



CONCHO VALLEY
COUNCIL OF GOVERNMENTS

PROCUREMENT POLICY

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1. Definitions

“Award” refers to the decision to accept a bid, proposal, or offer and enter into a contract.

“Board” refers to the appropriate governing body for CVCOG’s departments and programs, either the CVCOG Executive Committee or Concho Valley Transit District’s Board of Directors.

“Competition” the process of soliciting multiple bids, proposals, or offers from qualified suppliers or vendors to ensure fairness, transparency, and the selection of the best value.

“Contract” a legally binding agreement between two parties.

“Contractor” an individual or organization engaged under a contract to provide goods, services, or works, often responsible for delivering outcomes in accordance with agreed terms and conditions.

“CVCOG” refers to the Concho Valley Council of Governments.

“CVCOG’s Simplified Acquisition Threshold (SAT)” refers to the dollar amount set by CVCOG below which certain streamlined procurement procedures may be used.

“Evaluation criteria” refers to standards used to assess and compare bids, proposals, or offers.

“Federal Simplified Acquisition Threshold” refers to the amount set by federal regulation below which streamlined procurement procedures may be used. This threshold is established by the Federal Acquisition Regulation (FAR) and may be updated periodically.

“Grantor agency” refers to any public entity that provides grant funds to CVCOG, either directly or through a pass-through arrangement.

“Offer” refers to a bid, proposal, or submission—including all required documentation—provided by a vendor in response to a solicitation issued by CVCOG.

“Offeror, Bidder, or Proposer” refers to any person, business, or organization that submits an offer in response to a solicitation issued by CVCOG.

“Procurement” the process of acquiring goods, services, or works from an external source.

“Procurement Department” refers to CVCOG’s Procurement Department meaning CVCOG personnel designated responsible for all procurement activities within the organization.

“Purchase order” a document issued to a supplier or vendor to confirm an order and authorize payment.

“Requisitioner” refers to an individual, department, or program that submits a request to the Procurement Department to purchase goods or services.

“Solicitation” a formal request for quotes, request for proposals, invitation for bids, or other written method used to solicit bids, proposals, or offers from potential suppliers or contractors in response to procurement needs.

“State” refers to the State of Texas.

“Supplier/Vendor” refers to a person or organization that provides goods or services.

2. Introduction

2.1. Purpose

The purpose of this Procurement Policy (the “Policy”) is to establish a comprehensive framework that governs the acquisition of goods, services, and construction projects in a manner that ensures transparency, fairness, and accountability. This Policy aims to standardize procurement processes, promote competition, and achieve the best value for public funds by outlining procedures and criteria for conducting procurements. It serves to protect the integrity of the procurement process, prevent conflicts of interest, and ensure compliance with relevant laws and regulations. Ultimately, this Policy is designed to enhance the efficiency of procurement operations, foster trust among stakeholders, and ensure that public resources are utilized effectively and responsibly.

2.2. Scope and Applicability of Policy

The scope of this Policy encompasses all activities related to the acquisition of goods, services, and construction projects conducted by the Concho Valley Council of Governments (CVCOG). This includes the planning, solicitation, evaluation, and awarding of contracts, as well as the management and oversight of contract performance. This Policy applies to all procurement transactions, regardless of their monetary value, and includes all personnel involved in the procurement process. It governs the procedures and standards to be followed to ensure consistency, transparency, and fairness in procurement practices. Additionally, the Policy covers compliance with relevant local, State, and Federal regulations, as well as any specific requirements imposed by grantor agencies.

This Policy applies to the purchase of goods and/or services by the CVCOG, for itself, and for any of the entities that fall within the umbrella of CVCOG including, (but not limited to):

1. 2-1-1 Texas
2. Aging and Disability Resource Center
3. Area Agency on Aging
4. Concho Valley Economic Development District
5. Concho Valley Regional Law Enforcement Academy
6. Concho Valley Testing & Training Center
7. Concho Valley Transit District
8. Criminal Justice
9. CVCOG Administration
10. Foster Grandparents Program
11. Head Start / Early Head Start
12. Homeland Security
13. Public Safety
14. Regional 9-1-1
15. Regional Services
16. Retired & Senior Volunteer Program
17. Senior Companion Program
18. Solid Waste

3. Legal and Regulatory Framework

3.1. Promulgation of Procurement Policy

This Policy was formally promulgated and approved by CVCOG's Executive Board of Directors (the "Board") on 05/14/2025. The approval signifies the Board's endorsement of the Policy's guidelines and procedures, which are designed to ensure effective and transparent procurement practices. This Policy will be implemented as of the approval date, and all subsequent procurement activities will adhere to its provisions to maintain the highest standards of integrity and compliance.

3.2. CVCOG Organizational Documents

- a) 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.
- b) Furthermore, the Executive Director of the CVCOG is responsible for ensuring that full and accurate accounts of receipts and disbursements are kept. Regarding the purchase of goods and/or services, the Board's approval of this Policy shall serve as its delegation of such record-keeping responsibilities to the Procurement Department.

3.3. Delegation of Procurement Duties

The Executive Director delegates procurement-related duties to the CVCOG Procurement Department. This delegation encompasses the full spectrum of procurement activities, including but not limited to, the development and issuance of solicitations, evaluation of bids and proposals, negotiation of contract terms, and contract administration. The Procurement Department is also responsible for ensuring compliance with applicable procurement regulations, maintaining records of procurement transactions, and conducting due diligence to ensure that all procurement processes are transparent and equitable. This delegation aims to centralize procurement functions within a specialized department to enhance efficiency, consistency, and adherence to established procurement standards.

3.4. Grantor Agency Policies and Procedures

These policies are not intended to be less stringent than those mandated by any grantor agency providing specific funds to CVCOG. The procurement procedures delineated by the source-granting agency shall be adhered to when expending funds for the operation of any particular program.

If a contract resulting from a specific procurement transaction is funded by federal or state sources and comes with particular conditions or requirements (like specific contractor selection procedures or levels/methods of competition), CVCOG will adhere to the grantor agency's more detailed or restrictive conditions and requirements, rather than those outlined in this Policy.

3.5. Interpretation

This Policy will be construed and applied to promote its underlying purposes and policies. The guidelines herein are intended to comply with all applicable local, State of Texas, and Federal rules, regulations, policies and procedures. Detailed operating procedures, which incorporate this Policy, will be maintained by the CVCOG Procurement Department.

3.6. Severability

Invalidation of any one of these provisions by judgment, court order, statute, regulation or code will in no way affect any other provision, which will continue to remain in full force and effect.

3.7. Cooperative Procurement Capability

CVCOG is authorized to expand its procurement activities to include cooperative agreements with other public entities, such as cities, municipalities, counties, and similar organizations. This includes the posting of solicitations that could benefit these entities by offering opportunities for shared procurement and collective purchasing. By facilitating access to CVCOG's solicitations and contracts, we aim to enhance efficiencies, leverage collective buying power, and foster collaborative relationships with public sector partners. This cooperative approach supports the optimal use of resources and promotes broader participation in procurement processes.

4. Procurement Roles and Responsibilities

4.1. Board of Directors (Executive Committee and CVTD Board)

The Board may act (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 CVCOG employees shall follow the directives reflected in the Board's action, in addition to the guidelines and procedures set forth within this Policy.

The Board is responsible for:

- Reviewing and approving major procurement decisions, including high-value contracts, unusual or controversial acquisitions, and any procurement actions that exceed delegated authority limits.

- Ensuring compliance with procurement policies and procedures and provide strategic guidance on procurement matters.

4.2. Executive Director

The CVCOG, its programs, Concho Valley Transit District (CVTD), and the Concho Valley Economic Development District (CVEDD) report to the CVCOG Executive Director who is appointed by CVCOG Board of Directors. The Executive Director serves as CVCOG's Contracting Officer and is granted authority by the Board to enter into contracts and agreements in accordance with Federal and State rules, laws, guidelines and regulations as advised and guided by this Policy.

The Executive Director is responsible for:

- Providing overall direction and oversight for the procurement function to ensure that procurement activities align with organizational goals and strategic objectives.
- Granting or delegating authority for procurement actions within established thresholds and ensuring that the Board approves of any procurements that are deemed by the Executive Director to be unusual, controversial, or exceed established limits.
- Executing 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 CVCOG.
- Issuing interpretations of this Policy, issuing directives, and making decisions in circumstances where such authority is not otherwise specifically reserved to the Board.
- Ensuring adherence to procurement policies and procedures across the entire organization.

4.3. Program or Department Leadership

Program or Department Leadership are responsible for:

- Identifying procurement needs specific to their program or department and communicating them clearly.
- Providing all necessary specifications, technical information, and supporting documentation required to facilitate a successful and timely procurement process.
- Engaging the Procurement Department early in the planning process to ensure alignment and efficiency.
- Working closely with the Procurement Department to ensure procurement processes meet program-specific compliance requirements, where applicable.
- Ensuring that all procurement activities are conducted in accordance with the policies and procedures of any relevant grantor agency.
- Reviewing and approving procurement actions within the thresholds specified in this Policy.

4.4. Procurement Department

The Procurement Department is responsible for:

- Managing and performing procurement activities in accordance with established policies and procedures, including oversight of the solicitation, evaluation, and selection processes.
- Providing guidance and support to CVCOG programs and departments on procurement-related matters, including assistance with developing specifications and requirements for acquisitions.
- Ensuring all procurement activities comply with applicable local, state, and federal regulations, as well as CVCOG policies and ethical standards.
- Developing and maintaining effective relationships with suppliers and vendors, and addressing any issues that arise.
- Tracking and reporting on procurement activities to ensure compliance with relevant regulations and policies.

- Identifying and assessing risks related to procurement, such as supplier performance and market volatility, and implementing strategies to mitigate those risks.
- Maintaining comprehensive and accurate records of all procurement activities, including solicitations, evaluations, contracts, supporting documentation, and related correspondence.
- Developing, updating, and maintaining procurement policies and procedures to reflect current best practices, regulatory changes, and organizational needs.
- Developing and maintaining standardized purchasing terms and conditions that align with organizational requirements and legal considerations.

4.5. Finance Department

The CVCOG Finance Department is responsible for:

- Reviewing and verifying that procurement expenditures align with approved budgets and providing financial analysis and support for procurement decisions.
- Monitoring and reporting on the financial aspects of procurement activities, including expenditures and financial compliance.

4.6. All Employees

All CVCOG Employees involved in any part of a procurement activity are responsible for:

- Adhering to the provisions outlined in this Policy unless explicit prior authorization is granted by the Executive Director or the Board.
- Adhering to ethical standards and avoiding conflicts of interest in procurement activities.
- Reporting any concerns or irregularities in procurement processes to the appropriate authorities within the organization.

5. General Procurement Standards

5.1. Compliance with Federal Procurement Standards

CVCOG will comply with all applicable requirements set forth in 2 CFR §§ 200.317 through 200.327, as amended. This includes adherence to the procurement standards established by the U.S. Office of Management and Budget (OMB), ensuring that all procurement activities funded by federal awards are conducted in accordance with the regulations outlined in these sections. CVCOG will implement and enforce procedures that promote fair, transparent, and competitive procurement processes, and will ensure that any procurement transactions are in full compliance with the requirements governing the use of federal funds.

5.1.1. Documented Procedures

CVCOG must maintain and use documented procedures for procurement transactions under a federal award or subaward, including for acquisition of property or services. These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in 2 CFR §§ 200.317 through 200.327.

5.1.2. Oversight of Contractors

CVCOG must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

5.1.3. Unnecessary or Duplicative Items

CVCOG must avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. When appropriate, an analysis should be made between leasing and purchasing property or equipment to determine the most economical approach.

5.1.4. Strategic Sourcing

When appropriate for the procurement or use of common or shared goods and services, CVCOG is encouraged to enter into State and local intergovernmental agreements or inter-entity agreements for procurement transactions. These or similar procurement arrangements using strategic sourcing may foster greater economy and efficiency. Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) will meet the competition requirements of this part.

5.1.5. Use of Excess and Surplus Federal Property

CVCOG is encouraged to use excess and surplus Federal property instead of purchasing new equipment and property when it is feasible and reduces project costs.

5.1.6. Value Engineering Clauses

When practical, CVCOG is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering means analyzing each contract item or task to ensure its essential function is provided at the overall lowest cost.

5.1.7. Responsible Contractors

CVCOG must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. CVCOG must consider contractor integrity, public policy compliance, proper classification of employees (see the Fair Labor Standards Act, 29 U.S.C. 201, chapter 8), past performance record, and financial and technical resources when conducting a procurement transaction.

5.1.8. Procurement Records

CVCOG must maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

5.1.9. Time-and-Materials Contract Types

CVCOG may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a recipient or subrecipient is the sum of:

- a) The actual cost of materials; and
- b) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Because this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, CVCOG must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

5.1.10. Settlement of Contractual and Administrative Issues

CVCOG is responsible for the settlement of all contractual and administrative issues arising out of its procurement transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve CVCOG of any contractual responsibilities under its contracts. The Federal funding agency will not substitute its judgment for that of the recipient or

subrecipient unless the matter is primarily a Federal concern. CVCOG must report violations of law to the Federal, State, or local authority with proper jurisdiction.

5.1.11. Build America Buy America (BABA) Compliance

In accordance with the Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901–70927, codified in part at 41 U.S.C. § 8301 note), CVCOG shall ensure compliance with all provisions and requirements outlined in the Act for all Federally funded infrastructure projects. This includes the requirement that all iron, steel, manufactured products, and construction materials used in covered projects are produced in the United States, as defined by the Act and applicable guidance issued by the relevant federal agencies.

Compliance with these domestic content requirements is a condition of federal financial assistance and applies to all contracts, subcontracts, and procurements funded wholly or in part with federal funds, unless a valid waiver has been granted by the appropriate federal authority.

5.1.12. Labor and Employment Practices

These procurement standards do not prohibit CVCOG from:

- a) Using Project Labor Agreements (PLAs) or similar forms of pre-hire collective bargaining agreements;
- b) Requiring construction contractors to use hiring preferences or goals for people residing in high-poverty areas, disadvantaged communities as defined by the Justice40 Initiative (see OMB Memorandum M-21-28), or high-unemployment census tracts within a region no smaller than the county where a federally funded construction project is located. The hiring preferences or goals must be consistent with CVCOG's policies and procedures, and must not prohibit interstate hiring;
- c) Requiring a contractor to use hiring preferences or goals for individuals with barriers to employment (as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102(24))), including women and people from underserved communities as defined by Executive Order 14091;
- d) Using agreements intended to ensure uninterrupted delivery of services; using agreements intended to ensure community benefits; or
- e) Offering employees of a predecessor contractor rights of first refusal under a new contract.

5.1.13. Competition

- a) All procurement transactions, irrespective of monetary value or funding source, shall be conducted to foster maximum free and open competition. To uphold impartial contractor performance and mitigate unfair competitive advantages, contractors involved in developing or drafting specifications and other solicitation requirements shall be barred from participating in such procurements.
- b) To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.

All competitive procurement solicitations must:

- a) Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. The description may include a statement of the qualitative nature of the property, equipment, or service to be procured. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment, or service must conform. Detailed product specifications should be avoided if at all possible. When it is

impractical or uneconomical to clearly and accurately describe the technical requirements, a “brand name or equivalent” description of features may be used to provide procurement requirements. The specific features of the named brand must be clearly stated; and

- b) Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.

5.1.14. Non-Exclusionary and Non-Discriminatory Specifications

In accordance with 49 U.S.C. § 5325(h), CVCOG must ensure that all procurement specifications developed or used in connection with Federally funded contracts are written to promote full and open competition and shall not include any exclusionary or discriminatory specifications.

CVCOG shall avoid specifying brand names, product origins, or other restrictive requirements unless the specification is clearly justified in writing and no other suitable alternatives exist. All procurements shall be conducted in a manner that provides all qualified suppliers and contractors with an equal opportunity to compete, consistent with the principles of fairness, transparency, and competition.

5.1.15. Domestic Preferences for Procurements

- a) CVCOG should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.
- b) For purposes of this section:
 - i. *“Produced in the United States”* means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - ii. *“Manufactured products”* means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- c) If using Federal financial assistance for infrastructure projects, CVCOG must implement the Buy America preferences set forth in 2 CFR part 184.

5.1.16. Procurement of Recovered Materials

- a) CVCOG and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- b) CVCOG should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

5.1.17. Contract Cost and Price

- a) CVCOG must perform a cost or price analysis for every procurement transaction, including contract modifications, in excess of the simplified acquisition threshold. The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, CVCOG should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, CVCOG must make independent estimates before receiving bids or proposals.
- b) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated prices would be allowable for the recipient or subrecipient under 2 CFR 200 Subpart E – Cost Principles. CVCOG may reference its own cost principles as long as they comply with 2 CFR 200 Subpart E – Cost Principles.
- c) CVCOG must not use the “cost plus a percentage of cost” and “percentage of construction costs” methods of contracting.

5.1.18. Federal Agency or Pass-Through Entity Review

- a) The Federal agency or pass-through entity may review the technical specifications of proposed procurements under the Federal award if the Federal agency or pass-through entity believes the review is needed to ensure that the item or service specified is the one being proposed for acquisition. CVCOG must submit the technical specifications of proposed procurements when requested by the Federal agency or pass-through entity. This review should take place prior to the time the specifications are incorporated into a solicitation document. When CVCOG desires to accomplish the review after a solicitation has been developed, the Federal agency or pass-through entity may still review the specifications. In those cases, the review should be limited to the technical aspects of the proposed purchase.
- b) When requested, CVCOG must provide procurement documents (such as requests for proposals, invitations for bids, or independent cost estimates) to the Federal agency or pass-through entity for pre-procurement review. The Federal agency or pass-through entity may conduct a pre-procurement review when:
 - i. CVCOG’s procurement procedures or operation fails to comply with the procurement standards in this part;
 - ii. The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition, or only one bid is expected to be received in response to a solicitation;
 - iii. The procurement is expected to exceed the simplified acquisition threshold and specifies a “brand name” product;
 - iv. The procurement is expected to exceed the simplified acquisition threshold, and a sealed bid procurement is to be awarded to an entity other than the apparent low bidder; or
 - v. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
- c) CVCOG is exempt from the pre-procurement review in paragraph (b) of this section if the Federal agency or pass-through entity determines that its procurement systems comply with the standards of this part.
 - i. CVCOG may request that the Federal agency or pass-through entity review its procurement system to determine whether it meets these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding and third-party contracts are awarded regularly.

- ii. CVCOG may self-certify its procurement system. However, self-certification does not limit the Federal agency's or pass-through entity's right to review the system. Under a self-certification procedure, the Federal agency or pass-through entity may rely on written assurances from the recipient or subrecipient that it is complying with the standards of this part. The recipient or subrecipient must cite specific policies, procedures, regulations, or standards as complying with these requirements and have its system available for review.

5.1.19. Bonding Requirements Under Federal Awards

The Federal agency or pass-through entity may accept CVCOG's bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the federal simplified acquisition threshold. Before doing so, the Federal agency or pass-through entity must determine that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- a) A bid guarantee from each bidder equivalent to five percent of the 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 as assurance that the bidder will, upon acceptance of the bid, execute any required contractual documents within the specified timeframe.
- b) A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure the fulfillment of all the contractor's requirements under a contract.
- c) A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

5.1.20. Federal Contract Provisions

CVCOG's contracts must contain the applicable provisions described in 2 CFR 200 Appendix II.

5.2. Compliance with State of Texas Procurement Standards

CVCOG will comply with all procurement standards outlined in the Texas Grant Management Standards (TxGMS). CVCOG will ensure that all procurement activities conducted under state-funded grants adhere to the requirements and guidelines established by the Texas State Comptroller's Office and other relevant state authorities. CVCOG will implement procedures that foster fairness, transparency, and competition in its procurement processes, ensuring full compliance with the TxGMS to promote responsible and effective use of state funds.

5.3. Conflicts Between Local, State, and Federal Procurement Standards

In the event of a conflict between the provisions of this Policy and any applicable local, state, or federal statute, code, regulation, or the procurement procedures of a grantor agency, the strictest applicable requirement shall prevail.

Where procurement activities are funded in whole or in part by federal or state grants, CVCOG must adhere to the procurement standards established by the relevant grantor agency. If such standards differ from those outlined in this Policy or from local or state regulations, the organization shall follow the most restrictive or stringent requirement to ensure full compliance. If compliance with all applicable requirements is impossible, CVCOG may seek local Legal Counsel and should notify the Program Agency Chief Counsel for resolution.

5.4. General Terms and Conditions

The Procurement Department is responsible for maintaining General Terms and Conditions for all contracts and purchase orders.

5.5. Brand Name or Equivalent

CVCOG is permitted to use brand names in specifications only when it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the good(s) being acquired. Where brand names are included in specifications, CVCOG must place “or equal” next to the brand name to define the functional and physical salient characteristics of the good(s). The salient characteristics of the named brand that bidders or offers must provide must be identified.

5.6. Best Value to CVCOG

Texas law mandates that contract awards may only be made to responsive vendors providing best value to the State. The best value standard may vary depending on the procurement method; therefore, procurement personnel must ensure that the appropriate best value standard is used as the basis for the contract award. In determining the best value for CVCOG, the purchase price and whether the goods or services meet specifications are principal considerations that must be balanced with other relevant factors. With exception to the Invitation to Bid (IFB) process, CVCOG may consider the following relevant factors to determine best value:

1. Installation costs;
2. Life cycle costs;
3. Quality and reliability of the goods and/or services;
4. Delivery terms;
5. Vendor past performance;
6. Cost of employee training;
7. Effect of the purchase on agency productivity;
8. The vendor’s anticipated economic impact to the state or a subdivision of the state;
9. The impact of a purchase on CVCOG’s administrative resources; and
10. Other factors relevant to determining the best value for the state in the context of a particular purchase.

6. Policy Principles and Conflicts of Interest

6.1. Transparency

Transparency is of paramount importance as it fosters trust, accountability, and fairness in the management of public resources. By ensuring that all procurement processes are open and accessible, stakeholders can be confident that decisions are made based on merit and in accordance with established criteria.

Transparency helps to prevent corruption and favoritism, supports competitive bidding, and promotes equitable treatment of all vendors. It allows for scrutiny and verification, ensuring that public funds are used efficiently and effectively. Ultimately, transparency upholds the integrity of the procurement process and reinforces public confidence in CVCOG’s commitment to ethical and responsible stewardship of public funds.

6.2. Accountability

Accountability is crucial for ensuring that all procurement activities are conducted with integrity, responsibility, and adherence to established standards and regulations. It involves holding all parties involved—whether they are procurement officials, contractors, or suppliers—responsible for their actions and decisions throughout the procurement process. Accountability ensures that decisions are made based on objective criteria and that resources are used effectively and efficiently. It also provides mechanisms for addressing and rectifying any issues or discrepancies that may arise, thereby maintaining the credibility and

trustworthiness of the procurement system. By upholding strict accountability, we reinforce the commitment to ethical practices, safeguard public interests, and ensure that public funds are managed prudently.

6.3. Efficiency

Efficiency is essential for optimizing the use of public resources and ensuring timely delivery of goods, services, and construction projects. Efficient procurement processes streamline procedures, reduce delays, and minimize administrative costs, thereby enhancing overall operational effectiveness. By focusing on efficiency, CVCOG can expedite procurement cycles, improve contract management, and deliver results that meet the needs of the public promptly and effectively. This not only maximizes the value obtained from public expenditures but also fosters a more responsive and agile procurement environment. Prioritizing efficiency ensures that public funds are utilized judiciously, and that services and goods are provided in a timely manner, ultimately benefiting the community and reinforcing public confidence in the procurement system.

6.4. Conflicts of Interest

No employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract. A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An employee, officer, agent, and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, CVCOG may set standards for situations where the financial interest is not substantial or a gift is an unsolicited item of nominal value. CVCOG’s standards of conduct must also provide for disciplinary actions to be applied for violations by its employees, officers, agents, or board members.

Employees, officers, agents, or board members who violate this Policy may face disciplinary actions ranging from written warnings to termination of employment, as well as potential legal consequences. The severity of the action will depend on the nature of the violation and will be determined in accordance with CVCOG’s personnel policies.

7. Procurement Thresholds, Approval Requirements, and Purchasing Authority

7.1. CVCOG Procurement Thresholds

Type	Purchase Range	Description
Micro-Purchase / “Spot” Purchase	\$0.01 to \$9,999.99	Purchase of goods, services, or equipment with a total cost less than \$10,000.00 do not require quotes or offers but are to be distributed equitably among qualified suppliers. Purchases must be approved by the Program or Department Director or their designee.
Simplified Acquisition Threshold (SAT) / Small Purchase	\$10,000.00 to \$49,999.99	Unless otherwise authorized by this Policy or by law, purchases within this range require the solicitation of quotes or offers from an adequate number of qualified sources. Purchases in this range must be completed by the Procurement Department and approved by the Executive Director or their designee prior to award.
Formal Procurements	\$50,000.00 +	Purchases above CVCOG’s SAT are subject to the requirements of the formal competitive solicitation process unless specifically exempted by this Policy or by law. Purchases above CVCOG’s SAT must be completed

		by the Procurement Department and approved by the Board prior to award.
Consulting Services	\$15,000.00 +	Consulting services greater than or equal to \$15,000.00 must be approved by the Board prior to award.
Emergency Procurement	\$50,000.00 +	Must be approved by the Executive Director or designee with approval at subsequent Board meeting.

7.2. State and Federal Thresholds

CVCOG recognizes that both state and federal governments maintain specific procurement thresholds for various contracting activities. To ensure full compliance with applicable regulations, CVCOG's procurement thresholds, outlined in this Policy, are intentionally more restrictive than those established by the state and federal government. This approach is designed to enhance oversight, ensure adherence to relevant requirements, and foster transparency in procurement processes across all levels of operation.

7.3. Board Approval Requirements

The Executive Director, or another delegated person serving in his/her place, shall not execute any contract involving an expenditure exceeding CVCOG's SAT (regardless of funding source) unless and until such contract has been approved by the applicable Board (Executive Committee or CVTD Board of Directors).

7.3.1. Pre-Solicitation Approval for Unusual or Controversial Acquisitions

To ensure transparency and proper oversight, CVCOG must seek Board approval before initiating any acquisitions that are deemed by the Executive Director to be unusual or controversial. This process helps to address potential concerns, assess risks, and ensure that all significant decisions align with our strategic objectives and public interests.

7.3.2. Approval of Contract or Expenditure Exceeding CVCOG's SAT

When presenting items for Board approval, CVCOG should seek permission to contract with a specific supplier and set the approval amount to cover the full expected contract value, including any possible renewals. This helps avoid needing additional Board approvals later for contract renewals or changes in the contract amount. It's important for the Procurement Department and the requisitioner to work closely to prepare these approval requests.

In specific instances determined to be appropriate by the Executive Director, it may be necessary to obtain Board approval prior to the solicitation process or prior to identifying the precise contractor or exact expenditure amount. In such cases, the requested approval amount must be substantiated by thorough research and accurate cost estimations.

7.4. Purchasing Authority Limits

The following purchasing limits apply unless express prior approval has been granted by the Procurement Manager/Director, CVCOG Executive Management, or the Board.

Non-Procurement Staff Member	Micro-purchases up to \$3,000.00 with prior Program or Department Director approval.
Procurement Staff Member	Micro-Purchases up to \$10,000.00 with prior Program or Department Director approval. Simplified acquisition/small purchase up to \$49,999.99 with prior Executive Director approval.
Procurement Manager/Director	Micro-Purchases up to \$10,000.00 with prior Program or Department Director approval.

	<p>Simplified acquisition/small purchase up to \$49,999.99 with prior Executive Director approval.</p> <p>Purchases/contracts greater than or equal to \$50,000.00 with prior Board approval.</p>
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8. Procurement Planning and Strategy

Effective procurement planning is fundamental to achieving successful outcomes in any procurement process. Proper planning ensures that procurement activities align with organizational goals, budgetary constraints, and regulatory requirements, thereby mitigating risks and enhancing efficiency. It is strongly recommended that CVCOG undertake formal planning for procurements exceeding CVCOG's SAT. Such formal planning involves thorough market research, clear specification development, and a well-defined procurement strategy, all of which contribute to more informed decision-making and better management of resources. By investing time and effort in detailed planning for substantial procurements, CVCOG can improve competition, achieve better value for money, and ultimately ensure the successful delivery of projects and services.

8.1. 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.

1. Eligibility:

- a) All goods and/or services to be acquired with Federal, State, or other grant funds must be eligible by the grantor agency or assistance award and any regulations thereunder.
- b) All goods and/or services to be acquired with Federal, State, or local grant funds must also be eligible for support within the scope of the underlying grant or cooperative agreement from which the funding assistance is to be derived.

8.2. Acquisition for Assignment Purposes

- a) CVCOG shall contract only for its current and reasonably expected needs and shall not add quantities or options to third-party contracts solely to permit assignment to another party at a later date.
- b) 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 goods or services.
- c) The general limit on assignments does not preclude CVCOG or its programs from participating in joint procurements or purchasing from State Government Purchasing Contracts.

8.3. Procurement Size

For every procurement, CVCOG should consider whether it's better to combine items into one big order or split them into smaller ones to obtain the most economical purchase. CVCOG will not split a large purchase into smaller ones just to take advantage of simpler buying rules unless it's to create more opportunities for SMWVBE, HUB, or DBE businesses.

8.4. General Procurement Lead Times

To ensure a smooth procurement process, requisitioners should be prepared to adhere to the following general lead times and notification requirements when submitting requests to the Procurement Department:

1. **Micro-Purchases:** For micro-purchases, which are typically transactions involving minimal expenditure, the requisitioner should notify the Procurement Department 5-10 business days in advance of the needed good or service. This allows sufficient time for any necessary approvals and processing. Shipping times should be taken into consideration.
2. **Simplified Acquisitions (Small Purchases):** For small purchases, which fall within a higher expenditure range but do not require formal bidding, requisitioners should provide notification to the procurement department 2-3 months prior to the anticipated purchase date. This ensures that adequate time is available for review, contacting vendors for quotes, and to secure any required documentation.
3. **Formal Procurements:** For formal procurements, which involve larger expenditures and require a competitive bidding process, requisitioners should notify the procurement department at least 6 months before the need for the good or service or expiration of the existing contract. More complex acquisitions could take even longer. This extended lead time is crucial to accommodate the complexities of formal bidding, evaluation, approvals, and contract award procedures.

8.5. Scopes, Specifications, and Salient Characteristics

Specifications shall clearly describe the products or services to be procured and shall state how bids or proposals will be evaluated. Specifications shall not be exclusionary, discriminatory, unreasonably restrictive or otherwise in violation of Federal or State laws, regulations, or guidelines.

A Scope of Work (SOW), Scope of Services (SOS), and technical specifications all serve the common purpose of clearly defining the requirements and expectations for goods or services to be procured. Each document outlines what is needed, how it should be delivered, and the standards it must meet to ensure that the final outcome satisfies the requisitioner's objectives.

Development of a proper SOW, SOS, or technical specifications are crucial components in the procurement planning phase. While the Procurement Department can assist in developing these documents, it is primarily the responsibility of the requisitioner to provide all necessary information and specifications. They must also verify that the SOW, SOS, or technical specifications are comprehensive and accurate to ensure that the resulting goods or services fully meet their needs.

The primary role of the Procurement Department in developing the SOW, SOS, or technical specifications is to ensure proper formatting, compliance with regulations, and adherence to relevant standards. They also validate that the specifications are crafted in a manner that does not unfairly restrict competition, thereby promoting a fair and open procurement process.

It is strongly recommended that Program Directors, Department Managers, or other approved representatives sign off on the final scopes of work, scopes of services, or specification documents.

8.6. Cost Estimating and Budgeting

A cost estimate is a detailed approximation of the expenses associated with acquiring goods or services. It provides a forecast of the financial resources required, based on current market rates, historical data, and project-specific factors. Accurate cost estimating is crucial before applying for grant funds or initiating any procurement process as it ensures that CVCOG allocates the necessary budget and prevents overspending.

A procurement process, especially soliciting bids or proposals, should not be initiated unless there are sufficient funds available to cover the project expenses backed by accurate cost estimating and thorough research and planning. Lack of proper planning and insufficient funding generally should not be an acceptable reason to cancel a procurement process, except in extreme or unexpected circumstances. The requisitioner should take this into consideration prior to submitting a procurement request. This responsibility ensures that the requisition aligns with budgetary constraints, supports financial planning, and facilitates a smooth procurement process without delays or financial shortfalls.

While the Procurement Department may assist in these functions, proper planning and budgeting are ultimately the responsibility of the requisitioner.

8.7. Purchase Requisitions

A purchase requisition (REQ) is an internal document used within CVCOG to formally request the acquisition of goods or services. It is typically initiated by a department or individual who identifies a need for specific items or services and requires approval before a purchase order can be issued. The REQ outlines details such as the description of the items or services, quantity, estimated cost, and any specific requirements or preferences. Once completed, the REQ is submitted to the Procurement Department for review and approval. The approved requisition serves as the basis for initiating the procurement process.

A properly prepared REQ will generally include:

- a) Determination of need, justification, or documentation of the needed good or service from the requestor.
- b) Scope of Work, Scope of Services, or Technical Specifications/Salient Characteristics.
- c) Information on where and how the items should be delivered.
- d) When the goods or services are needed by, to help with scheduling and urgency.
- e) Cost Estimates or basis for budget amount.
- f) Budget amount, budget printout, and information on where the costs will be charged within the budget.
- g) Any additional requirements, considerations, or supporting documents for procurement.
- h) Necessary approvals based on expected spend amount.

8.8. Annual Planning

To ensure strategic alignment and optimal management of resources, it is essential that all programs within CVCOG conduct annual procurement planning sessions with the Procurement Department prior to the end of the program's current fiscal grant year. These sessions are crucial for developing a comprehensive understanding of each program's needs, priorities, and upcoming requirements. By coordinating annually, programs and the Procurement Department can collaboratively identify procurement goals, forecast budgetary needs, and address potential challenges well in advance. This proactive approach facilitates more effective and timely procurement activities, enhances budget management, and fosters better communication and coordination across the organization. Regular planning sessions also help in anticipating market trends, identifying potential cost-saving opportunities, and ensuring compliance with regulatory requirements.

8.9. Professional Procurement Planning

For complex or high-value procurements, it is strongly recommended and, in some cases, required, that CVCOG hires a professional firm to assist with scope or specification development, cost estimating, and project oversight. Engaging specialized firms can provide invaluable expertise and ensure that procurement processes are meticulously managed. Professional firms bring a depth of knowledge and experience that can enhance the accuracy of project specifications and cost estimates, thereby reducing the risk of errors or

omissions that might lead to cost overruns or project delays. Additionally, their oversight services can help maintain project integrity, ensure adherence to best practices, and address issues proactively. By leveraging the expertise of these firms, agencies can significantly improve the likelihood of successful project outcomes and ensure that procurement objectives are met efficiently and effectively.

Hiring a specialized firm is subject to the same thresholds and competitive requirements as outlined in this Policy.

8.10. Unfair Competitive Advantage

To maintain fairness and competitiveness in the procurement process, contractors who are involved in the development or drafting of specifications, requirements, statements of work, or invitations for bids and requests for proposals should be excluded from competing in those procurements. However, if information was derived from a contractor who expresses an interest in participating in the procurement, the Procurement Department must conduct comprehensive due diligence by ensuring that the specifications or scope are not designed in a way that unfairly restricts competition, caters to that specific contractor, or excludes other potential bidders/proposers.

8.11. Information Technology Related Procurements

For IT-related procurements, the requisitioner must submit a detailed request for the needed IT goods or services to the Procurement Department. The Procurement Department must collaborate closely with the IT Department to ensure that the requested goods or services meet compliance and compatibility standards. The IT Department will conduct thorough vetting to verify that the goods or services align with organizational needs and technical requirements. Together, the Procurement and IT Departments will work to identify and secure the most suitable solution to fulfill the requisitioner's needs effectively.

9. Primary Methods of Procurement

9.1. Micro-Purchase

A micro-purchase refers to a procurement transaction where the total cost of goods or services does not exceed the micro-purchase threshold. These purchases are generally characterized by their low value and minimal risk, allowing for streamlined procurement procedures. Micro-purchases are designed to facilitate quick and efficient procurement processes for small-scale needs without requiring extensive formalities.

- a) To the maximum extent practicable, CVCOG must distribute micro-purchases equitably among qualified suppliers.
- b) Micro-Purchases may be awarded without soliciting competitive price or rate quotations if CVCOG considers the price to be fair and reasonable based on research, experience, purchase history or other information and documents its files accordingly.
- c) CVCOG may not divide or reduce the size of the procurement to avoid additional procurement requirements applicable to larger acquisitions.

Micro-purchases up to \$3,000.00 can be made by any staff member who has been given permission by their department or program's management. However, it is the responsibility of the person making the purchase to submit all required documents to the Procurement Department, such as receipts, invoices, and a micro-purchase stamp. These documents must be submitted to the Procurement Department in a timely manner for proper processing, and in accordance with CVCOG's P-Card Policy. If the submitted documents are not sufficient, the Procurement Department may return them to the purchaser until the necessary information is provided. Micro-purchases exceeding \$3,000.00 must be completed by the Procurement Department, unless otherwise authorized.

Repeated errors or consistent issues with inadequate documentation may result in the revocation of purchasing privileges for the individual or the program or department.

9.2. Simplified Acquisition Procedures

Simplified acquisition procedures refer to the process for acquiring goods or services where the total value is higher than a micro-purchase but still below CVCOG's Simplified Acquisition Threshold (SAT). Simplified acquisitions are designed to streamline procurement procedures for transactions that are relatively low in value and complexity. This approach allows for less formal and more efficient procurement processes, while still maintaining oversight and ensuring competitive practices.

Simplified acquisitions must be completed by the Procurement Department unless otherwise authorized by the Executive Director or their designee.

9.2.1. Obtaining Quotes or Estimates from Vendors

1. Identify Procurement Needs: Work with the requisitioner to clearly define the goods or services required, including specifications, quantity, and delivery requirements. Ensure that all necessary details are documented to facilitate accurate quotes.
2. Verify Procurement Threshold: Verify that the procurement is expected to fall within the SAT range. This ensures that the appropriate procedures apply.
3. Planning and Pre-Solicitation Documents: Ensure that all pre-solicitation documents and approvals have been completed including purchase requisitions or other requirements depending on the expected dollar amount of the project.
4. Prepare a Solicitation: Develop a solicitation (such as a Request for Quotes (RFQ)). This document should outline the procurement requirements, submission instructions, and deadline to respond. It is recommended to provide respondents with a minimum of 2-4 weeks to respond.
5. Identify Potential Vendors: Identify a list of qualified vendors who can fulfill the procurement requirements. Reach out to them to solicit quotes. This can be done through email, online procurement platforms, or other appropriate methods.
6. Distribute Solicitation: Send the solicitation to the identified vendors. Ensure that the Request is distributed to an adequate number of qualified sources (recommended to be distributed to 3+ vendors/suppliers).
7. Receive and Review Quotes: Collect quotes from vendors by the specified deadline. Review and evaluate the quotes based on best value criteria such as price, quality, delivery time, and any other relevant factors.
8. Select the Best Quote: Work with the requisitioner to choose the quote that represents the best value for the procurement, considering both price and other factors. Document the selection process and the rationale for the decision.
9. Award the Contract: Notify the selected vendor of the award and finalize the procurement contract when applicable. Ensure that all terms and conditions are clearly outlined and agreed upon.
10. Notify Unsuccessful Vendors: Inform the vendors who were not selected of the outcome, providing feedback if appropriate and maintaining a professional relationship for future opportunities.
11. Document the Procurement Process: Maintain thorough records of the procurement process, including quotes received, correspondences, documentation, and the final award decision. This documentation is essential for transparency and audit purposes.

9.3. Formal Competitive Procurements

Formal competitive procurement refers to a structured and regulated process used to acquire goods, services, or construction projects that exceed CVCOG's SAT. This process typically involves detailed procedures such as issuing formal solicitations (e.g., Invitations for Bids or Requests for Proposals), conducting competitive evaluations, and adhering to rigorous documentation and compliance requirements. The formal procurement process ensures transparency, fairness, and accountability in awarding contracts, while seeking to obtain the best value for CVCOG through competitive means and thorough evaluation.

Formal procurements must be completed by the Procurement Department unless authorized by the Executive Director or their designee.

9.3.1.Sealed Bids

An Invitation for Bids (IFB) is a formal solicitation issued by CVCOG to invite suppliers or contractors to submit competitive bids for a specific contract or project. The IFB outlines detailed specifications, requirements, and terms for the goods, services, or construction work needed. Bidders are required to provide their bids based on the criteria specified in the IFB. The process is designed to ensure a fair and transparent selection of vendors by evaluating the bids on a competitive basis, typically focusing on price and compliance with the stated requirements.

- i. For sealed bidding to be feasible, the following conditions should be present:
 - a. A complete, adequate, and realistic specification or purchase description is available;
 - b. Two or more responsible bidders have been identified as willing and able to compete effectively for the business; and
 - c. The procurement lends itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally based on price.
- ii. If sealed bids are used, the following requirements apply:
 - a. Bids must be solicited from an adequate number of qualified sources, providing them with sufficient response time prior to the date set for opening the bids. Unless specified by a funding agency, CVCOG may exercise judgment in determining what number is adequate. The invitation for bids must be publicly advertised;
 - b. The invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond;
 - c. All bids must be opened publicly at the time and place prescribed in the invitation for bids;
 - d. No negotiations are permitted;
 - e. A firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible bidder. When specified in the invitation for bids, factors such as discounts, transportation cost, and life-cycle costs must be considered in determining which bid is the lowest. Payment discounts must only be used to determine the low bid when CVCOG determines they are a valid factor based on prior experience; and
 - f. CVCOG must document and provide a justification for all bids it rejects.

9.3.2.Proposals

A Request for Proposals (RFP) is a formal solicitation issued by CVCOG to solicit detailed proposals from suppliers, contractors, or service providers for a specific project or procurement need. The RFP outlines the project's objectives, scope of work, and evaluation criteria, and invites interested parties to submit comprehensive proposals that address the requirements and offer solutions. Unlike an IFB which primarily focuses on price, an RFP evaluates proposals based on various factors such as technical approach, experience, and cost, allowing for a more comprehensive assessment of the proposed solutions and the qualifications of the offerors.

Proposals are awarded in accordance with the following requirements:

- i. Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered;
- ii. CVCOG must have written procedures for conducting technical evaluations and making selections;
- iii. Contracts must be awarded to the responsible offeror whose proposal is most advantageous to CVCOG considering price and other factors; and
- iv. CVCOG may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the offeror's qualifications are evaluated, and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure architectural/engineering (A/E) professional services. The method may not be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

9.3.3. Qualifications Based Selection

A Request for Qualifications (RFQu) is a formal solicitation issued by CVCOG to seek qualifications from potential suppliers, contractors, or service providers for a specific project or service. The RFQu requests detailed information about the qualifications, experience, and capabilities of the respondents rather than their pricing or proposals for specific solutions. The goal of an RFQu is to pre-qualify vendors based on their expertise and ability to meet the project's requirements. Once qualified, these vendors may be invited to participate in further stages of the procurement process, such as submitting detailed proposals or bids.

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

9.3.4. Technology Acquisitions

A Request for Offers (RFO) is a formal solicitation issued by CVCOG to invite suppliers, contractors, or service providers to submit offers for a specific project, product, or service. The RFO typically includes detailed descriptions of the requirements, objectives, and criteria for evaluation, and seeks competitive offers from vendors. While RFOs can be used for various types of procurements, they are often employed specifically for technology-related acquisitions. Unlike an RFP, which often involves a detailed evaluation of multiple factors beyond cost, an RFO generally focuses on receiving offers that provide the best value based on a combination of price and specified criteria. The RFO process aims to ensure that the organization selects the most suitable offer that meets its technological needs and objectives.

9.4. Advertising Procedures for Formal Solicitations

To ensure transparency, broad competition, and equitable opportunities for all potential vendors, formal solicitations must be advertised through a variety of channels. Additionally, CVCOG may choose to use these advertising methods for Micro-Purchases or Simplified Acquisitions (Small Purchases), as needed. CVCOG must retain proof of all advertising methods/attempts in the procurement file. The following advertising standards should be applied:

1. Newspapers: Solicitations must be published in at least one widely circulated local or regional newspaper, with publication occurring at least once a week for a minimum of two consecutive weeks. This ensures that the opportunity reaches a broad audience and complies with traditional advertising practices.
2. Agency Website: Solicitations must be prominently posted on CVCOG's official website. This provides a central and accessible location for vendors to find detailed information about the solicitation, submission requirements, and deadlines.

3. Social Media: It is encouraged to post procurement opportunities on CVCOG's official social media platforms to leverage digital reach and engage with a diverse audience. This includes platforms such as Facebook, Twitter, and LinkedIn, where updates and links to the solicitation details can be shared.
4. Bidding Platforms: It is encouraged to post solicitations on approved bidding platforms or procurement websites where vendors commonly search for opportunities. This includes any government or industry-specific platforms that facilitate electronic access to procurement notices and bidding documents.
5. Email Notifications: Notifications about the solicitation should be sent to a comprehensive list of interested parties, including vendors registered with CVCOG and relevant industry contacts. This method ensures direct communication with potential bidders and keeps them informed of new opportunities.

9.5. Formal Solicitation Requirements

1. Description of the goods and/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. 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.
2. Brand name or equal: 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.
3. Criteria for Award: Solicitations must identify all factors to be used in evaluating bids or proposals and their relative order of importance. CVCOG shall conduct a public bid opening for all IFB solicitations. Public opening is not required for other solicitation types. Contracts shall be awarded to the lowest, responsive, and responsible bidder considering price and other criteria outlined in the solicitation.
4. Contract Type Specified: The solicitation must clearly specify the type of contract that will be awarded, as this provides prospective vendors with essential information on the contractual terms and conditions that will govern the agreement.
5. State or Federal Requirements: The solicitation and the resulting contract must specify all applicable State and/or Federal requirements or clauses that will impact the contract's scope and performance. Additionally, it must outline the State and/or Federal requirements that bidders, proposers, or offerors must satisfy both prior to and throughout the contract's execution.
6. Right to Award to Other Than the Low Bidder, Proposer, or Offeror: The solicitation must specifically reserve CVCOG's right to award a contract to other than the low bidder or offeror.
7. Right to Reject All Bids, Proposals, or Offers: The solicitation must specifically reserve CVCOG's right to reject all bids or offers.

9.6. Formal Solicitation Restrictions

Solicitations with requirements that contain features that unduly restrict competition may not be used. Such features include, but are not limited to:

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 established 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.

9.7. Administrative Review of Bids or Proposals

An Administrative Review is a formal evaluation, typically conducted by the Procurement Department, to ensure that all submissions comply with the required procedures and criteria set forth in the solicitation. This review focuses on verifying that proposals are complete, submitted on time, and meet all mandatory requirements. It includes determining the responsiveness of each proposal to ensure it addresses all aspects of the solicitation and conducting a vendor responsibility check to assess the suitability and reliability of the bidders. The aim is to ensure fairness and transparency by confirming that each proposal adheres to the rules before moving on to more detailed technical and financial evaluations conducted by an evaluation committee.

9.8. Determining Responsibility and Responsiveness

Vendor responsibility and responsiveness are distinct but complementary aspects of the procurement evaluation process:

- a) **“Responsibility”** refers to the assessment of a respondent’s capability and reliability to perform the contract. This involves evaluating factors such as the vendor’s financial stability, past performance, legal compliance, and overall suitability to deliver the required goods or services. It ensures that the vendor has the necessary resources, experience, and integrity to fulfill the contract successfully.

- b) **“Responsiveness”** refers to whether a vendor’s offer meets all the technical and administrative requirements specified in the solicitation. This involves checking if the vendor’s offer adheres to the required format, deadlines, and submission guidelines, and whether it adequately addresses the scope of work outlined in the solicitation. Responsiveness ensures that the vendor’s offer is complete and eligible for further evaluation.

9.9. Evaluation of Bids or Proposals

In evaluating offers, the process varies significantly depending on the nature of the procurement and the criteria used for selection.

- a) Evaluating Bids: The evaluation of bids typically occurs in a straightforward, quantitative manner. Bids are assessed primarily based on the price offered and adherence to the specifications outlined in the IFB. The process is highly focused on compliance with the specified requirements, and the lowest bid that meets all criteria usually wins. Evaluation factors often include cost, delivery time, and conformity to technical specifications. The goal is to select the most cost-effective option that meets the predefined requirements without considering qualitative factors.
- b) Evaluating Proposals: In contrast, evaluating proposals is a more comprehensive and qualitative process. Proposals are assessed based on a range of criteria, which often include technical approach, innovation, expertise, and overall value, in addition to cost. The evaluation involves a detailed review of the proposer’s approach to solving the problem, their experience and qualifications, and the quality of their proposed solutions. Proposals are scored according to a set of pre-determined criteria, which may involve multiple stages of assessment and input from various stakeholders. This process aims to select the most advantageous proposal that delivers the best value and aligns with CVCOG’s objectives and needs.

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

- 1. General:
 - a) 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.
 - b) CVCOG may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation.
- 2. Options:
 - a) In general, evaluate offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.
 - b) It is not necessary to evaluate 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.

9.10. Negotiations

CVCOG retains the authority to negotiate terms and conditions on solicitations other than an IFB process. While IFBs do not allow for negotiations, other solicitation methods such as RFPs, RFQs, and RFOs do allow for negotiation. In these cases, CVCOG may engage in discussions with offerors to refine proposals, address specific requirements, and achieve the best value for the organization. Negotiations may involve adjusting terms, clarifying details, and optimizing solutions to better meet CVCOG's needs and objectives. This flexibility in the procurement process ensures that CVCOG can select the most advantageous offer and achieve optimal outcomes for its projects and initiatives. Not all procurement methods allow for negotiation. Prior to commencing negotiations, CVCOG Procurement Department must verify that negotiations are permitted under the applicable procurement method.

Negotiations are permitted for the following:

- 1. Purchases using competitive sealed proposals;

2. Purchases using Request for Qualifications;
3. Purchases using Request for Offers;
4. Purchases under DIR Cooperative Contracts;
5. Purchases of consulting services;
6. Purchases of professional services;
7. TXMAS purchases;
8. Sole source and competitive proprietary purchases; and
9. Emergency purchases when there is insufficient time to solicit bids

9.11. Cancellation of Solicitations

Any solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interest of CVCOG. The reasons for the cancellation shall be made part of the contract file. Each solicitation issued by CVCOG shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interest of CVCOG.

9.12. Debriefing Unsuccessful Offerors

Offerors excluded from competitive range or from award may request a debriefing, or alternatively, CVCOG may offer to provide a debriefing. If the reasons and rationale not to proceed with an offeror are well-documented, the procuring official can proceed to debrief the offeror(s) with confidence. A candid explanation of the process can serve the purposes of defusing any potential dispute by the disappointed offeror(s) as well as encourage future participation by the unsuccessful offerors. If there is a high probability that a dispute will materialize, then CVCOG is under no obligation to notify or debrief unsuccessful offerors.

9.13. Award Requirements

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

1. Award to Other Than the Lowest Bidder, Proposer, 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.
2. Award Only to a Responsible Bidder, Proposer, 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 capacity, 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 State of Texas Debarred Vendor list or Federal System for Award Management (SAM) at the time of contract award. Entities that are listed as debarred or suspended contractors may not be determined to be responsible contractors.
3. Notification of Award: Upon completion of any evaluation process and contingent upon approval by the Executive Director and/or Board of Directors (when applicable), CVCOG will formally notify the selected contractor(s) of the award through written communication. This notification includes a formal award letter or notice outlining the details of the awarded contract. The notification will also provide instructions on the next steps, including any required documentation or contract signing procedures. Contractors who were not selected will also receive a formal notification informing them of the decision.

4. 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.
5. Approval of Contracts:
 - a) All contracts must be signed by the Executive Director, or their designee.
 - b) Contracts with a Total Contract Value (TCV) exceeding the SAT must be approved by the Board of Directors at the monthly meeting.

9.14. Procurement Protest Procedures

CVCOG must establish and maintain written procedures for the resolution of procurement protests. These procedures must outline the process by which a vendor or other interested party may formally protest a procurement decision, including the applicable timelines, required content of the protest, and the steps for review and resolution.

To ensure transparency and accessibility, CVCOG's protest procedures shall be:

- Posted publicly on CVCOG's official website; and
- Made available to any individual or organization upon request, in electronic or printed form.

9.15. Prequalification

1. CVCOG 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.
2. CVCOG may prequalify bidders, offerors and products for procurement purposes if:
 - a) CVCOG ensures that all prequalification lists it uses are current;
 - b) CVCOG ensures that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition; and
 - c) CVCOG permits potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date).
 - i. CVCOG is 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.

9.16. Unsolicited Proposals

CVCOG may enter into contracts based on an unsolicited proposal when authorized by applicable Federal or State law, guidelines, or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition.

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

9.17. Use of Technology and E-Commerce in Procurement

The use of technology and eCommerce is permitted to enhance efficiency, transparency, and accessibility. CVCOG may leverage technological tools and eCommerce platforms to streamline processes, facilitate communication, and ensure a competitive bidding environment. This includes utilizing electronic systems for bid submissions, contract management, and vendor communications, as well as adopting digital methods for evaluating and awarding contracts. By embracing technology and eCommerce, the procurement process will benefit from improved accuracy, reduced administrative burden, and greater engagement with a diverse pool of

vendors. CVCOG is encouraged to integrate these tools to support a modern and effective procurement framework.

10. Other Methods of Procurement

CVCOG must follow the same procurement requirements as they would the primary methods of procurement.

10.1. State and Local Intergovernmental Agreements

To enhance economic efficiency and align with initiatives aimed at promoting the cost-effective utilization of shared services across government entities, CVCOG is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements as appropriate for the procurement or utilization of common or shared goods and services. Compliance with competition requirements will be ensured through documented procurement processes, including strategic sourcing, shared services arrangements, and other comparable procurement methodologies.

10.2. Cooperative Purchasing Contracts

In certain circumstances, CVCOG is authorized to utilize cooperative purchasing contracts and state-led cooperative contracts to procure goods and services, leveraging agreements established by other governmental entities or organizations. Cooperative purchasing allows CVCOG to access pre-negotiated contracts that have been competitively sourced and awarded by other jurisdictions, thereby ensuring cost-effectiveness and efficiency. These contracts enable CVCOG to benefit from bulk pricing, streamlined procurement processes, and established vendor relationships, which can lead to significant savings and reduced administrative burdens. CVCOG is responsible for verifying that underlying contracts have met all necessary procurement requirements such as competition and inclusion of required State or Federal contract clauses.

Examples of Cooperative Agreements CVCOG can utilize include, but are not limited to:

1. BuyBoard
2. HGACBuy
3. Texas SmartBuy
4. Texas Multiple Award Schedule (TXMAS)
5. Texas Department of Information Resources (DIR)
6. OMNIA Partners
7. The Interlocal Purchasing System (TIPS)
8. NASPO ValuePoint

10.2.1. Use of Cooperatives with Local or State Funds

Under Texas Law, CVCOG can engage in cooperative purchasing programs with another local government or a local cooperative organization (as defined by Texas Local Government Code Chapter 271), to include state and federal cooperative contracts, provided that the procurement of goods or services adheres to the specifications set forth by the cooperative.

Any amount at or above the Formal Procurement threshold requires CVCOG Board of Directors approval. CVCOG must determine that the cooperative agreement program being used to procure the goods or services satisfies State of Texas competitive requirements. To ensure best value, it is encouraged to seek offers from an adequate number of qualified sources for all acquisitions.

10.2.2. Use of Cooperatives with Federal Funds

Programs using Federal funds are not allowed to acquire goods or services directly off a cooperative contract without express authorization from the grantor agency. However, programs using Federal funds may request offers from vendor(s) participating in the cooperative contract as long as the full and

open competition requirement is met by requesting offers from other sources, such as DBEs, HUBs, and private sector vendors.

For example, Federal guidelines require quotes from an adequate number of qualified sources on purchases over the micro-purchase threshold, so a quote from a co-op would only fulfill the need for one of the quotes.

10.3. Joint Procurements

The joint procurement method involves two or more purchasers that agree to use a single solicitation document and enter into a single contract. Unlike a state purchasing schedule or contract, a joint procurement is not drafted for the purpose of accommodating additional purchasers that subsequently choose to participate in the contract.

10.4. Federal Supply Schedules

CVCOG may utilize federal supply schedules to acquire goods and services efficiently and cost-effectively. Federal supply schedules, also known as General Services Administration (GSA) Schedules, provide a streamlined procurement mechanism by offering pre-negotiated contracts with established terms and pricing, facilitated by the federal government. These schedules allow CVCOG to access a wide range of products and services from vetted vendors at competitive rates, thus simplifying the procurement process and ensuring compliance with federal regulations.

10.5. Direct Purchase of Service Applications (Area Agency on Aging Only)

DPS is a procurement and contracting methodology for the purchase of services by the AAA on a client-by-client basis in lieu of annualized contracting, or a fixed sum basis. This process provides flexibility in the purchasing of services for participants in the OAA programs. Contractors are identified through a formal evaluation and selection process and a formalization of their status in a vendor pool is accomplished by issuance of an agreement.

10.6. Non-Competitive Procurement

There are specific circumstances in which CVCOG may use a noncompetitive procurement method. The noncompetitive procurement method may only be used if one of the following circumstances applies:

- i. The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold;
- ii. The procurement transaction can only be fulfilled by a single source;
- iii. The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;
- iv. The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or
- v. After soliciting several sources, competition is determined inadequate.

10.6.1. Single Source Procurement

- a) Single source procurements may be utilized only when the required goods or services can only be fulfilled by a single supplier and no reasonable alternatives exist. In such cases, CVCOG must produce a written justification that clearly explains why the item or service is unique, why no other sources are suitable or acceptable, and why competitive procurement methods are not feasible. This justification must be approved by the Procurement Department and the Executive Director. All single source procurement requests must include sufficient documentation to support the claim of exclusivity. The Procurement Department reserves the right to request additional information or deny the request if the justification is deemed

insufficient. Additionally, details of approved single source procurements shall be documented and retained in the procurement file.

- b) A vendor's claim that their goods or services are available only from them does not automatically qualify the procurement as a single source. The mere existence of proprietary features or branding does not justify a single source designation if other vendors offer alternative solutions that can reasonably meet CVCOG's functional requirements. All single source determinations must be based on a thorough evaluation of available options and supported by objective justification, not solely on vendor assertions.
- c) CVCOG must demonstrate due diligence to validate that the goods or services can only be fulfilled by the single supplier. Often, a manufacturer may have distributors that resell their products as "authorized distributors". It should be verified that the manufacturer does not have authorized distributors, if it is determined that distributors exist, competition must be sought from each distributor.

10.6.2. Urgent and Compelling Procurement

- 1. CVCOG may limit the number of sources from which it solicits bids or proposals when there is an unusual and urgent need for the products or services, and CVCOG would suffer serious harm if required to conduct a full and open procurement process.
- 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, air conditioner repair during the heat of summer is urgent on a bus given there is no replacement bus for the route and the patrons need cool air.

10.6.3. Emergency Acquisition

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 thresholds and competitive processes so that emergency purchases can be conducted.

- i. An emergency purchase occurs when CVCOG 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) CVCOG should make a reasonable attempt to obtain an adequate number of informal bids.

- 2) Emergency procurements over \$50,000 must be posted publicly; 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.

11. Purchasing Instruments

1. Purchase Card (P-Card): P-Cards are increasingly utilized to streamline purchasing processes and enhance efficiency. They allow for quick, secure transactions and simplify the management of low-value or routine purchases. By leveraging P-Cards, CVCOG can reduce administrative costs, improve cash flow management, and gain better control over spending with real-time tracking and reporting capabilities. Additionally, P-Cards can facilitate compliance with procurement policies by providing detailed transaction records and reducing the need for complex purchase orders and invoicing. Purchases using a P-Card must be compliant with CVCOG's P-Card Policy.
2. Purchase Order: A purchase order (PO) is a formal document issued by a buyer to a supplier, outlining the specifics of a purchase, such as quantities, prices, and delivery terms. POs can serve as a binding contract between CVCOG and a vendor for acquiring goods or services. They ensure clarity and accountability by documenting the agreed-upon terms and conditions, facilitating budget management, and providing a clear record for auditing and compliance purposes. POs help streamline procurement processes, control spending, and maintain transparency in public purchasing activities.
3. Blanket Purchase Order: A blanket purchase order (BPO) is a type of long-term contract that covers multiple transactions over a specified period with predetermined terms and conditions. It is designed to simplify the purchasing process for frequently ordered goods or services by establishing a general agreement with a supplier, often at negotiated rates. BPOs streamline procurement by eliminating the need for individual purchase orders for each transaction, thereby reducing administrative work and enabling more efficient management of recurring purchases.
4. Formal Written Contract: A formal written contract is a legally binding agreement documented in writing, detailing the specific terms, conditions, and obligations agreed upon by the parties involved. Formal written contracts are used to clearly define the scope of work, deliverables, pricing, and timelines for goods or services procured by CVCOG. They ensure legal enforceability, provide a clear framework for performance and compliance, and protect both parties by outlining remedies for breaches and disputes. Formal written contracts help maintain transparency, accountability, and fairness in the procurement process.
5. Task Order: A task order is a specific directive typically issued under a broader contract, used to manage and fulfill individual tasks or projects within a larger, pre-established agreement. Task orders allow CVCOG to assign particular tasks or services to a contractor without needing to negotiate a new contract each time. This approach provides flexibility, as it enables CVCOG to adjust to evolving needs or requirements efficiently while leveraging the existing contractual framework. Task orders are commonly used in indefinite delivery/indefinite quantity (IDIQ) contracts, where the overall contract specifies the terms and conditions, but the precise scope of work is determined through these individual task orders.

12. Risk Management in Procurement

The purpose of risk management is to identify, assess, and mitigate risks associated with the procurement process to ensure that procurement activities are conducted efficiently, effectively, and in compliance with relevant regulations and organizational policies. Effective risk management helps to safeguard public resources, enhance transparency, and maintain the integrity of the procurement process. CVCOG should take the following measures regarding risk in procurement:

12.1. Risk Identification

- a) Identify and categorize potential risks that may impact the procurement process, including but not limited to financial risks, operational risks, legal and regulatory risks, reputational risks, and performance risks.
- b) Assess potential sources of risk such as vendor performance issues, contractual disputes, market fluctuations, and compliance challenges.

12.2. Risk Assessment

- a) Evaluate the likelihood and impact of identified risks. This includes analyzing the severity of potential consequences and the probability of occurrence.
- b) Prioritize risks based on their potential impact on procurement objectives and organizational goals. High-priority risks should receive greater attention and more robust mitigation strategies.

12.3. Risk Mitigation

- a) Develop and implement preventive measures to reduce the likelihood of risks occurring. This may include establishing clear procurement procedures, conducting thorough vendor evaluations, and ensuring compliance with legal requirements.
- b) Prepare contingency plans to address risks if they materialize. This includes outlining specific actions to take in response to risk events, such as alternative sourcing strategies or legal remedies.
- c) Incorporate risk mitigation clauses in procurement contracts, such as performance bonds, insurance requirements, and penalties for non-compliance.

12.4. Risk Monitoring and Reporting

- a) Continuously monitor procurement activities to identify emerging risks and assess the effectiveness of risk mitigation strategies. This includes regular reviews of vendor performance, compliance audits, and market trends.
- b) Establish a reporting mechanism to document and communicate identified risks, risk assessments, and mitigation actions to relevant stakeholders. This ensures transparency and provides a basis for informed decision-making.

13. Engaging SMWBE, HUB, and DBE Vendors

- a) In accordance with the requirements outlined in 2 CFR § 200.321, when possible, CVCOG should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered as set forth below.
- b) Such consideration means:
 - 1) These business types are included on solicitation lists;
 - 2) These business types are solicited whenever they are deemed eligible as potential sources;
 - 3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
 - 4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;

- 5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- 6) Requiring a contractor under a Federal award to apply this section to subcontracts.

13.1. Historically Underutilized Businesses (HUB)

The HUB program is designed to promote and support the participation of businesses that have historically faced barriers to equitable access to government contracts and procurement opportunities. When a funding agency assigns a HUB goal to a specific procurement, CVCOG will incorporate that goal into the procurement process. The program aims to increase the involvement of small, minority-owned, women-owned, and disadvantaged businesses in public sector procurement efforts.

13.2. Disadvantaged Business Enterprises (DBE)

The Disadvantaged Business Enterprise (DBE) program is a federal initiative aimed at increasing the participation of small businesses owned and controlled by socially and economically disadvantaged individuals in public sector contracting and procurement. The program seeks to level the playing field for businesses that have historically been underrepresented in government contracts due to various barriers. When a funding agency assigns a DBE goal to a specific procurement, CVCOG will incorporate that goal into the procurement process.

Concho Valley Transit District (CVTD) maintains a Disadvantaged Business Enterprise (DBE) program to meet the U.S. Department of Transportation's regulations (49 CFR Part 26), as required by their federal financial assistance agreement.

14. Documentation and Reporting of Procurements

All procurements conducted on behalf of CVCOG will have required documentation to substantiate the procurement and use of funds. CVCOG must maintain records sufficient to detail the history of each procurement transaction. Any procurement requests submitted to the Procurement Department missing documentation may be subject to rejection and sent back to the requisitioner for clarification and/or correction.

14.1. Micro-Purchase Summary Form

A Micro-Purchase Summary Form is required for all purchases within the micro-purchase threshold.

A Micro-Purchase Summary Form is a form used to document that the micro-purchase was conducted in a manner compliant with the micro-purchase requirements. This form must be completed by the individual who made the purchase. CVCOG Procurement Department is responsible for maintaining the template used for the Micro-Purchase Summary. Only the current approved version may be used.

14.2. Independent Cost Estimate (ICE)

An ICE is required for all procurements exceeding the micro-purchase threshold.

An ICE is an independent assessment of what you would expect to pay for goods or services, based on reliable sources, such as paid historical prices, industry standard, market surveys, or comparable purchases by other agencies. An ICE should be conducted prior to, and independent from, contacting suppliers.

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. The Procurement Department is

responsible for maintaining the template used for Independent Cost Estimates. Only the current approved version may be used.

14.2.1. Performing an ICE

An ICE must be completed before receiving formal quotes, bids, or proposals. All prices listed on the ICE must have supporting/reference documentation included in the procurement file or attached to the ICE document.

The most common ICE methods include obtaining information from:

- a) Published Price Lists – Typically appropriate for goods. Price lists or catalogs are acceptable price sources for off-the-shelf items such as technology, and office supplies. Price lists are often available online or in printed advertisements. Prices posted on a store shelf are also acceptable.
- b) Historical Purchases – Typically appropriate for goods or services. If a subrecipient recently purchased similar goods or services, a recent invoice or quote may help determine a fair and reasonable price. “Recently” may vary, according to circumstances.
- c) Comparable Purchases by Other Agencies – Typically appropriate for goods or services. A subrecipient may contact other agencies to determine a fair and reasonable price, so long as the agency is of similar size and the purchase or project is of similar scope.
- d) Engineering Estimates – Typically appropriate for construction projects. a prediction or calculation of the costs, time, resources, and other factors involved in a project or task, based on engineering principles and expertise. It typically involves analyzing the scope of work, materials required, labor costs, and potential risks to develop an accurate projection of the project's parameters.
- e) Independent Third-Party Estimates – Typically appropriate for goods or services. An evaluation or assessment conducted by a neutral entity that will not directly be involved in the transaction or decision-making process.

14.2.2. ICE Reconciliation

An ICE reconciliation is a process used to validate and compare the cost estimates developed independently from the bid or quote received for a procurement. This reconciliation involves reviewing and assessing whether the actual bid or quoted amount aligns with the pre-established ICE to ensure that the pricing is fair and reasonable. If the actual bid or quoted amount deviates by more than $\pm 10\%$ from the ICE, an ICE reconciliation may be necessary. This process helps to ascertain the validity of the bid, ensuring that the procurement remains competitive and within budgetary expectations. The reconciliation aims to address discrepancies and provide a thorough evaluation of the pricing to uphold the integrity of the procurement process.

14.3. Written Procurement History (WPH)

A WPH is a comprehensive record that documents the entire procurement process for acquiring goods, services, or construction projects. This record includes key details such as the procurement requirements, solicitation methods, evaluation criteria, selection process, contract negotiations, and final award decisions. The purpose of maintaining a written procurement history is to ensure transparency, accountability, and compliance with relevant regulations and organizational policies.

The level of documentation required for the procurement history will vary depending on the size and complexity of the procurement. For more complex or high-value procurements, a detailed and extensive procurement history is essential to provide thorough insight and support accountability. Conversely, for smaller or less complex procurements, the documentation may be less extensive but still includes the necessary details to support transparency and compliance. The variation in documentation ensures that the procurement process is appropriately documented relative to its significance and complexity.

14.3.1. Rationale for Method of Procurement

For procurements exceeding CVCOG's SAT, the rationale for the method of procurement used for each contract must be kept in the procurement file, including a sole source justification for any acquisition that does not qualify as competitive, and documents related to solicitation.

14.3.2. Selection of Contract Type

For procurements exceeding CVCOG's SAT, the basis for selection of contract type must be included in the procurement file. The contract type must be clearly identified in each contract.

14.3.3. Basis for Contractor Selection or Rejection

14.3.3.1. State Debarred Vendor Check

Prior to award of contract or notice to proceed, CVCOG must validate that the contractor does not appear on the State of Texas Debarred Vendor List. This search must be downloaded and stored in the procurement file for all purchases.

14.3.3.2. Federal Debarred Vendor Check (System for Award Management)

Prior to award of contract or notice to proceed, CVCOG must validate that the contractor does not appear on any federal exclusion list (www.sam.gov). This search must be downloaded and stored in the procurement file for all purchases.

14.3.3.3. Determination of Responsiveness

The determination of responsiveness is the process of evaluating whether a submitted bid or proposal meets all the essential requirements and criteria specified in the solicitation. This includes verifying that the bid or proposal adheres to the submission guidelines, complies with technical specifications, and fulfills all mandatory conditions outlined in the request. A responsive bid or proposal is one that addresses the solicitation's requirements in a complete and accurate manner, without significant deviations or omissions. This assessment is crucial to ensuring that only those submissions which are fully compliant with the solicitation's terms are considered for further evaluation or award. When applicable, responsiveness determinations must be stored in the procurement file for acquisitions exceeding CVCOG's SAT.

14.3.3.4. Determination of Responsibility

The determination of responsibility is the process of assessing a bidder's or offeror's ability to satisfactorily perform the contract or project as specified in the solicitation. This evaluation involves examining the bidder's or offeror's financial stability, technical expertise, past performance, and overall capability to fulfill the contract requirements. It also includes verifying compliance with legal and regulatory standards, such as licenses, certifications, and insurance. The goal of this assessment is to ensure that the selected contractor or supplier possesses the necessary qualifications, resources, and integrity to complete the work successfully and meet the organization's expectations. Responsibility determinations must be stored in the procurement file for acquisitions exceeding CVCOG's SAT.

14.4. Cost Analysis and Price Analysis

If the funding agency requires it, a cost or price analysis may be required for the procurement file. The purpose of a cost or price analysis is to ensure that CVCOG does not pay unreasonably high prices to third-party contractors. A cost or price analysis is performed after the receipt of bids or proposals but prior to the award of a contract. The cost or price analysis is only required for acquisitions or contracts above CVCOG's SAT unless otherwise specified by the funding agency or other authority. While "cost/price analysis" is often used as a combined phrase, cost analysis and price analysis are distinguishable concepts.

14.4.1. Cost Analysis

When price competition is inadequate, such as in a single bid or sole source procurement, the recipient must develop a cost analysis. A cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's proposal and the application of judgment to determine how well the proposed costs represent what the cost should be assuming reasonable economy and efficiency

14.4.2. Price Analysis

When contracting on a fixed price basis, a comparison of the proposed prices will normally satisfy the requirement to perform a price analysis.

14.5. Cost Reasonableness (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)

14.6. Budget Information

Retain a copy of the associated budget(s) that the department wishes to pay for the good or service in the procurement file.

14.7. Contract Administration and Close-Out Documentation

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

- A. Contractor Performance: CVCOG must maintain documents related to contractor adherence to budget and schedule, compliance with contract terms and conditions, DBE participation, progress reports, disputes and disciplinary actions;

- B. Contractor Deliverables: CVCOG must maintain copies of all contract deliverables and records relating to approval, rejection and requested modifications of contract deliverables;
- C. Contract Changes: CVCOG must maintain copies of all contract modifications, including documentation related to the determination of need, written justification and rationale, cost analysis, negotiation and execution;
- D. Contract Payments: CVCOG must retain documentation of invoices, approval of payments, requests for modifications to invoices, determination of percentage of contract completion for partial payments (if applicable), and ownership of title to partial work products;
- E. Contract Close-Out: CVCOG must retain documentation related to contractor performance and evaluation, approval of final deliverables and payments, transfer of title to complete work products to CVTD, and contract audit and final reconciliation. Files will be adequately maintained, accessible, and retained 7-years unless otherwise determined.

14.8. Supporting Documentation and Correspondences

CVCOG must retain all relevant supporting documentation and correspondences associated with procurement activities in the procurement file. This includes, but is not limited to, procurement requests, evaluation criteria, award notices, relevant internal communications, and any communication with vendors or stakeholders throughout the procurement cycle. Such documentation is essential for verifying compliance with regulatory requirements, facilitating audits, and addressing any disputes that may arise. The retention of these records is crucial for maintaining a clear and comprehensive trail of the procurement process, thereby upholding the integrity and efficacy of our procurement operations.

14.9. Documentation Related to Refunds or Credits

In certain situations, CVCOG may find it necessary to return items for a refund or to receive credits based on specific circumstances. To ensure proper record-keeping and accountability, the following documentation should be included in the files associated with these transactions:

- a) A refund receipt or credit memo that clearly outlines the items being refunded or the specifics of the credit issued.
- b) Detailed documentation explaining the reasons for the refund or the issuance of the credit.
- c) Records related to the original purchase or procurement activity that led to the issuance of the credit.
- d) Information on the grant or funding source that is to be refunded or credited.

For refunds or credits, state and federal debarment searches, micro-purchase stamps, and independent cost estimates are not required.

15. Procurement Categories and Specialized Procurement Types

15.1. Transit Procurements

15.1.1. Texas Department of Transportation Funded Procurements

CVCOG is required to seek concurrence from the Texas Department of Transportation (TxDOT) before proceeding with any procurement action funded by TxDOT that is estimated to be near or greater than CVCOG's SAT. CVCOG must work closely with TxDOT through each step of the procurement process to ensure compliance with their oversight requirements. This collaboration ensures that all procurement activities align with TxDOT's guidelines and regulations, maintaining compliance and accountability for the use of transportation funds. CVCOG must obtain TxDOT's approval prior to initiating the procurement process to ensure that all necessary checks and approvals are in place.

15.1.2. Federal Transit Administration Funded Procurements

Contracts awarded or procurements funded by federal funds must comply with the requirements outlined in the most current versions of FTA Circulars and federal regulations as well as in compliance with 2 CFR Part 200. (Federal regulations prevail over any provisions contained within this Policy that may conflict with the federal regulations).

15.1.3. Required Contract Clauses

Third-party contract clauses must be included in all federal assisted contracts, purchase orders, and or procurements to form a sound and complete agreement. Determination of the required clauses will be made based on the requirements as stated in the FTA Master Agreement, FTA Circular 4220.1G, and/or 2 CFR Part 200.

Best Practice: Utilize TxDOT's Consolidated Certification Form PTN-130 regardless of funding source to ensure that all required contract clauses and certifications (both State and Federal) are included.

15.1.4. Buy America Compliance

In accordance with the requirements set forth in 49 U.S.C. § 5323(j)(1), CVCOG must comply with all applicable "Buy America" provisions for its procurement projects. Specifically, CVCOG must require that all steel, iron, and manufactured goods used in its Federally funded procurement projects will be produced in the United States.

15.1.5. Rolling Stock Procurements

Contract term limitation for rolling stock and replacement parts shall not exceed five (5) years inclusive of options for bus fleet.

All third-party contracts to acquire rolling stock must include provisions to ensure compliance with applicable requirements of 49 USC Section 5323 and FTA regulations, Pre-Award and Post-Delivery audits of rolling stock purchases. The documentation shall be made a part of the procurement file. Awards are only made to responsible and responsive contractors in compliance with the requirements of 49 USC 5325(j) – Buy America.

15.1.5.1. Fixing America's Surface Transportation (FAST) Act

Under Section 3019 of the FAST Act (2015), grantees may purchase rolling stock and related equipment from a State cooperative procurement contract.

15.1.5.2. Bus Testing Requirements

For bus procurements, CVCOG must have in its possession a copy of the Altoona Bus Testing Report before final acceptance of the first vehicle.

15.1.6. Options

Contracts may include options to ensure the future availability of property or services if justification can be shown that options are needed for public transportation or project purposes. Option quantities must be evaluated at the time of the contract award. When exercising options, ensure the options are in accordance with the contract and the price is better than prices available in the market or is more advantageous at the time the option is exercised. CVCOG must ensure that options reflect the reasonably foreseeable need and are evaluated prior to contract award.

15.1.7. Assignment of Options

CVCOG may use another recipient's contract rights if the original contract was procured in compliance with federal requirements, contained required Federal provisions, does not contain excessive options, the optioned vehicles do not include cardinal changes to the original vehicles, and the contract price is fair and reasonable. The underlying contract must include an assignability clause clearly describing the assignor-recipient's right to assign contract rights to the assignee-recipient; or, that the vendor be made a party to the assignment.

CVCOG must verify that the underlying contract complies with applicable Federal requirements regarding excessive options, inclusion of Federal requirements, assignability, price, and no cardinal changes prior to acceptance of these options.

15.1.8. Lease Versus Purchase

To obtain the best value a review of lease versus purchase alternative for acquiring property should be completed and if necessary, obtain an analysis to determine the more economical alternative. CVCOG may use FTA capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. FTA approval must be obtained prior to entering into a lease agreement.

15.1.9. Certifications and Reports Checklist

✓	Requirement	Threshold/Applicability
	Lobbying Certification	Procurements > \$100,000.00
	TVM Certification	Procurements of railcars or buses and modified mass-produced vans
	Buy America Certification	Projects > \$150,000.00 that contain steel, iron, or manufactured
	Bus Testing Report	Procurements of buses and modified mass-produced vans
	Pre-Award Buy America Audit	Rolling stock procurements > \$150,000.00
	Pre-Award Buy America Certification	Rolling stock procurements > \$150,000.00
	Pre-Award Purchaser's Requirement Certification	Rolling stock procurements
	Post-Delivery Audit	Rolling stock procurements > \$150,000.00
	Post-Delivery Buy America Certification	Rolling stock procurements > \$150,000.00
	Post-Delivery Purchaser's Requirement Certification	Rolling stock procurements
	On-Site Inspector's Report	Rolling stock procurements for any number of rail vehicles; more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population
	FMVSS Pre-Award Certification	Non-rail rolling stock procurements
	FMVSS Post-Award Certification	Non-rail rolling stock procurements

15.2. Procurement of Audit Services

In general, the procurement procedures contained in this Policy apply to the acquisition of audit services financed with State or Federal assistance; however, CVCOG must consider the applicable requirements outlined in 45 CFR §§ 75.500 through 75.521 and 2 CFR §§ 200.500 through 200.521 before procuring audit services.

15.3. Procurement of Consulting Services

Consulting service refers to the service of studying or advising CVCOG under a contract that does not involve the traditional relationship of employer and employee. CVCOG may contract with a consultant only if there is a substantial need for the consulting services and CVCOG cannot adequately perform the services with its own personnel or obtain the consulting services through a contract with a state governmental entity. Consulting services procurements are usually advertised as an RFP.

A “major consulting services contract” means a consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$15,000. Major consulting services contracts must be approved by the Board.

A consulting services contract cannot be divided into more than one contract to avoid the procurement requirements pertaining to major consulting services contracts. In selecting a consultant, CVCOG must base its choice on demonstrated competence, knowledge, qualifications, and on the reasonableness of the proposed fee for the services. If other considerations are equal, CVCOG must give preference to a consultant whose principal place of business is located in the State or who will manage the consulting services contract wholly from an office in the State.

15.4. Procurement of Personal or Professional Services

15.4.1. Brooks Act

The Brooks Act, formally known as the "Brooks Architect-Engineers Act," is a federal law governing the procurement of architectural and engineering services by U.S. governmental agencies. Enacted in 1972, the Act requires that these services be procured through a qualification-based selection process (RFQ) rather than a competitive bidding approach. Under the Brooks Act, agencies must first evaluate the qualifications of potential firms based on their experience, expertise, and past performance. After selecting the most qualified firm, CVCOG negotiates a fair and reasonable price for the services. This process aims to ensure that the best-qualified professionals are chosen for complex and technical projects, fostering high-quality outcomes and effective use of public funds.

15.4.2. Architect and Engineering Services

Architect and Engineering (A&E) services must only be procured using a Qualifications-Based Selection (QBS) process when the estimated value of the services exceeds CVCOG's SAT. Under the QBS process, A&E firms are evaluated and selected based solely on their qualifications, experience, and technical competence relative to the scope of work. Price proposals may not be solicited or considered during the initial selection phase. Following selection, CVCOG will negotiate a fair and reasonable price with the most qualified firm. If an agreement cannot be reached, negotiations will be terminated and initiated with the next most qualified firm, and so on until a contract is awarded. This process ensures that A&E services are procured in a manner that prioritizes professional competence.

15.5. Construction and Facility Improvement Procurements

15.5.1. Facility Construction

When entering into a contract for constructing a facility, CVCOG may utilize any of the contract types that offer the best value according to Chapter 271 of the Texas Local Government Code. CVCOG must decide on the contract method before advertising and then award the contract to the respondent who provides the best value based on the specified criteria. The contract does not need to be awarded solely to the lowest responsible bidder. CVCOG must document the rationale for its contract award decision.

- Competitive sealed bidding;
- Competitive proposals;
- Design-Build contract;
- Design-Bid-Build contract;
- A contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager; or
- A job order contract for the minor repair, rehabilitation, or alteration of a facility.

15.5.2. Design-Bid-Build (DBB)

Description:

- The Design-Bid-Build method involves three distinct phases: design, bid, and build.
- Design Phase: The owner contracts with an architect or engineer to complete the design of the project.
- Bid Phase: After the design is complete, the project is put out to bid, and contractors submit proposals based on the completed design.
- Build Phase: The owner selects a contractor to construct the project based on the lowest bid or best value.

Advantages:

- Clear separation of design and construction responsibilities.
- Competitive bidding can lead to cost savings.

Disadvantages:

- Potential for delays due to the sequential nature of the process.
- Less collaboration between designer and builder, which can lead to design changes and increased costs.

15.5.3. Design-Build (DB)

Description:

- In the Design-Build method, a single entity is responsible for both design and construction.
- The owner contracts with a design-build firm that handles both the design and the construction phases.

Advantages:

- Streamlined communication as the design and construction teams are integrated.
- Potential for faster project completion due to overlapping design and construction phases.
- Reduced risk of disputes between designer and builder.

Disadvantages:

- Less owner control over the design compared to DBB.
- Potential for conflicts of interest if cost savings lead to compromises in design quality.

15.5.4. Job Order Contracting (JOC)

Description:

- Job Order Contracting is a method used for recurring, small to medium-sized projects. It involves a long-term contract with a contractor for a set period, with a fixed unit price or hourly rate for various types of work.

Advantages:

- Streamlined procurement for smaller, routine projects.
- Quick response to urgent needs or maintenance work.

Disadvantages:

- May not be suitable for large or complex projects.
- Pricing is based on unit rates or hourly rates, which might not be as competitive.

15.5.5. Bonding Requirements

For construction, public works, or facility improvement contracts or subcontracts greater than or equal to \$25,000.00, but less than \$100,000.00, the following bonding requirements apply:

- a) **Payment Bond:** A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

For construction, public works, or facility improvement contracts or subcontracts greater than or equal to \$100,000.00, the following bonding requirements apply:

- a) **Bid Bond:** A bid guarantee from each bidder equivalent to five percent of the 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 as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- b) **Performance Bond:** A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- c) **Payment Bond:** A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

15.5.5.1. Reduced Bonding

Specific funding agencies 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 Administrator.

15.5.5.2. Excessive Bonding

It is important to establish appropriate bonding requirements to protect the interests of all parties involved. Excessive bonding requirements are not recommended as they can create unnecessary barriers to competition and may disproportionately disadvantage potential vendors. Bonding requirements should be commensurate with the scope and risk associated with the procurement, ensuring that they are fair, reasonable, and aligned with industry standards. Excessive bonding can deter qualified vendors from participating, thereby limiting competition and potentially increasing costs.

Adherence to State and local bonding policies that exceed federal agency bonding requirements generally does not necessitate federal approval. However, if such “excessive bonding” requirements are deemed to violate the Common Grant Rules by restricting competition, the federal agency will likely withhold Federal assistance for procurements subject to those requirements.

15.5.6. Davis-Bacon Act and Prevailing Wage Requirements

The Davis-Bacon Act is a federal law that mandates the payment of prevailing wages on public construction projects in excess of \$2,000 funded by the U.S. government. Enacted in 1931, the Act requires that contractors and subcontractors pay their workers’ wages and fringe benefits that are at

least equal to the prevailing rates for similar work in the local area. To ensure compliance with the Davis-Bacon Act in construction or facility improvement projects, CVCOG should take several key steps: first, verify that the contract includes the appropriate wage determinations and prevailing wage rates; second, monitor the contractor's payroll records and verify that workers are paid according to these rates; and third, conduct regular site inspections and audits to confirm compliance. Additionally, CVCOG should ensure that contractors and subcontractors submit certified payroll reports as required, and address any discrepancies or violations promptly to uphold the law's standards and protect worker rights.

15.5.7. Copeland Anti-Kickback Act

In compliance with the Copeland Anti-Kickback Act, our policy strictly prohibits any form of kickbacks or illegal payments in connection with procurement processes. The Act mandates that all contractors and subcontractors involved in federally funded projects must refrain from offering, soliciting, or accepting any form of compensation or inducement intended to influence the award or performance of contracts. We are committed to upholding the highest standards of integrity and transparency, ensuring that all transactions are conducted fairly and ethically. Any suspected violations of this policy will be thoroughly investigated, and appropriate actions will be taken to address and rectify any misconduct. This approach safeguards the integrity of our procurement activities and reinforces our commitment to ethical business practices.

15.5.8. 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].

15.5.9. Accessibility

Construction projects must adhere to the requirements set forth by the Americans with Disabilities Act (ADA). Ensuring that facilities and infrastructures are accessible to individuals with disabilities is a fundamental obligation. CVCOG must require that all bidders and contractors demonstrate compliance with ADA guidelines, including the provision of accessible design features, accommodations, and facilities. Any construction project that fails to meet these accessibility standards will not be considered compliant, and the Department is committed to upholding these standards to promote inclusivity and equal access in all public works.

15.5.10. 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

15.5.11. 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.

15.5.12. Seismic Safety

CVCOG 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].

15.6. 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].

15.7. Procurement of Promotional, Outreach, and Recognition Materials

15.7.1. Promotional, Outreach, and Branded Items

When purchasing promotional, outreach, or branded items, CVCOG must exercise caution to ensure that these expenses are appropriately charged to the correct source (i.e. local funds). These types of items—such as branded merchandise, giveaways, and other promotional materials—should generally not be charged to any grant unless specifically authorized by the funding source. Before proceeding with any purchase, staff must verify that the expense aligns with the terms and conditions outlined in the grant agreement and confirm that the funding source allows for such expenditures. Any purchases of this nature that fall outside of these guidelines must be carefully justified and reviewed.

15.7.2. Recognition Expenses

Costs associated with recognition items and materials, such as awards, plaques, or recognition gifts, must comply with the applicable cost principles outlined in 2 CFR 200, Subpart E, and must be expended in accordance with sound business practices. These costs should be reasonable, necessary, and allocable to the grant. Any expenditure for recognition items must have a clear, documented business purpose, and CVCOG must ensure that these purchases are consistent with the objectives of the grant and the policies of the funding source. Prior approval from the appropriate grant authority may be required in cases where these items are not explicitly allowed under the terms of the grant agreement. At minimum, any recognition expense exceeding the Micro-Purchase Threshold must include:

1. Documentation of the purchase indicating the specific and direct programmatic purpose.
2. Documentation of steps taken to achieve competition amongst qualified suppliers, to the maximum extent possible.
 - a. If competition is not practical or feasible (e.g., gift cards or pre-paid cards), CVCOG should document the rationale for vendor selection, considering factors such as the best value to the recipient(s) or other relevant criteria. Additionally, the purchase must comply with internal approval processes, ensuring transparency and alignment with the Policy.
3. Documentation of cost reasonableness.
4. Documentation that adequate funds are available to complete the purchase.
5. Documentation that the purchase is directly tied to a recognition recipient's service.
6. Documentation that appropriate limits have been applied, and that recognition is distributed equitably amongst recipients, to the maximum extent possible.

16. Contract Development and Administration

16.1. Contract Time Limitations

Contracts, inclusive of options, must not extend for more than five years after the date of the original contract. For cooperative procurement contracts, the contract duration can be for no more than a two-year initial term, with no more than three optional extensions of not more than one year each.

16.2. Contract Development

The contract development process begins with a thorough assessment of needs to ensure that all requirements are clearly defined and documented. This includes conducting market research, preparing a detailed solicitation document, and defining performance metrics. Depending on the size and complexity of the procurement, CVCOG will draft a contract that specifies the scope of work, deliverables, timelines, payment terms, and any relevant clauses, including those related to compliance, quality assurance, and value engineering. The solicitation process will be conducted transparently and competitively, providing fair opportunity for vendors to submit proposals.

16.3. Determining Total Contract Value

Total Contract Value (TCV) refers to the complete financial commitment associated with a contract over its entire duration. It encompasses the full amount payable under the contract, including base contract sums, optional extensions or renewals, contingencies, and any additional costs that may arise.

Calculation of Total Contract Value:

To calculate the Total Contract Value, follow these steps:

1. Base Contract Amount: Start with the initial amount agreed upon in the base contract. This is the primary sum specified for the standard scope of work or deliverables.
2. Optional Extensions or Renewals: Include the financial value of any options for contract extensions or renewals that are exercisable at the discretion of the contracting parties.
3. Contingencies: Add any contingency amounts that are set aside for unforeseen expenses or adjustments, as stipulated in the contract.
4. Additional Costs: Account for any additional costs that may be incurred, such as change orders, amendments, or extra services requested during the contract term.
5. Adjustments and Escalations: Incorporate any clauses that allow for price adjustments or escalations based on factors like inflation or cost increases.

The TCV is the sum of all these components, providing a comprehensive view of the total financial obligation associated with the contract. This figure is crucial for budgeting, financial planning, and tracking the overall expenditure related to the contract.

16.4. Common Contract or Agreement Types

- Memorandum of Understanding
A Memorandum of Understanding (MOU) is a document that outlines the terms and conditions of a collaborative arrangement between parties, specifying their mutual goals and responsibilities. Typically, MOUs are managed by individual programs or departments within CVCOG to facilitate cooperative efforts and define the scope of work without the need for formal contracts. However, when an MOU involves the expenditure of public funds, it must be routed through the Procurement Department. This ensures compliance with procurement regulations and proper oversight of public

resources. The Procurement Department will review and approve such agreements to uphold transparency and accountability in the use of public funds.

- **Fixed Price Contracts**

Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price.

- Firm-Fixed Price (FFP) - The contractor is paid a set amount regardless of the actual costs incurred.
- Fixed-Price with Economic Price Adjustment - Allows for adjustments to the contract price based on changes in economic conditions.

- **Cost-Reimbursement Contracts**

Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.

- Cost-Plus-Fixed-Fee (CPFF) - The contractor is reimbursed for allowable costs and paid a fixed fee.
- Cost-Plus-Incentive-Fee (CPIF) - The contractor is reimbursed for costs and earns an incentive fee based on cost savings or performance.
- Cost-Plus-Award-Fee (CPAF) - The contractor is reimbursed for costs and earns an additional award fee based on performance.

- Time and Materials Contract - The contractor is paid for labor at specified hourly rates and for materials used, with the total cost based on the time and materials expended. Time and materials type contracts may only be used after a determination that no other type of contract is suitable. The contract must set a ceiling price that the contractor shall not exceed except at its own risk.
- Labor-Hour Contract - Similar to a Time-and-Materials contract, but only covers labor costs without reimbursement for materials.
- Indefinite Delivery/Indefinite Quantity Contract (IDIQ) - Provides for an indefinite quantity of goods or services during a fixed period, with specific tasks or delivery schedules defined as the need arises. The contract must require CVCOG to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.
- Blanket Purchase Agreement (BPA) - A simplified acquisition method that allows for the issuance of purchase orders against a pre-established agreement for recurring needs.

16.5. Prohibition on Cost-Plus Percentage Contract Type

The cost plus a percentage of cost and percentage of construction cost methods of contracting cannot

not be used. A cost-plus percentage of cost contract or CPPC is a cost reimbursement contract containing some element that obligates CVCOG to pay the contractor an amount, undetermined at the time the contract was made and to be incurred in the future, based on a percentage of future costs.

Why?

- There is no incentive to control costs.
- The contractor has a financial interest in increasing the cost of performance.

How do you know you're using a CPPC?

- Payment is at a predetermined rate;
- Rate is applied to actual performance costs Contractor's entitlement is uncertain at the time of contracting; and
- Rate increases with increased performance.

16.6. Revenue Contracts

To the greatest extent possible, competitive procedures should be used to procure revenue contracts to permit interested parties an equal opportunity to participate. The method of procurement will be determined based on the goods or services to be procured.

To ensure fair and equal access to all State or Federally assisted property and to maximize revenue derived from such property, CVCOG shall conduct its revenue contracting as follows:

1. Limited Contract Opportunities: If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus or hiring auctioneers to auction property), then CVCOG must use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.
2. Open Contract Opportunities: If, however, one party seeks access to an asset (such as a utility that might seek cable access in a subway system), and CVCOG 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.

16.7. Public Private Partnerships

A Public-Private Partnership (PPP) is a collaborative arrangement between government entities and private sector organizations designed to leverage resources, expertise, and efficiencies from both sectors to deliver public services or infrastructure projects. In a PPP, the public sector typically provides regulatory oversight, funding, or assets, while the private sector contributes innovation, operational expertise, and additional funding. This partnership aims to achieve shared objectives, such as improving service delivery, accelerating project development, or enhancing infrastructure quality, while distributing risks and rewards equitably. By combining the strengths of both sectors, PPPs seek to optimize outcomes, reduce costs, and enhance value for the public.

16.8. Contract Format

16.8.1. Combined Solicitation/Contract

In certain contracting scenarios, particularly within government procurement, a contract can be established through a combination of the solicitation documents, the vendor's response, and an authorized signature page. This process often involves using standardized forms such as the General Services Administration's (GSA) Optional Form 307. The contracting agency issues a solicitation outlining the requirements, terms, and conditions of the proposed contract, inviting vendors to submit

their responses. The vendors then provide their proposals or bids, including pricing information and compliance with the solicitation's terms. Upon reviewing and accepting these responses, CVCOG prepares the Optional Form 307, which serves as the formal contract document when signed by authorized representatives from both CVCOG and the vendor. This signature page, in conjunction with the solicitation and vendor response, collectively forms the binding contract, ensuring that all parties agree to the outlined terms. The use of this form consolidates the documents into a formal agreement, providing a clear and enforceable contract framework without needing a separate, comprehensive written agreement. The enforceability of the contract is thus dependent on the proper completion and signing of the Optional Form 307, which integrates the solicitation, the vendor's response, and the formal acceptance of the terms.

16.8.2. Contract Template

For more complex procurements or scenarios where additional details and clarity are required, the contracting officer may opt to use a formal authorized contract template to establish the agreement. In these cases, the formal contract template serves as the primary document that outlines the comprehensive terms and conditions of the contract. The solicitation and the vendor's response, while integral to the process, act as reference documents that provide context and specifics relevant to the agreement. This approach ensures that the contract encompasses all necessary elements and provides a structured framework for addressing the complexities of the procurement. As a best practice, it is advisable to include a "Sample Agreement" in the solicitation documents. This sample provides vendors with a clear example of the contract format and language, allowing them to review and address any concerns or discrepancies before or alongside their submission. By doing so, vendors are better informed about the contractual expectations and can submit proposals that are more aligned with the anticipated contract terms, thereby streamlining the negotiation and award process.

16.8.3. Vendor/Industry Provided 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 State of Texas and Federal provisions and do not include terms and conditions that may be unfavorable to any CVCOG program.

16.8.4. Value Engineering

When practical, CVCOG is encouraged to incorporate value engineering clauses into its contracts to optimize project outcomes and cost-efficiency. Value engineering is a systematic method aimed at improving the value of a project by analyzing its functions and identifying ways to reduce costs without compromising quality or performance. This approach involves evaluating design alternatives and innovative solutions that can achieve the same objectives at a lower cost. By including value engineering clauses, CVCOG encourages contractors to actively seek out and propose cost-effective solutions and enhancements, fostering a collaborative environment where both parties work towards achieving greater value. This not only helps in managing and potentially reducing project expenses but also drives innovation and efficiency. Implementing value engineering ensures that resources are used effectively, ultimately benefiting both CVCOG and the stakeholders involved by delivering high-quality results within budget constraints.

16.8.5. Contract Administration and Oversight

CVCOG must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. CVCOG must actively manage and administer the contract to ensure that both parties fulfill their obligations. This includes establishing a

clear point of contact for communication, setting up a schedule for regular progress reviews, and maintaining comprehensive documentation of all contract-related activities. CVCOG will monitor contractor performance against the established benchmarks, review and approve invoices, and address any issues or discrepancies promptly. Amendments to the contract, if necessary, will be processed in accordance with established procedures, ensuring that all changes are documented and agreed upon by both parties.

16.8.6. Subcontractors

CVCOG must mandate that prime contractors obtain prior approval before engaging any subcontractors, ensuring that all subcontractors are vetted and meet CVCOG's standards. This requirement is crucial for maintaining control over project quality and compliance. Depending on the contract amount, subcontractors are required to complete the same forms as the prime contractor and adhere to equivalent performance standards and regulations. By enforcing these measures, CVCOG ensures consistency and accountability throughout the project, as all parties involved are subject to uniform requirements and oversight. This approach helps maintain high standards of work and ensures that subcontractors are fully aligned with the project's objectives and contractual obligations.

16.8.7. Contractor Performance

CVCOG can effectively monitor contractor performance through a combination of regular oversight mechanisms and performance metrics. This involves establishing clear performance standards and benchmarks in the contract, which serve as criteria for evaluating the contractor's work. Regular progress reports and site inspections should be conducted to assess adherence to these standards and ensure that milestones are met on time. Additionally, CVCOG can utilize performance evaluations and feedback from stakeholders to gauge the quality of work and address any issues promptly. By maintaining open lines of communication and employing tracking tools such as performance dashboards, CVCOG can continuously monitor the contractor's adherence to contractual obligations, making adjustments as needed to ensure that project goals are achieved and that any deviations are promptly addressed.

16.8.8. Contract Changes

Contract changes, change orders, or amendments refer to modifications made to the original terms and conditions of a contract after it has been executed. These adjustments can include alterations to the scope of work, adjustments to the contract price, changes in project timelines, or updates to specific terms and conditions. Amendments must be documented in writing and agreed upon by all parties involved to ensure that they are legally binding and enforceable. Approval of contract changes are subject to the same procurement thresholds as outlined in this Policy.

If the changes are so significant that they fundamentally alter the original specifications, failing to re-advertise the updated specifications would prevent potential vendors from having a fair chance to respond. In cases where the revisions are substantial, a new solicitation is required to comply with bidding statutes and ensure fairness. All changes must be reviewed and approved by the Procurement Department.

16.8.9. Administrative Changes

Administrative changes occur within the scope of the contract and do not affect or alter the rights of the parties. These changes are typically executed via a unilateral amendment. Examples of administrative changes include:

- changes in billing instructions or address;
- corrections of typographical errors not affecting the substance of the contract;

- changes as permitted by the specific contract language; and
- changes in agency personnel assigned to the contract.

16.8.10. Substantive Changes

Substantive Changes are contractual changes that affect the rights of both parties. Such changes generally require bilateral amendments (agreement by both parties). Examples of substantive changes include:

- a change in the price of the contract;
- a change in the delivery schedule;
- a change in the quantity;
- a change of deliverables (e.g., the specifications);
- a change of key personnel: or
- a change of any terms and conditions.

16.8.11. Prohibition on Cardinal Changes

A cardinal change is a significant alteration to a contract that fundamentally alters the scope of work, terms, or nature of the agreement, such as a major increase in quantity or a drastic change in the project's objectives. These changes are prohibited because they exceed the original contract's scope and can lead to unfair advantages, compromise competitive bidding processes, and disrupt the balance of the original agreement. Allowing such changes without proper procedures could undermine the integrity of the procurement process and lead to legal and financial complications.

Cardinal changes are significant enough to breach the original agreement's scope and often challenge the contract's validity. They may lead to disputes or claims for adjustments, as they effectively create a new agreement with terms that differ substantially from the original contract.

16.8.12. Cost and Price Analysis of Changes

CVCOG must conduct the same cost or price analysis procedures on contract changes as it would for an original procurement. This ensures that all modifications are evaluated for fairness, reasonableness, and alignment with market rates. The approval procedures for changes will adhere to the same standards as those applied to the initial procurement, with the approval process varying based on the dollar amount of the change. Smaller changes may require less formal approval, while more significant modifications will follow the established procedures for higher-dollar adjustments, including additional levels of review, including board approval and authorization as needed.

16.8.13. Damages

16.8.13.1. Compensatory Damages

Compensatory damages should be used when CVCOG has suffered a loss or injury due to another party's breach of contract, negligence, or other wrongful actions. The primary purpose of compensatory damages is to compensate the injured party for the actual financial losses and harm they have incurred as a result of the wrongdoing.

Compensatory damages are intended to restore the injured party to the position they would have been in had the breach or wrongful act not occurred. This includes covering direct losses, such as costs incurred or lost profits, as well as consequential damages that arise directly from the breach.

Compensatory damages should be used when:

1. Actual Losses Are Evident: There is clear evidence of financial loss or harm directly resulting from the breach or wrongful act.
2. Proof of Damages: The injured party can provide documentation and evidence to substantiate the extent of the losses and the impact on their financial position.
3. Legal Basis: There is a legal basis for claiming damages under the terms of the contract or applicable law.

16.8.13.2. Liquidated Damages

Liquidated Damages may be used if CVCOG reasonably expects to suffer damages through delayed contract completion. The rate and measurement standards must be calculated to reasonably reflect CVCOG's costs should the standards not be met and must be specified in the contract.

Liquidated damages should be used when the parties to a contract anticipate that specific damages will occur due to a breach, and it is difficult to precisely quantify those damages at the time of contract formation. Liquidated damages are predetermined amounts stipulated in the contract that are payable in the event of a breach, particularly for delays or failures to meet contractual milestones.

Liquidated damages are appropriate when:

1. Anticipated Breach Costs: The potential costs or losses resulting from a breach are difficult to estimate or quantify accurately at the time of contracting.
2. Clear Agreement: Both parties agree in advance on a specific amount of damages that will be payable for the breach, which provides clarity and certainty in the event of non-performance.
3. Reasonable and Enforceable: The amount specified as liquidated damages is reasonable and not punitive, reflecting a genuine pre-estimate of the anticipated harm caused by the breach. It should be enforceable under applicable laws and not deemed excessive or unfair.

Using liquidated damages helps to provide a clear and agreed-upon remedy for breaches, especially in cases where delays or failures could lead to significant disruptions or costs, thus facilitating smoother contract administration and reducing potential disputes.

16.8.14. Payments Against Contracts

(1) Advance Payment:

- (a) 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.
- (b) Accordingly, CVCOG may use State or Federal assistance to support or reimburse the costs of such acquisitions, unless otherwise directed by the grantor agency.
- (c) Specific agency concurrence is required only when such advance payment or payments customarily required in the marketplace exceed \$100,000.

(2) Prompt Payment Act:

In alignment with our commitment to fostering a transparent and efficient procurement process, CVCOG must adhere to the principles outlined in the Prompt Payment Act. This policy ensures that

all contractors and suppliers are paid in a timely manner, thereby supporting fair business practices and maintaining strong relationships with our vendors. Under this policy, payments for services and goods provided will be processed within the stipulated time frame set forth by the Prompt Payment Act, typically within thirty (30) days of receiving a properly prepared invoice. To facilitate prompt processing, all invoices must be submitted in accordance with our submission guidelines, including accurate details and supporting documentation. Any discrepancies or issues with invoices will be promptly addressed to avoid unnecessary delays.

16.8.15. Contract Issues and Dispute Resolution

CVCOG shall maintain written dispute resolution procedures that are publicly available on CVCOG's website and made available upon request. In the event of a contract dispute, CVCOG will adhere to the procedures outlined in Chapter 2009 of the Texas Government Code, or, if necessary, utilize the dispute resolution process set forth in Chapter 2260 of the Texas Government Code. These procedures ensure consistent and transparent handling of contract-related issues in compliance with applicable state law.

16.8.16. Termination of Contracts

CVCOG must include termination clauses in all contracts exceeding \$10,000. These clauses must cover various scenarios to ensure flexibility and protection for both parties involved. Specifically, the contract should include:

- Termination for Cause: Allows CVCOG to terminate the contract if the contractor fails to meet performance standards or breaches contract terms.
- Termination for Convenience: Provides CVCOG with the right to terminate the contract for any reason, with appropriate notice, without penalty.
- Termination for Non-Appropriation: Enables contract termination if funding for the contract is not appropriated or becomes unavailable.
- Termination by Mutual Agreement: Allows for contract termination by mutual consent of both parties, as agreed upon in writing.

Including these termination clauses ensures that CVCOG has the necessary flexibility to manage contractual relationships effectively and address any unforeseen circumstances that may arise.

16.8.17. Termination Procedures

Notifying a contractor of contract termination is a critical process that must be handled carefully to ensure clarity and legal compliance. Here are the key steps to follow:

1. Review the Contract
 - Check Termination Clauses: Review the contract's termination clauses to understand the specific requirements for notice, including any required notice periods and the conditions under which termination can occur.
2. Prepare Termination Notice
 - Draft the Notice: Prepare a formal termination notice that includes the date of termination, the reason for termination, and any relevant contractual provisions being invoked. Ensure the notice complies with the contract's requirements regarding format and content.
 - Include Supporting Documentation: Attach any supporting documentation that justifies the termination, such as performance reports or evidence of breach.

3. Verify Delivery Method

- Choose Appropriate Delivery Method: Determine the method of delivery for the termination notice as stipulated in the contract, which might include hand delivery, registered mail, or electronic communication. Ensure the method provides proof of receipt.
- Document Delivery: Obtain confirmation of receipt from the contractor to ensure that the notice has been delivered and received.

4. Send the Termination Notice

- Dispatch the Notice: Send the termination notice using the chosen delivery method. Ensure that it reaches the correct contact person or department as specified in the contract.

5. Follow-Up

- Confirm Receipt: Follow up with the contractor to confirm receipt of the termination notice and address any questions or concerns they may have.
- Document Communication: Keep a record of all communications related to the termination, including the notice and any responses from the contractor.

6. Manage Contractual Obligations

- Review Remaining Obligations: Assess any remaining contractual obligations, such as final payments, return of property, or transition assistance.
- Coordinate Transition: If applicable, coordinate with the contractor to ensure a smooth transition and resolution of any outstanding issues.

7. Legal and Administrative Follow-Up

- Consult Legal Counsel: If needed, consult with legal counsel to ensure that all legal and contractual obligations are met and to address any potential disputes.
- Update Records: Update internal records to reflect the termination and ensure all documentation is properly filed for future reference.

16.8.18. Internal Piggybacking

In this policy, "Internal Piggybacking" refers to using an existing contract to purchase goods and services for another program or department.

1. Eligibility: Piggybacking may be possible if the vendor agrees, depending on the contract's age and value. All procurement guidelines must be followed.
2. Scope and Changes: A contract's scope cannot be altered by more than 10 percent without rebidding, as per state and federal standards. Therefore, CVCOG must review the contract before discussing changes with the vendor.
3. Evaluation: The Procurement Department will determine if amending the contract offers the best value for CVCOG and the requesting department. Key considerations include:
 - a) Value: Does piggybacking save time, money, and resources for all programs/departments?
 - b) Scope Alignment: Are the requesting department's needs covered by the current contract's scope, specifications, and award amount? Ensure the contract still aligns with CVCOG's needs and that the items or services are current and relevant.

- c) Contract Term: Does the contract's term, including any renewals or extensions, meet the requesting department's needs? Ensure the contract is up-to-date.

16.8.19. Contract Close-Out

Contract closeout involves several key steps to ensure that all contractual obligations have been fulfilled and to formally conclude the agreement. Initially, CVCOG should verify that all deliverables have been completed and meet the specified quality standards. This includes reviewing final reports, confirming that all work is satisfactorily performed, and ensuring that all invoices and payments are accurately processed. Additionally, any remaining issues or disputes will be resolved, and all contract documentation, including amendments and correspondence, will be compiled and archived. CVCOG should also conduct a final review to ensure compliance with all contractual terms and conditions. Once all requirements are met, the contract will be formally closed out, and a closeout report should be prepared to summarize the project's outcomes and lessons learned.

17. Public Access to Procurement Information

Procurement information shall be a public record to the extent provided in Texas Government Code, Chapter 552, and, except for procurement information which may be withheld from disclosure by CVCOG pursuant to Subchapter C, Chapter 552, of the Texas Government Code, as amended, or which cannot be disclosed pursuant to federal or state law, shall be available to the public as provided in such statutes.

18. Procurement Record Retention

CVCOG is required to prepare and maintain comprehensive and easily accessible procurement files, project performance and financial transactions, including those related to procurement and other facets of project implementation. These records must be retained for a minimum of seven (7) years following the completion of final payments and the resolution of all related matters. This retention period ensures that all documentation is available for review, audits, or any necessary inquiries, thereby supporting transparency and accountability in project management. In exceptional cases where specific regulations or agreements dictate a different retention period, CVCOG will adhere to those requirements accordingly.

18.1. Access to Records

CVCOG must provide any funding agency including any of their authorized representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any project financed with State or Federal assistance.

19. References

U.S. Code of Federal Regulations. *2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart D: Procurement Standards*. Retrieved from <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D>

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Texas Legislature. *Title 10, Subtitle F, Chapter 2260 – Texas Government Code*. Retrieved from <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2260.htm>