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - d. “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e. “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - f. Women;
 - g. Any additional groups whose members are designated as socially and economically disadvantaged by the

SBA, at such time as the SBA designation becomes effective.

- 3) Contractors that fall into the HUB and/or DBE categories that need more information can contact the CVCOG Procurement department.

vi. **Scope of Work:**

Depending on the goods and/or services to be procured, such as specialized equipment or services, and the estimated amount of expenditure, the procurement department may determine that a simple description of goods or services will not be sufficient and that a **Scope of Work (SOW) must be created.**

- 1) **Invitation for Bid:**

Given that the success or failure of a procurement contract can usually be linked to the adequacy of the planning, analysis, and thoroughness of the SOW, it is recommended that an **Invitation to Bid** document and/or template be utilized with the guidance of the procurement department manager and the department subject matter expert(s).

- a. **Invitation for Bid (IFB):**

A written competitive sealed bid method used to obtain written bids. An IFB may be for both informal (procurements of \$25,000 or less) and formal (procurements exceeding \$25,000).

- 2) **Request for Qualifications (RFQ):**

- a. Generally used for professional services wherein the respondents are evaluated based solely on their qualifications and skills.

- b. This solicitation method is more like an application process, where it is very clear what is expected from the vendor. Price is negotiated after the agency selects its preferred respondent based on how well the respondents met the published qualifications. (Division, 2018)

- 3) To fully develop the proper procurement document, departments will need to supply explicit, salient characteristics of the good or service to be procured along with any vendor information (if available) to the procurement department staff.

vii. **Cost or Price Analysis:**

If the funding agency requires it (such as TxDot) a **cost or price analysis** documentation may be required for the contract file:

- 1) **Cost Analysis:**

- a. 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.

- b. 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.
- c. A cost analysis will not provide sufficient information to determine the reasonableness of the contract cost when:
 - i. The offeror submits elements of the estimated cost;
 - ii. Only a sole source is available, even if the procurement is a contract modification; or
 - iii. In the event of a change order.

2) **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.

- viii. The CVCOG will award to a responsible and responsive contractor that offers the best value elements of the goods and/or services that are optimal to the CVCOG's needs.
- ix. Documentation of each solicitation, and any written quotes received in response, shall be placed in the contract file.

c. **Competitive Procurements:**

- i. \$25,000 and above
- ii. Formal solicitation responses will be conducted by the Procurement Department on procurements in excess of \$25,000 that do not conform with one of the other procurement types listed in this operating policy (OP).
- iii. Subject matter experts from the initiating department will need to provide information to the procurement department to develop the necessary documentation for vendors.

iv. **Competitive Proposals:**

Competitive proposals are initiated through the issuance of a solicitation referred to as a **Request for Proposals (RFP)** or a formal **Invitation to Bid (IFB)**.

1) **Request for Proposals (RFP):**

- a. A Request for Proposals (RFP) is a written solicitation document for purchases acquired by means of the competitive sealed proposals procurement method.
- b. Generally, an RFP is recommended when factors other than price are to be considered, negotiations are desired, requirements cannot be described by detailed specifications included in a PO, or the vendor is expected to provide innovative ideas. This

solicitation type must be used when an IFB is not practicable or advantageous. One of the key differences between an IFB and an RFP is that negotiations are allowed in an RFP and not allowed in an IFB. (Division, 2018)

- c. Each RFP shall indicate in general terms what is to be procured, and shall contain or reference the applicable terms and conditions, including any unique capabilities or qualifications that will be required of the contractor.
- d. The RFP shall instruct prospective offerors of the need to demonstrate, within their proposals, their “responsibility.” Each RFP shall also specify the factors that will be used to evaluate the merits of proposals received, such as best value, along with the numeric importance.
- e. Please keep in mind that RFPs can take time to create given that multiple people may need to be involved to fully develop an RFP that meets the needs of the department.
- f. **Per the state Comptroller, an estimated month is needed to create an RFP and the following are standard times that an RFP should be posted online:**
 - i. General procurements must be posted online for a minimum of 21 days.
 - ii. Emergency procurements must be posted online for a minimum of 14 days.
 - 1. A written justification will be needed for posting the minimum amount of days.
 - iii. **Keep in mind that board approval will need to be factored into the calendar/timeline for a formal procurement.**
- v. Qualifications –based procurement (RFQ), where price is not initially used as a selection factor, can only be used for the following services:
 - 1) Architectural;
 - 2) Engineering;
 - 3) Accounting;
 - 4) Actuarial; and
 - 5) Legal
- vi. **Sealed Bids:**

Sealed bids are used in procurements in which bids are publically solicited and a firm fixed price contract is awarded to the responsible bidder whose bid,

confirming to all the material terms and conditions of the solicitation, is lowest in price.

- 1) The vehicles through which bids are solicited can be an Invitation for Bids, or a Request for Proposals.
 - a. The solicitation 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.

2) When Appropriate:

- a. The sealed bid method of procurement is the preferred method for acquiring products and services, including construction services that cost greater than \$100,000.
- b. The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate.
- c. The sealed bid method of procurement is appropriate if the following conditions apply:
 - i. Precise Specifications:

A complete, adequate, precise, and realistic specification or purchase description is available.
 - ii. Adequate Sources:

Two or more responsible bidders are willing and able to compete effectively for the business.
 - iii. Fixed Price Contract:

The procurement generally lends itself to a firm fixed price contract.
 - iv. Price Determinative:

The successful bidder can be selected on the basis of price, and those price-related factors listed in the solicitation

 1. 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.
 - v. 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.

d. **Third-Party Contracting Capacity:**

i. **Revenue Contracts:**

1) 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.

2) 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.

3) All third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements.

4) All programs under the purview of CVCOG will conduct annual planning with its requirement organization in advance of receipt of purchase requests.

5) CVCOG programs will conduct formal planning for all requirements in excess of \$100,000.00.

ii. **Specific Requirements Include:**

1) **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.

2) **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:

- a. Solicitations: Requirements for solicitations
- b. Necessity: Requirements related to need for products or services.
- c. Lease versus Purchase: Requirements related to the lease or purchase alternatives to achieve an economical and practical procurement.
- d. Metric Usage: Requirements related to the acceptance of products and services dimensioned in the metric system of measurement.
- e. Environmental and Energy Efficiency Preferences: Requirements related to preference for products and services that conserve natural resources, protect the environment, and are energy efficient.
- f. Procurement Methods: Descriptions of procurement methods appropriate and deemed applicable to the acquisition.
- g. Legal Restrictions: Descriptions of Federal and State restrictions.
- h. Sources: Descriptions of the availability and use of various sources of products and services.
- i. Resolution of Third Party Contracting Issues: Procedures related to the resolution of third party contracting issues.

3) **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.

4) **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 are 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.

5) **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 sub-recipients, if any, have made final payment and all other pending matters are closed. Specific record keeping requirements include:

- a. 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:
 - i. 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;
 - ii. Contract Type: Must state the reasons for contract type it used;
 - iii. Contractor Selection: Must state the reasons for contractor selection or rejection;
 - iv. Contractor Responsibility: Must provide a written determination of responsibility for the successful contractor;
 - v. Cost or Price: Must evaluate and state its justification for the contract cost or price; and
 - vi. Reasonable Determination: Must retain documentation commensurate with the size and complexity of the procurement.
- b. 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.

6) Use of Technology/Electronic Commerce:

CVCOG and sub-recipients may use and Electronic Commerce system to conduct third party procurements. If an Electronic Commerce system is used, then the following requirements apply:

- a. Sufficient System Capacity:

System must have sufficient system capacity necessary to accommodate all federal requirements for full and open competition.

b. 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

c. Uses:

CVCOG may use its system to undertake the following types of third party procurements:

i. 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.

ii. Electronic Bidding and Reverse Auctions:

CVCOG and sub-recipients may use electronic bidding and reverse auctions.

4. 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.

- i. 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.

1) Detailed product specifications should be avoided if at all possible; however, there is not prohibition against their use when appropriate.

- ii. 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.
- iii. 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.

- iv. Solicitations with requirements that contain features that unduly restrict competition may not be used. Such features include:
 - 1) Excessive Qualifications:

Imposing unreasonable business requirements for bidders or offerors.
 - 2) Unnecessary Experience:

Imposing unnecessary experience requirements for bidders and offerors.
 - 3) Improper Prequalification:

Using prequalification procedures that conflict with the prequalification standards described above.
 - 4) 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.
 - 5) Excessive Bonding:

Imposing unreasonable restrictive bonding requirements on bidders and offerors in excess of federal, agency, and state requirements.
 - 6) 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.
 - 7) In-State or Local Geographic Restrictions:

Specifying in-state or local geographic 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 establish federal or state provisions, rules, or regulations.

 - a. 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.
 - 8) 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:

a. 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.

b. 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.

c. 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.

9) 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.

10) 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.

- a. 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.

c. Contract Type Specified:

- i. The solicitation must state the type of contract that will be awarded.
- ii. CVCOG may review the Federal Acquisition Regulation (FAR) Part 16 to determine the best type of contract for a specific requirement.
- iii. **The following contract types are prohibited or restricted:**

- 1) Cost plus Percentage of Cost type contracts are prohibited

- 2) Time & Materials type contracts may be used only after a written determination is made that no other contract type is suitable.
 - a. CVCOG and the Contractor must specify a ceiling price that the Contractor may not exceed 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 CVTDs right to reject all bids or offers.

5. **Evaluation Requirements:**

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

a. General:

- i. 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.
- ii. CVCOG may not modify its evaluation factors after bids or proposals have been received without re-opening the application.

b. Options:

i. 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.

ii. 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 interest.

6. **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 the 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:**

- i. All contracts must be signed by the Executive Director, or designated representative(s).
- ii. **Contracts exceeding \$25,000 must be approved by the Board of Directors at the monthly Board of Directors meeting.**

7. **Exceptions to Procurement Thresholds:**

The following items supersede the above procurement thresholds – please check with procurement department when wanting to use the following criteria as justification:

a. **Sole Source/Proprietary Purchases:**

- i. A proprietary purchase is one where the specifications or conditions of the proposed purchase are proprietary to one vendor and do not permit an equivalent product or service to be supplied.
- ii. The term “**proprietary**” refers to a product or service that has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services.
- iii. Proprietary purchases include products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law.
- iv. Proprietary purchases, by definition, preclude competition because an attribute of the purchase limits consideration to only one product or supplier. In today’s robust marketplace, it is unusual for only one product or one vendor to be capable of addressing an agency’s business need. Because Texas procurement law promotes the use of competitive bidding for purchases, proprietary purchases are subject to enhanced scrutiny. (Division, 2018)

1) Competitive Proprietary Purchase:

A **competitive proprietary purchase** is justified when the specified product or service is available for purchase through more than one vendor such as, dealers, distributors, resellers, authorized service providers.

- a. Examples of competitive proprietary purchases include brand-specific replacement parts for equipment available through multiple OEM-authorized dealers and software that a software publisher makes available to the public through several resellers.

- v. A **sole source** is justified when the specified product or service is only available for purchase through a single vendor e.g., manufacturer, publisher, service provider, and/or they hold the patent or trademark.

- 1) Examples of sole source proprietary purchases include a back issue of a magazine available from only the publisher and an educational conference available from only the conference sponsor

- vi. The **Justification of Proprietary Purchase form** must be submitted and approved by the Executive Director with procurement paperwork if the above criteria apply.

b. Purchasing Cooperatives (Co-ops):

- i. A "**purchasing cooperative**" is a type of cooperative arrangement, often among businesses, to agree to aggregate demand to get lower prices from selected suppliers.

- 1) Retailers' cooperatives are a form of purchasing cooperative. It is often used by government agencies to reduce costs of procurement.

- ii. Purchasing Cooperatives are used frequently by government entities, since they are required to follow laws requiring competitive bidding above certain thresholds.
 - iii. Counties, municipalities, schools, colleges and universities in the majority of states can sign an inter-local agreement or contract that allows them to legally use a contract that was procured by another governmental entity.
 - iv. Advantages include better purchasing and a wider range of resources to share as the co-ops do the internal bidding and negotiating to provide the best value pricing.
 - v. **CVCOG, CVTD, and/or CVEDD currently belong to the following co-ops:**
 - 1) Sourcewell (formerly NJPA) – <http://www.sourcewell.com/en/>
 - 2) Buyboard – <https://www.buyboard.com/Home.aspx>
 - 3) HGACBuy – <https://www.hgacbuy.org>
 - a. **CVTD is prohibited from using HGACBuy due to FTA restrictions**
 - 4) TIPS USA – <https://www.tips-usa.com>
 - vi. To join a co-op, please submit a request to the procurement department as we're required to research any and all procurement programs before joining.
 - vii. Programs using **State and/or local funds** can request bids from co-ops and procure from the co-op regardless of the procurement level threshold given that co-ops do the bidding and/or negotiating internally.
 - 1) Reference: Texas Local Government Code, Chapter 252: <https://statutes.capitol.texas.gov/SOTWDocs/LG/htm/LG.252.htm>
 - viii. Programs using **Federal Funds** can request bids from co-ops; however, due to federal restrictions, programs must attempt to acquire bids from multiple sources, such as DBEs, HUBs, and private sector vendors.
 - 1) For example, Federal guidelines require 3+ quotes on purchases over \$5000, so a quote from a co-op would only fill the need for one of the quotes.
 - 2) If the purchase(s) are approved by program managers, information will be submitted to the procurement department for purchase. All salient characteristics and co-op documentation should be attached in the contract file.
 - a. Examples of documentation can include screenshots, links, contact information, etc.
- c. **Procuring from a State Contract:**

- i. Statewide Procurement Division (SPD) contracts competitively bid items and negotiate contracts, so state agencies, universities, and local governments can utilize the state contracts when using state and/or local funds.
- ii. **State contracts supersede the procurement levels exempting departments from collecting the minimum 3 bids necessary for informal and formal purchase levels. However, to ensure best pricing, it is encouraged to seek out 3 bids on all purchases.**
- iii. **Unless authorized by the awarding agency or organization, departments using federal funds and/or federal match awards are not allowed to utilize these contracts and would have to adhere to the procurement levels to acquire commodities or services.**
- iv. **State Cooperative Contracts Using FTA Funds (CVTD):**
 - 1) Under Section 3019 of the FAST Act (2015), grantees may purchase rolling stock and related equipment from a State cooperative procurement contract.
 - a. **“Cooperative Procurement Contract”:**

A contract entered into between a State government or eligible nonprofit entities and one or more vendors under which the vendors agree to provide an option to purchase rolling stock and related equipment to multiple participants.
 - 2) The contract term for a cooperative procurement contract may be for an initial term of not more than two years and may include three optional extensions of one year each.
 - 3) State cooperative purchasing contracts or state schedules are subject to federal requirements, including, but not limited to, full and open competition, no geographic preferences, Buy America, and bus testing, and must include all FTA required clauses and certifications with its purchase orders issued under the State contract.
 - 4) Pursuant to Section 3019 of the FAST Act, recipients may purchase from another State’s schedule.
- v. **Texas SmartBuy:**
 - 1) The State of Texas best value marketplace for non-IT goods and services.
 - 2) As the state's central eProcurement system, state agencies and local governments utilize this site for hundreds of competitively bid and awarded state contracts with over 2 million items available.
 - 3) SPD is the State’s central authority for the procurement of non-IT goods and services.
 - a. SPD’s primary functions include managing statewide contracts, exercising procurement authority delegation of specific purchases to individual agencies, and providing guidance on

procurement practices which foster effective competition and ensure the quality and integrity of state purchases.

- b. SPD leverages the State's buying power by developing statewide Term Contracts and establishing TXMAS contracts for large-volume non-IT goods and services. These contracts are available on Texas Smart-Buy. (Division, 2018)

4) <http://www.txsmartbuy.com/contracts?filterBy=TxSmartBuy>

5) If the purchase(s) are approved by program managers, information will be submitted to the procurement department for purchase.

- a. All salient characteristics and Smart-buy documentation should be attached in the contract file. Examples of documentation can include screenshots, links, etc.

vi. **TXMAS:**

1) As an alternative purchasing method, the Statewide Procurement Division establishes **Texas Multiple Award Schedule (TXMAS)** contracts that have been developed from contracts awarded by the federal government or other governmental entities.

2) The General Services Administration's (GSA) Federal Supply Service awards Federal Supply Schedule contracts by competitive procurement procedures for more than 20 schedules that cover multiple commodities and services. The prices reflected on GSA schedule contracts are the most favored customer (MFC) prices and the maximum price allowable.

3) TXMAS contracts take advantage of the MFC pricing and under certain circumstances, an agency or local governmental entity may negotiate a lower price for the goods or services offered on a TXMAS contract. A "best value" purchase must be made by following the TXMAS purchasing procedures via the Texas Smart-buy website.

a. <http://www.txsmartbuy.com/contracts?filterBy=TXMAS>

- b. If the purchase(s) are approved by program managers, information will be submitted to the procurement division for purchase. All salient characteristics and TXMAS documentation should be attached in the contract file. Examples of documentation can include screenshots, links, etc.

vii. **DIR:**

1) DIR is the State's information technology and telecommunications agency.

a. <https://dir.texas.gov/>

2) By leveraging the buying power of the State for technology purchases, DIR provides a range of IT and telecommunications products and

services to agencies and eligible voluntary customers, including local governments and universities.

- 3) More than 600 information technology (IT) commodity contracts are in place for products and services, including computers, software, security hardware and software, networking equipment, telecommunications equipment, IT staffing services, and technology-based training.
- 4) The Cooperative Contracts program offers customers a combination of discounted pricing, convenience, expedited processing, options across multiple vendors and resellers, and opportunities to purchase from Historically Underutilized Businesses (HUBs). (Division, 2018)
- 5) **Prior to procuring items from vendors listed on the DIR contracts, purchaser(s) must check with the IT department for approval.**
 - a. If the purchase(s) are approved by program managers and IT approves the procurement, information will be submitted to the procurement department for purchase. All salient characteristics and DIR documentation should be attached in the contract file. Examples of documentation can include screenshots, links, etc.

viii. **Federal Supply Schedules (FTA funding / CVTD):**

1) **Information Technology:**

- a. Section 211 of the E-Government Act of 2002, 40 U.S.C. Section 502(c)(1), authorizes State and local governments, within limits established by law, to acquire IT of various types through GSA's Cooperative Purchasing Program, Federal Supply Schedule 70.
- b. When using GSA schedules to acquire property or services in this manner, recipients must ensure all Federal requirements, required clauses, and certifications (including FTA's Buy America requirements) are properly followed.
- c. Also, when using GSA schedules to acquire property or services, recipients can fulfill the requirement for full and open competition by seeking offers from at least three sources.
- d. FTA expects a recipient using a price published on a GSA schedule to consider whether the GSA price is reasonable.

d. **Local Contracts:**

- i. CVCOG and its subsidiary entities contract with businesses within the Concho Valley and the state of Texas for goods and services.
- ii. Contract information is listed in the Contracts and Agreements server with limited access to staff.
- iii. Departments can inquire if a local contract is available to 'piggyback' onto.

1) **Piggybacking:**

a. An assignment of an existing contracts' rights to purchase goods and services for another department.

2) Depending on the age and monetary value of a contract, it may be possible to piggyback (if the vendor(s) agree(s)), by amending contract(s) for multiple department use; however, procurement guidelines must be maintained.

3) A contract's scope cannot change more than 10 percent without having to be rebid per state and federal standards; therefore, prior to discussing with a vendor, the contract would need to be reviewed by the procurement department.

4) The procurement department will decide if amending the contract would provide the best value to all of the CVCOG and the inquiring department. Items to consider are:

a. Does it provide best value to all departments by saving time, money, resources, etc.?

b. Are the inquiring department's needs for commodities/services in line with the current contract's scope of work, specifications, and amount of award?

i. Does the contract encompass the commodities or services that CVCOG needs? The proposed piggyback should not significantly unbalance the original scope, or change the nature, quantity or scope of the original contract. Confirm that the items in the contract are not outdated or that services are still relevant.

c. Does the term of the contract, including contract renewals and extension meet CVCOG's inquiring department needs and/or is the contract current?

e. **Emergency Purchases:**

i. An **emergency purchase** occurs when the agency must make the procurement quickly to prevent a hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the CVCOG, including state, federal and/or local funds.

ii. Emergencies occur as the result of unforeseeable circumstances and may require an immediate response to avert an actual or potential public threat or to avoid undue additional cost to the CVCOG.

1) Proper procurement planning for anticipated business need is expected (i.e. lack of preparation does not constitute an emergency).

2) Pending expiration of funds does not constitute an emergency.

iii. All procurements conducted as emergencies should be made as competitive as possible under the circumstances.

- 1) The agency should make a reasonable attempt to obtain at least three informal bids.
 - 2) Emergency procurements over \$25,000 must be posted to the CVCOG website and the Electronic State Business Daily (ESBD); however, the minimum time for posting of the solicitation does not apply to the extent necessary to address the emergency.
- iv. Emergency purchases of goods or services should not exceed the scope or duration of the emergency. (Division, 2018)
- v. **Urgent and Compelling (U&C):**
- 1) 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.
 - 2) 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.

a. **Example:**

CVTD uses U&Cs to justify immediate repairs to a vehicle given the need to reinstate buses into service for the public. For example, an air conditioner repair during the heat of summer is urgent on bus A given there is no replacement bus for the route and the patrons need cool air.

8. **Federal Exceptions:**

a. **§ 75.404 Reasonable costs (specific to HHS):**

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

- i. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- ii. The restraints or requirements imposed by such factors as: Sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
- iii. Market prices for comparable goods or services for the geographic area.
- iv. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.

- v. Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost. (HHS, 2019)

b. **§ 75.405 Allocable costs (specific to HHS):**

- i. A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:
 - 1) Is incurred specifically for the Federal award;
 - 2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and
 - 3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.
- ii. All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.
- iii. Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.
- iv. **Direct cost allocation principles:**
 - 1) If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit.
 - 2) If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph 3 of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis.
 - 3) Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 75.317 through 75.323 and 75.439.

- v. If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part. (HHS, 2019)

c. **§2900.6 DOJ Competition:**

- i. In order to avoid unfair competitive advantage, contractors that develop or draft specifications, requirements, statement of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.
- ii. The following situations are considered to be restrictive and should not take place:
 - 1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - 2) Requiring unnecessary experience or excessive bonding;
 - 3) Noncompetitive pricing practices between firms or between affiliated companies;
 - 4) Noncompetitive contracts to consultants that are on retainer contracts;
 - 5) Organizational conflicts of interest;
 - 6) Specifying a “brand name” product instead of allowing “an equal” product to be offered; and
 - 7) Any arbitrary action in the procurement process. (Justice, 2017)

9. **Special Requirements:**

a. **Architect and Engineering:**

- i. 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.
- ii. Professional services of an architectural or engineering nature that are included are: perform 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.
- iii. 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.

- 1) 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.
- 2) 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.

iv. **Federal Laws and Regulations:**

Federal laws and regulations impose the following requirements on A&E and related procurements which CVCOG 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.

3) 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.

4) Requirements in the Context of a Construction Project:

A project involving construction 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.

5) 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.

6) Equivalent State Law (CVTD Specific):

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.

7) Special Requirements for Indirect Cost Rates (CVTD Specific):

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.

b. Construction Projects:

i. Design/Bid/Build Method:

- 1) For construction projects requiring separate contracts for design services and for construction services.
- 2) 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.

ii. Design Services:

For design services, qualifications-based procurement procedures described above in compliance with applicable Federal and State law and regulation shall be used.

iii. 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 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.

i. 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 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.

iv. Seismic Safety (CVTD Specific):

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].

v. 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.

vi. 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.

vii. Prevailing Wages:

- 1) **All Federal Grants utilizing a service industry, must ensure that the Davis-Bacon Act prevailing wage protections apply to laborers and mechanics employed on assisted projects.**
- 2) 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 Department of Labor (DOL) regulations, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction” [29 CFR Part 5].
- 3) 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.
- 4) The Davis-Bacon Act also requires contractors to pay wages not less than once a week. CVCOG 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.
- 5) These requirements are in addition to the separate Wage and Hour Requirements addressed above.

viii. Anti-Kickback:

- 1) 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].
- 2) 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.

ix. 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].

x. Labor Neutrality:

- 1) 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.
- 2) 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.

xi. Preference for U.S. Property:

1) **Buy America:**

For any assisted third-party construction contract exceeding \$100,000, agency 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 acquires, unless the agency has granted a waiver authorized by those regulations.

xii. Accessibility:

- 1) 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].

- 2) Moreover, the Americans with Disabilities Act (ADA) of 1990 includes specific guidelines for the construction of accessible, or ADA-compliant, facilities.
- 3) These design requirements must be met for most public and commercial bathrooms. They can also serve as a general guide for safe, user-friendly, accessible design when ADA compliance is not required.

c. **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:

i. **Single Audit Act:**

Each recipient that spends \$750,000 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.

1) **Organizational Conflicts of Interest:**

The auditor selected must be independent of the recipient.

2) **Eligibility of Costs:**

If programs spend \$750,000 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.

ii. **Other Project Audits:**

Before procuring audit services for a specific contract or project, CVCOG should be aware of the following:

1) **Organizational Conflicts of Interest:**

In general, CVCOG must select an auditor that is independent of the third-party contractor to be audited.

2) **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.

3) Duplication of Services:

- a. To prevent duplication and ensure the eligibility of particular audit services for Federal participation, CVCOG should contact the funding agency before undertaking an audit.
- b. 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.
- c. CVCOG should not obtain duplicative audits because they are likely to produce disparate indirect cost rates and may be ineligible for Federal assistance.
- d. 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.
- e. Moreover, per 45 CFR § 75.503 (specific to HHS), prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits.
- f. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

4) 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.

d. **Research, Development, Demonstration, Deployment, and Special Studies:**

i. Special Requirements:

Procurements of research-type services can involve circumstances that bring special Federal requirements into effect, including:

1) Patent Rights:

- a. CVCOG, CVTD, and/or CVEDD'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.

- b. 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 (CVTD specific):

- a. The following conditions shall apply to rights in data requirements for FTA assisted research, development, demonstration, or special studies projects:

- i. Publication Restrictions:

- Except for its own internal use, neither CVCOG, CVTD and/or CVEDD 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.

- ii. Distribution of Data:

- 1. 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, sub-recipient, third party contractor, or third party subcontractor, either license in the copyright to the subject data or a copy of the subject data.
 - 2. 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].

e. **Classified Advertisements:**

Examples include newspaper, magazine, online, etc.

f. **Direct Publications:**

i. Must be on REQ/PO

1) “Direct publication – not available from any other source”

ii. Direct subscriptions from publisher

iii. Audio, visual, or audiovisual materials (films, audio presentations, etc.)

iv. Software packages purchased directly from the developer

v. Newspaper and magazine subscriptions from the publisher

vi. Publications produced by professional societies

g. **Postal Services/Freight**

h. **IT Procurement:**

i. When a department needs to procure computer hardware or software, please submit a request to the procurement department and explain the need and/or salient characteristics, and a quote or quote(s) will be obtained.

ii. Prior to processing the order; however, the IT department will review the order to see if the hardware and/or software will be appropriate for the CVCOG, CVTD and/or CVEDD.

iii. Upon approval, the order will be processed depending on the procurement level of the associated procurement.

i. **Advance Payment:**

- i. 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.
- ii. Accordingly, CVCOG may use Federal or Agency assistance to support or reimburse the costs of such acquisitions.
- iii. Specific agency concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.

4. PROTEST PROCEDURES

Due to Federal policy, the CVCOG and CVTD programs have separate protest procedures. See Transit section for specific protest procedures for CVTD.

1. CVCOG Right to Protest:

a. Aggrieved Bidders and Offerors:

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

iii. Deadline:

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

iv. Contents of Protest:

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

- 1) No protest shall lie for a claim presented by an unsuccessful bidder or offeror, alleging that the successful bidder or offeror is non-responsible, except with respect to the following:
 - a. A good faith assertion, supported by verifiable factual evidence included with the written protest, that the successful bidder or offeror is debarred by a federal, state or local governmental authority, or

- b. A good faith assertion, supported by verifiable factual evidence included with the written protest, that the successful bidder or offeror does not hold a license or certification required by a governmental authority for or in connection with the provision of goods or services that are the subject of the solicitation.
 - c. Except as noted above, a protest based on an allegation of non-responsibility of the successful offeror shall be deemed “invalid” for purposes of this section.
 - 2) No protest shall lie for a claim presented by an interested party challenging the validity of the terms or conditions of any solicitation. Any such claim shall be deemed “invalid” for purposes of this section.
- v. Authority to Resolve Protests:
 - 1) The Executive Director shall have authority to make a final determination of whether a particular protester qualifies as an “interested party”, whether a particular claim constitutes a valid protest, and to make final decisions on valid protests initiated by interested parties.
 - 2) The Executive Director shall issue a decision in writing within five (5) working days after receipt of a protest, stating his findings and the reasons for the action taken. However, the Director may, in his sole discretion, afford an interested party the opportunity to present his valid protest in person before a final decision is rendered.
 - 3) If an in-person hearing is afforded, the Director shall render his written decision within five (5) days after the date on which the presentation occurs.
 - 4) Decisions of the Executive Director shall be final.
- vi. Effect of Protest Upon Contract Award:
 - 1) Pending final determination of a protest, the validity of a contract awarded and accepted in good faith in accordance with this procurement policy shall not be affected by the fact that a protest or appeal has been filed.
 - 2) CVCOG shall not be required or compelled to delay the award of a contract for the period allowed for initiation of protests; however, if a protest is received prior to a decision to award a contract, then no further action shall be taken to award the contract unless:
 - a. The Executive Director renders a written determination that proceeding without delay is necessary to protect CVCOG’s interests, or
 - b. A bid or offer would expire before a final decision on the protest can be rendered.

2. Protest Procedures for Transit Related Procurements:

a. Statement of Policy:

- i. 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 judgement.
- ii. In general, FTA will not substitute its judgement for that of CVTD unless the matter is primarily a federal concern.
 - 1) 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.
 - 2) CVTD shall give timely notification to FTA when it receives a third party protest and will keep FTA informed about the status of any such protest.
 - 3) CVTD shall disclose all information about third party procurement protests to FTA upon request.
- iii. CVTD shall insert its protest procedures in all solicitation documents for product and services having an estimated value of \$100,000 or greater.

b. Solicitation Provision (\$100,000 or greater:

i. Pre-Proposal Protests:

- 1) All protests concerning solicitation specifications, criteria and/or procedures shall be submitted in writing to the Executive Director as specified below no later than 10 business days prior to the deadline for submission of bids/proposals.
- 2) The Executive Director may postpone the deadline for the submission of bids/proposals, but in any case, shall provide a written response to all protests no later than 5 business days prior to the deadline for submission of bids/proposals.
 - a. If the deadline is postponed, the postponement will be announced through an addendum to the solicitation.

ii. Pre-Award Protests:

- 1) With respects 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.
- 2) Such protests shall be submitted in writing to the Executive Director as specified no later than 5 business days after the Recommendation for Contract Award announcement by CVCOG.

- 3) 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 3 business days prior to the date that CVCOG shall announce the contract award.

iii. Requirements for Protests:

- 1) All protests must be submitted to CVCOG in writing, with sufficient documentation, evidence and legal authority to demonstrate that the Protestor is entitled to the relief requested.
- 2) 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.
- 3) The protest must also include a mailing address to which a response should be sent.
- 4) Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by CVCOG.

iv. Protest Response:

- 1) The Executive Director shall issue written responses to all protests received by the required protest response dates.
- 2) All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.
 - a. For convenience, CVCOG will also send a copy of the response to a protest to the protester by facsimile and/or electronic mail if those addresses are indicated in the protest letter.
 - b. 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.

v. Review of Protests by Agency:

- 1) All protests involving contracts financed with federal assistance shall be disclosed to the funding agency in accordance with agency directives.
- 2) Protestors shall exhaust all administrative remedies with CVCOG prior to pursuing protests with funding agencies.
- 3) Agencies may limit its reviews of protests to:
 - a. A grantee's failure to have or follow its protest procedures;

- b. A grantee's failure to review a complaint or protest when presented an opportunity to do so;
 - c. Or violations of federal or state law or regulation.
- 4) Appeals to agencies must be received by the cognizant funding agency procedures with specified times per agency protocols.

5. DEFINITIONS/GLOSSARY OF TERMS

1. **Addendum:** A written change, addition, alteration, correction, or revision to a Solicitation document or a Contract.
2. **Amendment:** An agreed addition to, deletion from, correction, or modification of a Contract signed by all authorized parties. An Amendment may include a renewal or extension of a Contract.
3. **Assignment:** An authorized legal transfer of contractual rights from one party to another party.
4. **Auxiliary Enterprise:** a business activity that is conducted at a State agency, providing a Service to the agency and is not paid for with appropriated money Texas Government Code § 2252.061 (1).
5. **Best Value:** Factors to be considered in determining best overall value for the CVCOG. CVCOG will award the contractor with the *best value* as defined per the following:
 - a. Price, Reputation of the contractor
 - b. Contractor's goods and/or services
 - c. Quality of the contractor's goods and/or services
 - d. Extent to which the contractor's goods and/or services meet CVCOG needs
 - e. Contractor's past relationship with CVCOG
 - f. Long term cost to CVCOG for acquiring the contractor's goods and/or services
6. **Bid:** An Offer to Contract submitted in Response to an Invitation for Bid. The term Bid may also be referred to as a Response.
7. **Bid Bond:** An insurance agreement, accompanied by a monetary commitment, by which a third-party accepts liability and guarantees that a Bidder will not withdraw a Bid during the Invitation for Bid process. A Bid Bond may also be required in a Request for Proposal process.
8. **Bid Opening:** The official process in which sealed Bids are opened, usually in the presence of one or more witnesses, at the time and place specified in the Invitation for Bid.
9. **Bid Tabulation:** A document used to record the Responses received from Bidders in the Invitation for Bid process.
10. **Bidder:** An individual or Contractor who submits a Response to an Invitation for Bid. The term includes anyone authorized to act on behalf of the individual or other entity that submits a Bid, such as agents, employees, and representatives. See also Respondent and Offeror.

11. **Blanket Purchase Order:** A blanket purchase order (PO) is a commercial document issued by CVCOG/CVTD/CVEDD to a vendor to purchase a defined dollar amount of goods and services over a period of time. Blanket POs are often used in place of standard POs when a buyer needs to place reoccurring orders with a seller over time, or when the exact quantities of goods desired are initially unknown.
12. **Board:** the governing body of the Concho Valley Council of Governments
13. **Change Order:** A written alteration that is issued to modify or amend a Purchase Order.
14. **Comptroller:** The Texas Comptroller of Public Accounts.
15. **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, CVTD and/or CVEDD 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.
16. Immediate Family includes an employee's spouse, grandparent, parent, brother, sister, child or grandchild, his or her partner.
17. **Consultant:** An individual or firm that provides Consulting Services to the CVCOG and does not involve the traditional relationship of employer and employee. Texas Government Code § 2254.021.
18. **Consulting Services:** The Services of studying and advising an Institution per Texas Government Code § 2254.021
19. **Contract:** A legally binding written agreement executed between the CVCOG or an Institution and a third-party in which the parties agree to perform in accordance with the obligations therein. Contracts include, but are not limited to: letter agreements, co-operative agreements, memorandums of understanding (MOU), Interagency Contracts, Inter-local Contracts, easements, licenses, leases, and Purchase Orders.
20. **Contract Administration:** Following the award of a Contract, the department level actions to oversee full compliance with all of the terms and conditions contained within a Contract.
21. **Contract Administrator:** The Contract Administrator is the department level individual responsible for adherence to all provisions contained within a Contract and for managing the performance of a Contract.
22. **Contract Close-out:** The process conducted at the completion of the Contract during which the Contract Administrator confirms and documents compliance with the terms and conditions of the Contract, final Deliverables are received, and outstanding payments are made.
23. **Contract Management:** The complete contracting process from Planning through Contract
24. Administration and concluding with Contract Close-out. The phases of contract management include: planning, procurement, contract formation, contract administration, and contract closeout.
25. **Contract Manager:** An individual who is responsible for coordinating the processes required for effective Contract Management. For Construction Project Contracts, the Contract Manager will be an individual within the CVCOG charged with the duty to oversee the Construction Project. The Contract Manager will provide guidance to Contract Administrators.

26. **Contract Review Team:** A team comprised of such members as the Contract Manager, the Contract Administrator, and as needed, cross-functional members such as: subject matter experts, information technology, risk management, legal, and price/cost analysts. The size and the members of the team are dependent on the nature and complexity of the Procurement.
27. **Contractor:** An individual or legal entity that has a Contract to provide Goods or Services to the CVCOG. Contractor is used interchangeably with the term “Vendor”.
28. **Cooperative Agreement:** A cooperative arrangement in which several government agencies agree to aggregate demand in order to Contract for Best Value. The Procurement cooperative conducts the Procurement process and provides general Contract oversight.
29. **Deliverable:** A unit or increment of work required by the Contract, including such items as Goods, Services, reports, or documentation.
30. **Disadvantaged Business Enterprise** a for-profit small business concern: (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, 51 percent of the stock of which is owned by one or more such individuals; and (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. (FTA, n.d.)
31. **Electronic State Business Daily (ESBD):** The electronic marketplace maintained by the Texas Comptroller’s Office where State of Texas Solicitation opportunities over \$25,000 are posted.
32. **Emergency Procurement:** 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 practice is impracticable or contrary to the public interest, an Emergency Procurement may be warranted to prevent a *hazard to life, health, safety, welfare, or property or to avoid undue additional cost to the Institution*.
33. **Exempt Purchase:** Certain Goods or Services that are exempt from the competitive Procurement rules, either by Statute or if the exemption is in the best interest of the public.
34. **Goods:** Supplies, materials, or equipment as defined in Texas Government Code § 2155.001. Goods do not include Services or real property.
35. **Historically Underutilized Business (HUB):** A for-profit entity with its principal place of business in the State of Texas that is at least 51% owned by a Black American, Hispanic American, woman, Asian Pacific American, Native American or disabled veteran as defined in Texas Government Code § 2161.001. See also the Texas Comptroller website at cpa.state.tx.us
36. **ICE:** An ICE is a benchmark for evaluating the reasonableness of the contractor’s proposed cost or price, and may range from a simple budgetary estimate to a complex estimate, based on inspection of the product, review of drawings or specifications, and prior procurement data. An ICE is an independent assessment of what you would expect to pay for goods or services, based on a reliable source, such as paid historical prices, industry standard, or market research. The ICE addresses the need, scope, and justification of each procurement; moreover, the ICE provides a statement that the budget has been reviewed by the department for the finance office.
37. **Independent Contractor:** An individual or legal entity who enters into a Contract to perform work for an Institution according to his or her own processes and methods. The Contractor is not subject to another’s control except for what is specified in a mutually binding agreement.

38. **Interagency Contract:** A Contract between one or more agencies of the State of Texas as defined by Texas Government Code § 771.002.
39. **Internal Repair:** An internal repair is a repair to state-owned equipment where the extent of the work cannot be determined until the equipment is disassembled. An internal repair must contain labor and may also include parts. Internal repairs are usually the result of an unexpected, basic service outage. If an internal repair qualifies as an emergency, it must be processed as an emergency purchase.
40. **Inter-local Contract:** A Contract between one or more agencies of the State of Texas and local government as defined by Texas Government Code § 791.003.
41. **Invitation for Bids (IFB):** A Procurement process used when the requirements are clearly defined, Negotiations are not necessary, and price is the major determining factor for selection.
42. **Liquidated Damages:** A specified Contract provision which entitles CVCOG to demand a set monetary amount determined to be reasonable estimate of damages an Institution will incur due to Contractor's failure to meet Contract requirements.
43. **Major Consulting Services Contract:** A Consulting Services Contract for which is reasonably foreseeable that the value of the Contract will exceed \$25,000, and modifications that increase the consideration. Texas Government Code § 2254.
44. **Memorandum of Agreement:** A memorandum of agreement (MOA) or cooperative agreement is a document written between parties to cooperatively work together on an agreed upon project or meet an agreed upon objective. The purpose of an MOA is to have a written understanding of the agreement between parties. The MOA can also be a legal document that is binding and hold the parties responsible to their commitment or just a partnership agreement.
45. **Memorandum of Understanding:** A memorandum of understanding (MOU) is a legal document describing a bilateral agreement between parties. It expresses a convergence of will between the parties, indicating an intended common line of action, rather than a legal commitment. It is a more formal alternative to a gentlemen's agreement, but generally lacks the bind power of a contract
46. **Minor Consulting Services Contract:** a Consulting Services Contract that is not a Major Consulting Services Contract.
47. **Negotiation(s):** conferring, discussing, or bargaining to reach a mutual agreement between two or more parties.
48. **Offer:** A Response to an Invitation for Bid (IFB), Request for Proposals (RFP), or a Request for Qualification (RFQ) and intended to be used as a basis to negotiate a Contract award. See also Bid, Proposal, and Qualification.
49. **Offeror:** An individual or legal entity submitting an Offer to an, Invitation to Bid, a Request for Proposal, or a Request for Qualification. The term includes anyone authorized to act on behalf of the individual or legal entity that submits an Offer, such as agents, employees, and representatives. See also Respondent, Bidder, and Proposer.
50. **Office of General Counsel:** the CVCOG General Counsel.
51. **Opening Date:** The date and time, after submission of Proposals, when sealed Proposal Responses are opened.

52. **Originating Department:** The System or Institutional department from which a Solicitation or Procurement is originated.
53. **Person:** an individual or a business entity. Texas Government Code § 572.002(7).
54. **Payment Bond:** A bond solely for the protection and use of Payment Bond beneficiaries who have a direct contractual relationship with the prime Contractor or a Subcontractor to supply labor or material.
55. **Performance Bond:** An instrument executed, subsequent to award, by a successful Proposer or Bidder that protects an Institution from loss due to the Contractor's inability to complete the Contract as agreed.
56. **Procurement (Procure):** Purchasing, renting, leasing, or otherwise acquiring any Goods and Services, including all functions that pertain to the acquisition through Contract Close-out.
57. **Professional Services:** Services directly related to professional practices as defined by the Professional Services Procurement Act (Texas Government Code § 2254.002). These include Services within the scope of the practice of: accounting; architecture; land surveying; medicine; optometry; professional engineering; real estate appraising or professional nursing. Services provided by professionals outside the scope of their profession (e.g., Consulting Services provided by accounting firms) are not considered Professional Services.
58. **Proposal:** A Response to a Request for Proposals (RFP) and intended to be used as a basis to negotiate a Contract award. See also Offer.
59. **Proposal Opening:** The public opening of Proposals, in which the names of the Respondents to a Solicitation are publicly read and recorded. No prices are divulged at a Proposal Opening as these types of Solicitations are subject to Negotiations.
60. **Proposer:** An individual or legal entity submitting a Proposal in response to a Request for Proposal. The term includes anyone authorized to act on behalf of the individual or legal entity that submits a Proposal, such as agents, employees, and representatives. See also Respondent and Offeror.
61. **Proprietary Purchase:** A Good or Service produced or marketed by a Contractor having the exclusive right to manufacture or sell it. See Texas Government Code § 2155.067 and Texas Comptrollers Procurement Manual for more information.
62. **Public Works Contract:** A Contract for constructing, altering, or repairing a public building or carrying out or completing any public work. A governmental entity is authorized by State of Texas law to make a Public Works Contract.
63. **Purchase Order:** A legal document issued to a Contractor which formalizes the terms and conditions of any purchase of Goods or Services.
64. **Purchasing Office:** The office designated by the CVCOG to purchase Goods or Services and oversee compliance with federal, State, and CVCOG Procurement Operating Policies and Procedures. For purposes of this Policy, the phrase "Purchasing Office" also encompasses "Contracting Office."
65. **Qualification:** A Response to a Request for Qualifications (RFQ) and intended to be used as a basis to qualify a Contractor.
66. **Quote:** A document setting forth an Offer to sell Goods or Services at a certain price under specified conditions.

67. **Renewal:** the process where an existing Contract is renewed for an additional time period in accordance with the terms and conditions of the original Contract.
68. **Request for Information (RFI):** A general invitation requesting information for a potential future Solicitation. The RFI is typically used as a research and information gathering tool for preparation of a Solicitation.
69. **Request for Proposal (RFP):** A Solicitation requesting submittal of a Proposal or Offer in response to the required Specifications and usually includes some form of a cost Proposal or Offer. The RFP process allows for Negotiations between a Proposer or Offeror and the issuing Institution.
70. **Request for Qualifications (RFQ):** A Solicitation document requesting submittal of Qualifications in response to the scope of Services required.
71. **Request for Quote (Quote):** A Solicitation document requesting pricing on informal purchases as determined by each Institution's chief Procurement officer.
72. **Response:** A submission to the CVCOG from a potential Contractor in response to a Solicitation.
73. **Responsible:** A Respondent who is fully capable to meet all of the financial and technical requirements of a Solicitation and any subsequent Contract.
74. **Responsive:** The Respondent has complied with all material aspects of the Solicitation, including submission of all required documents in accordance with the Specifications.
75. **Respondent:** An individual or legal entity submitting a Response to a Solicitation.
76. **Scope of Work (or "SOW"):** A detailed, written description of the conceptual requirements contained within the Specifications.
77. **Scoring Matrix:** A chart used to document the evaluation criteria of a Response.
78. **Service(s):** The furnishing of labor, time, and effort by a Contractor or Auxiliary Enterprise, including for a Construction Project, which may involve to a lesser degree, the delivery or supply of Goods.
79. **Solicitation:** A method or process used to obtain Responses for the purpose of gathering information or entering into a Contract.
80. **Solicitation Conference:** A meeting chaired by the Purchasing Office or Contracting Office which is designed to help potential Respondents understand the requirements of a Solicitation. May also be known as a Pre-Bid Conference, Pre-Solicitation Conference, or Pre-Proposal Conference.
81. **Specification(s):** Description of the requirements for Goods or Services including the Scope of Work, to be fulfilled by a Contractor.
82. **Statute:** a law enacted by a legislature.
83. **Subcontractor:** An individual or business entity retained by a Contractor to perform part of a Contractor's duties under a Contract.
84. **TPASS Contract:** Contract that is competitively procured and awarded by the Texas Comptroller's Office.

85. **Urgent & 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.
86. **Vendor:** An individual or business or governmental entity that has a Contract to provide Goods or Services to the State of Texas. Used interchangeably with the term “Contractor.”
87. **Vendor Debarment:** The status of any Vendor who is debarred from conducting business with an Institution by either the Texas Comptroller or the federal government. Debarment protects the State from risks associated with awarding Contracts to Vendors who have exhibited an inability or unwillingness to fulfill contractual requirements or who have displayed improper conduct. Debarment may include a Vendor’s successors-in-interest. Debarment does not relieve the Vendor from responsibility for fulfilling existing obligations.
88. **Vendor Performance Form:** A form prepared by the Contract Administrator that reports satisfactory and unsatisfactory performance by a Contractor.

6. REFERENCES

Division, S. P. (2018). *State of Texas Procurement and Contract Management Guide*. Statewide Procurement Division.

FTA. (n.d.). *FTA*. Retrieved from <https://www.transit.dot.gov/funding/procurement/bppm-disadvantaged-business-enterprise>.

HHS, U. S. (2019, October). Code of Federal Regulations, Title 45, Chapter A, Sub A, Part 75, 75.451.

Institute, N. T. (2018). Risk Assessment & Basic Cost or Price Analysis. In N. T. Institute.

Justice, U. D. (2017, December). DOJ Grants Financial Guide.

Texas Government Code:

<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.572.htm>

<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.771.htm>

<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.791.htm>

<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2155.htm>

<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2251.htm>

<https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2260.htm>