

Concho Valley Council of Governments

PROCUREMENT GENERAL TERMS AND CONDITIONS

These Terms are intended to establish standard procurement requirements and shall apply to the extent applicable to the nature and value of the purchase or contract. Additional terms may be included in the applicable solicitation, Purchase Order, contract, or other procurement document.

1. Applicability and Incorporation.

These Procurement General Terms & Conditions ("Terms") apply to Purchase Orders, contracts, and other procurement documents issued by the Concho Valley Council of Governments ("CVCOG"), unless otherwise stated in the applicable procurement document. By accepting a Purchase Order or performing services under a contract issued by CVCOG, the Contractor agrees to these Terms. These Terms are incorporated into and made a part of the applicable Purchase Order or contract.

2. Order of Precedence.

In the event of a conflict between documents applicable to a purchase or contract, the documents shall control in the following order: (1) applicable federal and state laws and regulations; (2) the executed contract or agreement, including any applicable exhibits or attachments; (3) the solicitation and any issued addenda; (4) the Purchase Order; and (5) these Terms, unless the applicable procurement document expressly provides otherwise.

3. Acceptance of Purchase Order/Contract.

A Purchase Order constitutes CVCOG's authorization to purchase the goods or services identified therein. The Contractor's acceptance of the Purchase Order, shipment of goods, commencement of services, or other performance constitutes acceptance of the Purchase Order and these Terms.

4. Scope, Specifications, and Changes.

The Contractor shall provide the goods or services in accordance with the applicable Purchase Order, contract, specifications, scope of work, and other incorporated documents. No material change to the scope, specifications, quantity, price, or other material term is authorized unless approved in writing by an authorized CVCOG representative.

5. Pricing and Taxes.

Unless otherwise stated, prices shall be firm and shall include all costs necessary to provide the goods or services, including applicable delivery, handling, and similar charges. CVCOG is exempt from sales and use taxes to the extent provided by applicable law. The Contractor shall not charge CVCOG for taxes from which CVCOG is legally exempt. CVCOG's tax exemption certificate is available upon request.

6. Delivery and Performance.

The Contractor shall deliver goods and perform services by the dates or within the time periods specified in the applicable procurement document. The Contractor shall promptly notify CVCOG of any anticipated delay and provide the reason for the delay and an expected delivery or completion date. Notification of a delay does not relieve the Contractor of its obligations under the Purchase Order or contract.

7. Inspection and Acceptance.

CVCOG may inspect and evaluate goods or services to determine whether they conform to the applicable requirements. Payment does not constitute final acceptance of goods or services. CVCOG may reject goods or services that do not conform to the applicable specifications, scope of work, or other requirements.

8. Invoices and Payment.

Invoices shall contain sufficient information to identify the applicable Purchase Order or contract, the goods or services provided, the applicable quantities or dates, and the amount due. Unless otherwise stated in the applicable Purchase Order or contract, payment shall be made in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code, as applicable.

Unless a different payment period is expressly stated in the applicable Purchase Order or contract, CVCOG's standard payment term is Net 30. Net 30 means that payment is due within thirty (30) days after the date the payment is legally due under applicable law, which generally begins upon the later of the date CVCOG receives the goods or services or a properly submitted invoice for those goods or services. The invoice date, by itself, does not establish the payment due date.

CVCOG may withhold payment of amounts that are disputed in good faith or for goods or services that have not been accepted or that do not conform to the applicable requirements. Payment does not constitute final acceptance of goods or services or waive any rights or remedies available to CVCOG under the Purchase Order, contract, or applicable law.

9. Nonconforming Goods or Services.

If goods or services do not conform to the applicable requirements, CVCOG may, as appropriate, require correction or replacement, reject the goods or services, obtain a reasonable credit or adjustment, or exercise other remedies available under the Purchase Order, contract, or applicable law. The Contractor shall be provided a reasonable opportunity to correct a deficiency when appropriate.

10. Subcontracting and Assignment.

The Contractor shall not assign the Purchase Order or contract, or materially subcontract its obligations, without the prior written consent of CVCOG when such consent is required by the applicable procurement document. Approval of a subcontractor does not relieve the Contractor of responsibility for performance of its obligations.

11. Insurance.

The Contractor shall maintain insurance required by the applicable solicitation, Purchase Order, contract, or law. If specific insurance requirements are not stated, the Contractor shall maintain insurance reasonably appropriate for the nature and scope of the goods or services provided.

12. Records and Audit.

The Contractor shall maintain records reasonably necessary to support invoices, payments, and performance under the Purchase Order or contract and shall make such records available to CVCOG and authorized governmental or funding entities when required by applicable law, regulation, or funding requirements. Records shall be retained for the period required by applicable law or the applicable contract.

13. Cybersecurity and Security Incidents.

The Contractor shall maintain reasonable administrative, technical, and physical safeguards appropriate to the nature of the goods or services provided and the information accessed, received, maintained, or processed in connection with the Purchase Order or contract. The Contractor shall use reasonable measures to protect CVCOG systems and information from unauthorized access, use, disclosure, alteration, or destruction.

The Contractor shall notify CVCOG within twenty-four (24) hours upon becoming aware of a confirmed or reasonably suspected security incident or breach that may affect CVCOG systems, data, or confidential information. The Contractor shall provide CVCOG with reasonably available information regarding the incident, including the nature of the incident and any known or reasonably suspected impact to CVCOG, and shall reasonably cooperate with CVCOG in investigating and responding to the incident. The Contractor shall comply with all applicable laws regarding the protection and notification of affected information.

14. Confidentiality and Public Information.

The Contractor shall protect confidential information received from CVCOG and use such information only as necessary to perform the Purchase Order or contract. CVCOG is subject to applicable public information and open records laws, and nothing in these Terms shall require CVCOG to withhold information when disclosure is required by law.

15. No Waiver.

Failure by CVCOG to enforce any provision of a Purchase Order, contract, or these Terms shall not constitute a waiver of CVCOG's right to enforce that provision in the future.

16. Severability.

If any provision of a Purchase Order, contract, or these Terms is determined to be invalid or unenforceable, the remaining provisions shall remain in effect to the fullest extent permitted by law.

17. Entire Agreement.

The applicable Purchase Order or contract, together with all incorporated documents, constitutes the agreement between CVCOG and the Contractor regarding the applicable purchase or services. No modification is effective unless made in accordance with the applicable Purchase Order or contract and approved by an authorized representative of CVCOG.

STATE & FEDERAL CONTRACT CLAUSE ADDENDUM

This Addendum establishes the state and federal contract requirements applicable to purchases and contracts issued by the Concho Valley Council of Governments (CVCOG) when required by applicable funding sources, statutes, regulations, or grant requirements. The provisions contained herein are derived from the Texas Grant Management Standards (TxGMS) and applicable federal requirements and are incorporated into and made a part of the applicable Purchase Order, Agreement, Contract, or other procurement document issued by CVCOG.

These provisions are required by applicable state and/or federal law, regulation, or grant requirements and are not discretionary contract terms. Accordingly, CVCOG cannot accept deviations, modifications, substitutions, or deletions to these required provisions unless expressly permitted by applicable law or the applicable funding agency. In the event of a conflict between this Addendum and other contract terms, the applicable state or federal requirement shall control.

1. AMERICANS WITH DISABILITIES ACT. Contractor represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA) and its implementing regulations, as each may be amended.

2. BUILD AMERICA, BUY AMERICA ACT PREFERENCE. Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the Build America, Buy America Act (BABAA) shall file the required certification to CVCOG with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived. Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that does not ensure compliance with BABAA domestic preference requirements.

3. BYRD ANTI-LOBBYING AMENDMENT.

Applicability: Clause applies to procurement contracts exceeding \$100,000 that are financed with federal funds.

Contractor certifies that no federal appropriated funds have been paid or will be paid to any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of

a member of Congress on its behalf to obtain, extend, or modify this contract or grant. If non-federal funds are used by Contractor to conduct such lobbying activities, Contractor shall promptly file the prescribed disclosure form. In accordance with 31 U.S.C. § 1352(b)(5), Contractor acknowledges and agrees that it is responsible for ensuring that each subrecipient and subcontractor certifies its compliance with the expenditure prohibition and the declaration requirement.

4. **CHILD SUPPORT OBLIGATION.** Contractor represents and warrants that it will include the following clause in the award documents for every subaward and subcontract and will require subrecipients and contractors to certify accordingly: “Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.”
5. **CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT.**
Applicability: Clause applies to procurement contracts exceeding \$150,000 financed with federal funds.
Contractor represents and warrants that it will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
6. **COMPLIANCE WITH LAWS, RULES, AND REQUIREMENTS.** Contractor represents and warrants that it will comply, and assure the compliance of all its subrecipients and contractors, with all applicable federal and state laws, rules, regulations, and policies in effect or hereafter established. In addition, Contractor represents and warrants that it will comply with all requirements imposed by the awarding agency concerning special requirements of law, program requirements, and other administrative requirements. In instances where multiple requirements apply to Contractor, the more restrictive requirement applies.
7. **CONTRACT OVERSIGHT.** Contractor represents and warrants that it will maintain oversight to ensure that its subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
8. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.**
Applicability: Clause applies to procurement contracts exceeding \$100,000 that are financed with federal funds and involve the employment of mechanics or laborers.
Contractor represents and warrants that it will comply with the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).
9. **CYBERSECURITY TRAINING PROGRAM (LOCAL GOVERNMENT SYSTEM).** Contractor represents and warrants its compliance with Section 2054.5191 of the Texas Government Code relating to the cybersecurity training program for local government employees who have access to a local government computer system or database.
10. **CYBERSECURITY TRAINING PROGRAM (STATE CONTRACTOR).** If Contractor has access to any state computer system or database, Contractor shall complete cybersecurity training and verify completion of the training program to CVCOG pursuant to and in accordance with Section 2054.5192 of the Government Code.
11. **DAVIS-BACON ACT AND THE COPELAND ACT.**
Applicability: Clause applies to all construction contracts funded in whole or in part with federal funds where the contract value exceeds \$2,000 and the scope of work involves construction, alteration, or repair (including painting and decorating) of public buildings or public works.
Contractor represents and warrants that it will comply with the requirements of the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”) and the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874).
12. **DEBARMENT AND SUSPENSION.** Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.
13. **DEBTS AND DELINQUENCIES.** Contractor agrees that any payments due under the contract or grant shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.
14. **DISASTER RECOVERY PLAN.** Upon request of CVCOG, Contractor shall provide the descriptions of its business continuity and disaster recovery plans.
15. **DISCLOSURE OF VIOLATIONS OF FEDERAL CRIMINAL LAW.** Contractor represents and warrants its compliance with 2 CFR § 200.113, which requires the disclosure in writing of violations of federal criminal law involving fraud, bribery, and gratuity and the reporting of certain civil, criminal, or administrative proceedings to SAM.
16. **DISCLOSURE OF PRIOR STATE EMPLOYMENT.**
Applicability: Clause applies to procurement contracts for consulting services under Chapter 2254 of the Texas Government Code.
In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by CVCOG or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Contractor has disclosed in its Response the following: (i) the nature of the previous employment with

CVCOG or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

17. **DISCLOSURE PROTECTIONS FOR CERTAIN CHARITABLE ORGANIZATIONS, CHARITABLE TRUSTS, AND PRIVATE FOUNDATIONS.** Contractor represents and warrants that it will comply with Section 2252.906 of the Texas Government Code relating to disclosure protections for certain charitable organizations, charitable trusts, and private foundations.
18. **DISCRIMINATION PROHIBITED.** In accordance with Section 2105.004 of the Texas Government Code, Contractor represents and warrants that it will not use block grant funds in a manner that discriminates on the basis of race, color, national origin, sex, or religion.
19. **DISPUTE RESOLUTION.** The dispute resolution process provided in Chapter 2009 of the Texas Government Code is available to the parties to resolve any dispute arising under the agreement.
20. **DOMESTIC PREFERENCE FOR PROCUREMENTS.** The Contractor 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. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: *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.
21. **EQUAL EMPLOYMENT OPPORTUNITY.**

Applicability: Clause applies to certain construction contracts financed with federal funds.

The Contractor hereby agrees that it will incorporate or cause to be incorporated into any subcontract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the federal Government or borrowed on the credit of the federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- 4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as

provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- 8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided that if the Contractor so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government that does not participate in work on or under the contract.
- 9) The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.
22. **EXCLUDED PARTIES.** Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.
23. **EXECUTIVE HEAD OF A STATE AGENCY AFFIRMATION.** In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Contractor certifies that it is not (1) the executive head of CVCOG, (2) a person who at any time during the four years before the date of the contract or grant was the executive head of CVCOG, or (3) a person who employs a current or former executive head of CVCOG.
24. **FEDERAL SOLID WASTE DISPOSAL ACT.** Contractor represents and warrants that it will comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
25. **FIREARM SUPPRESSOR POLICY.** Contractor certifies that it has not received a final judicial determination finding it adopted a rule, order, ordinance, or policy under which it enforces, or allows the enforcement of, a federal statute, order, rule, or regulation that purports to regulate a firearm suppressor in violation of Texas Government Code §2.102(a) in an action brought by the Attorney General under Texas Government Code §2.104. If Contractor is currently being sued under Texas Government Code §2.104 or is sued under this section at any point during the duration of this grant, Contractor agrees to immediately disclose the lawsuit and its posture to CVCOG.
26. **FORMER AGENCY EMPLOYEES.**
Applicability: Clause applies to procurement contracts that are consulting services contracts under Chapter 2254 of the Texas Government Code, if appropriated money will be used to make payments under the contract.
In accordance with Section 2252.901 of the Texas Government Code, Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of CVCOG during the twelve (12) month period immediately prior to the date of execution of the contract.
27. **FUNDING LIMITATION.** Contractor understands that all obligations of CVCOG under the contract or grant are subject to the availability of grant funds. The contract or grant is subject to termination or cancellation, either in whole or in part, without penalty to CVCOG if such funds are not appropriated or become unavailable.
28. **GOVERNING LAW AND VENUE.** This agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under this agreement is fixed in any court of competent jurisdiction of Tom Green County, Texas.
29. **INDEMNIFICATION.** CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CONCHO VALLEY COUNCIL OF GOVERNMENTS, AND/OR ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS

ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND CONCHO VALLEY COUNCIL OF GOVERNMENTS AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. THIS PARAGRAPH IS NOT INTENDED AND SHALL NOT BE CONSTRUED TO REQUIRE CONTRACTOR TO INDEMNIFY OR HOLD HARMLESS THE STATE OR CVCOG FOR ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF CVCOG OR ITS EMPLOYEES.

30. **LOBBYING EXPENDITURE RESTRICTION.** Contractor represents and warrants that CVCOG's payments to Contractor and Contractor's receipt of appropriated or other funds under the contract or grant are not prohibited by Sections 403.1067 or 556.0055 of the Texas Government Code, which restrict lobbying expenditures.
31. **NO CONFLICTS OF INTEREST (FEDERAL).** Contractor represents and warrants its compliance with the federal agency's conflict of interest policies in accordance 2 CFR § 200.112.
32. **NO CONFLICTS OF INTEREST (STATE).** Contractor represents and warrants that performance under the contract or grant will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. Further, Contractor represents and warrants that in the administration of the grant, it will comply with all conflict of interest prohibitions and disclosure requirements required by applicable law, rules, and policies, including Chapter 176 of the Texas Local Government Code. If circumstances change during the course of the contract or grant, Contractor shall promptly notify CVCOG.
33. **NO WAIVER OF SOVEREIGN IMMUNITY.** The Parties expressly agree that no provision of the grant or contract is in any way intended to constitute a waiver by CVCOG or the State of Texas of any immunities from suit or from liability that CVCOG or the State of Texas may have by operation of law.
34. **OPEN MEETINGS.** If the Contractor is a governmental entity, Contractor represents and warrants its compliance with Chapter 551 of the Texas Government Code, which requires all regular, special or called meeting of a governmental body to be open to the public, except as otherwise provided by law.
35. **POLITICAL POLLING PROHIBITION.** Contractor represents and warrants that it does not perform political polling and acknowledges that appropriated funds may not be granted to, or expended by, any entity that performs political polling.
36. **PROCUREMENT OF RECOVERED MATERIALS.** In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –
- A. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - B. Meeting contract performance requirements; or
 - C. At a reasonable price.
- The Contractor should, to the greatest extent practicable and consistent with the 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.
37. **PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES.**
- A. *Definitions.*
- Backhaul* means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).
- Covered foreign country* means The People's Republic of China.
- Covered telecommunications equipment or services* means–
- 1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
 - 2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - 3) Telecommunications or video surveillance services provided by such entities or using such equipment; or
 - 4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- Critical technology* means –
- 1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
 - 2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled–
 - i. Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - ii. For reasons relating to regional stability or surreptitious listening;
 - 3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
 - 4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

- 5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- 6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A) to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

B. Prohibition.

- 1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (C) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.
- 2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (C) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

C. Exceptions. This clause does not prohibit contractors from providing—

- 1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- 2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

D. Reporting Requirement.

- 1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (D)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.
- 2) The Contractor shall report the following information pursuant to paragraph (D)(1) of this clause
 - i. Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - ii. Within 10 business days of submitting the information in paragraph (D)(2)(i) of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

E. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (E) and excluding paragraph (B)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

38. RECORDS RETENTION (FEDERAL). Contractor represents and warrants its compliance with the records retention requirements of 2 CFR § 200.333. CVCOG reserves the right to direct a Contractor to retain documents for a longer period of time or transfer certain records to CVCOG's custody when it is determined the records possess longer term retention value. Contractor must include the substance of this clause in all subawards and subcontracts.

39. RECORDS RETENTION (STATE). For the time period specified in Section 441.1855 of the Texas Government Code, Contractor shall maintain and retain all records relating to the performance of the contract including supporting fiscal documents adequate to ensure that claims

for contract funds are in accordance with applicable State of Texas requirements. Contractor must include the substance of this clause in all subcontracts.

40. **REMEDIES FOR NONPERFORMANCE.** If Contractor fails to comply with any requirement of the contract, CVCOG may terminate or cancel all or any part of the contract, may obtain substitute requested items, may withhold acceptance and payments to Contractor, may revoke any prior acceptance, may require Contractor to refund amounts paid prior to revocation of acceptance and may pursue all rights and remedies against Contractor under the contract and any applicable law. Remedies for nonperformance may also include suspension or debarment. No provision of the contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to CVCOG as an agency of the State of Texas or otherwise available to CVCOG. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to CVCOG by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel.
41. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** Contractor represents and warrants that it will comply with the requirements of 37 CFR Part 401 ("Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements") and any implementing regulations issued by the awarding agency, if federal award meets the definition of "funding agreement" under 37 CFR §401.2(a) and the Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement."
42. **STATE AUDITORS RIGHT TO AUDIT.** Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by the Contractor or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Contractor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.
43. **TERMINATION AND CANCELLATION CIRCUMSTANCES.** CVCOG reserves the right to terminate the contract at any time, in whole or in part, without cost or penalty, by providing thirty (30) calendar days' advance written notice. CVCOG reserves the right, in its sole discretion, to terminate the contract in whole or in part for Contractor's material breach, provided that Contractor has been given advance written notice specifying the nonperformance and a thirty (30)-calendar-day period in which to cure the breach. In the event of contract termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. Termination or expiration of the contract shall not affect CVCOG's right to use previously purchased licensed software through the term of each such license, nor any maintenance or support purchased prior to such termination. In the event of contract termination, CVCOG's sole and maximum obligation shall be to pay Contractor for previously authorized services completed in accordance with contract requirements and performed prior to the effective date of termination. CVCOG shall have no other liability, including no liability for any costs associated with the termination. CVCOG reserves the right to pursue reasonable costs, fees, expenses, and other amounts or damages available to CVCOG under the contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at the Contractor's request or if CVCOG terminates the contract for cause.
44. **TERMINATION FOR NON-APPROPRIATION.** CVCOG's obligations under this contract are subject to the availability and appropriation of funds by CVCOG for the applicable fiscal year. If funds are not appropriated or otherwise made available to continue this contract, CVCOG may terminate the contract upon written notice to the Contractor, without penalty or further obligation beyond payment for goods or services properly provided through the effective date of termination.
45. **TEXAS PUBLIC INFORMATION ACT.** Contractor understands that CVCOG will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this Solicitation or any resulting contract or grant may be subject to public disclosure pursuant to the Texas Public Information Act. In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.