

# PROCUREMENT POLICY

September 2022

## **PROCUREMENT POLICY**

Adopted September 14, 2022

### **ABOUT COG**

The Metropolitan Washington Council of Governments (COG) is an independent, nonprofit association that brings area leaders together to address major regional issues in the District of Columbia, suburban Maryland, and Northern Virginia. COG's membership is comprised of 300 elected officials from 24 local governments, the Maryland and Virginia state legislatures, and U.S. Congress.

### **CREDITS**

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# 1 Introduction

## 1.1 PURPOSE

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

## 1.2 APPLICABILITY

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

- National Capitol Regional Transportation Planning Board (“TPB”)
- Metropolitan Washington Air Quality Committee (“MWAQC”)
- Blue Plains Intermunicipal Agreement Regional Committee
- Clean Air Partners
- Washington Area Housing Partnership
- Other COG policy boards or committees’ departments, and other non-COG policy boards or committees as approved by COG’s Board of Directors.
- Procurements, including cooperative ones, conducted by COG for other entities, unless otherwise stated herein.

## 1.3 DEFINITIONS

### 1.3.1 Goods

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

### 1.3.2 Services

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

The following are examples of contracts for services: insurance, accounting, auditing, actuarial, architecture, catering, engineering, building management, management consulting, etc.

### 1.3.3 Person

The term “person” includes any individual, corporation, partnership, association,

cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity.

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

Refers to a group of individuals assigned to evaluate proposals received in response to a COG solicitation (referred to as RFP, RFQ or an approved alternate form of procurement, or specific aspects of such proposals. A TSC, when utilized, shall consist, at a minimum, of:

- i. A representative of the department shall be designated as Project Manager and that will be responsible for project and contract management, but not necessarily serve on the TSC.
- ii. Between three (3) and nine (9) Subject Matter Experts (SME) should be chosen by the department Project Manager to serve on the TSC.
- iii. The TSC can consist of COG employees or outside subject matter experts (SME) from COG member agencies, grant funding agencies or other regional partners.
- iv. If any TSC will include persons other than those referenced above, the designation of the membership of the TSC for a particular procurement shall be approved by the department Project Manager, with the concurrence of the Purchasing Manager, prior to the scoring of the RFP or approved alternate form of procurement.
- v. Contract and Purchasing Staff shall not serve on the TSC but will score the price and Disadvantaged Business Enterprise (DBE) points.
- vi. All members of the TSC shall sign the COG Technical Selection Committee Guidelines document. (See COG Intranet for a copy).

### **1.4 PROCUREMENT RESPONSIBILITIES**

#### **1.4.1 Promulgation of Procurement Policy**

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

#### **1.4.2 Administrative Responsibility**

The Executive Director as COG’s Contracting Officer, shall have responsibility for the administration and proper implementation of this Policy. The Executive Director, through the Chief Financial Officer (CFO), has delegated specific responsibilities for the administration of procurement policies and procedures to the Purchasing Manager (“Manager”).

This includes, subject to the approval of the Office of General Counsel, development of standard forms and documents for use in procurement transactions, including, without limitation, compilation of a set of General Terms and Conditions applicable to COG contracts.

#### **1.4.3 COG Employees**

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

For each contract a COG employee shall be assigned to serve as contract and project manager. Typically, this will be a department head, or a designee thereof.

This employee will be responsible for monitoring the contractor's performance to ensure that COG receives goods and services that have been provided in accordance with the terms and conditions of the applicable contract.

## **1.5 RELATED REQUIREMENTS**

### **1.5.1 COG Guidelines**

#### **1.5.1.1 COG organizational document**

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

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

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

Pursuant to this Policy, the Executive Director, as Contracting Officer, shall execute all contracts and agreements entered into on behalf of COG over \$25,000 in value, unless the signing and execution thereof has been expressly delegated by the Board to some other officer, employee or agent of the corporation by a resolution.

Contracts and agreements valued at \$25,000 or under can be signed by the CFO or a staff member delegated by them to do so.

#### **1.5.1.3 Board directives**

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

#### **1.5.1.4 Administrative directives and interpretations**

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

#### **1.5.1.5 Requirements of specific awards**

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

However, where a source of funding for a contract resulting from a particular procurement transaction consists of federal or state funding, and where specific



conditions or related requirements (e.g., specific contractor selection procedures, or specific levels/methods of competition) are mandated in connection with the expenditure of such funding, then if the funding agency's mandated conditions or requirements are more specific, or more restrictive, than those set forth within this Policy, COG will comply with the funding agency's conditions and requirements.

## **1.5.2 Federal Requirements**

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

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

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

Any contract for staffing services with an individual or sole proprietor shall be reviewed by COG's Office of Human Resources Management, at the following times:

- (i) prior to award of a contract,
- (ii) prior to any renewal or extension of a contract, and
- (iii) at such other reasonable times as the Director of Human Resources may request.

## **1.5.3 Necessary Approvals**

### **1.5.3.1 Federal or State Funding**

Before proceeding with a purchase of goods or services funded, in whole or in part, by federal or state funds, COG's Project Manager may be required to obtain advance written approval from the funding agency if the procurement requires it under the rules of the funding agency.

The Purchasing Manager shall verify that requests for such outside approvals have been timely submitted to the funding agency for consideration. In these cases, no purchase transaction shall proceed, and no contract shall be awarded or entered into, until Purchasing Manager has received the required written approval of the funding agency. A copy of such approval shall be maintained in the contract file.

### **1.5.3.2 Contracts Generally**

The Executive Director, or other person serving as Contracting Officer, shall not execute any contract involving an expenditure of \$50,000 or more (regardless of the source of funding) unless and until such contract has been approved by the Board through the Consent Agenda process.

However, where the Transportation Planning Board (TPB) has approved the appropriation of funds in the annual budget process an additional approval by the COG Board is not required.

Also, in the case of the Metropolitan Washington Air Quality Committee (MWAQC), COG Board approval is not required, however the approval must be given by the TPB or MWAQC Board, respectively.

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On contracts with renewal clauses previously approved by the Board no

additional Consent Agenda approval is required when the renewal option is exercised, and funds have been budgeted.

## 2 Selection of Contractors

### 2.1 FULL AND OPEN COMPETITION

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

### 2.2 PROCUREMENT THRESHOLDS AND AUTHORIZED PROCEDURES

<p>In its procurement of goods and services, COG will implement one of the following methods to select a supplier or contractor: If goods or services are anticipated to cost:</p>	<p>The following solicitation method shall be used:</p>
<p>Cost/price: Less than \$10,000 Micro Purchase</p>	<p>No Competition Required--A purchase at this level is considered a minor purchase, or micro-purchase, and no competitive quotes are required, so long as the price to be paid is fair and reasonable. Although solicitation of multiple prospective contractors in a particular instance is not required, over time orders should be distributed among various contractors.</p>
<p>Cost/price: \$10,000 or more, but less than or equal to \$25,000 Small Purchase</p>	<p>Solicitation of 3 Written Quotes, minimum-- COG staff shall solicit written price or rate quotes from at least 3 sources. The solicitation shall be in writing and shall contain sufficient detail to allow accurate pricing of the goods or services to be procured. Lowest responsible quotation must be accepted.</p>
<p>Cost/price: Over \$25,000 Formal Procurement</p>	<p>Formal solicitation conducted by the Contracts and Purchasing Office. A Statement of Work (SOW) shall be included as part of the solicitation. A list of scoring factors that will be used to evaluate responses through scoring by a Technical Selection Committee. COG will select the responsible contractor who offers the best combination of price, quality and other elements of required goods or services that are optimal to COG's needs.</p>

#### 2.2.1 Micro Purchase

A purchase at this level is considered a minor purchase, or micro-purchase, and no competitive quotes are required, so long as the price to be paid is fair and reasonable.

### **2.2.2 Small Purchase (Informal Procurement)**

Small purchase procedures consist of relatively simple and informal solicitation methods, where the goods or services being procured are between \$10,000 and up to \$25,000.

If small purchase procedures are used, price or rate quotations shall be solicited from qualified sources using the same specification getting at least 3 written quotes as per the above chart.

### **2.2.3 Formal Procurement (Competitive Proposals)**

This technique of competitive proposals is normally conducted with public advertising of the solicitation with more than one source submitting an offer, and either a fixed-price, unit price, or a cost-reimbursement method (“time and materials”).

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

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

Competitive proposals are initiated through issuance of a solicitation referred to as a Request for Proposals (“RFP”) or a Request for Qualifications (RFQ). Each RFP/RFQ shall indicate in general terms what is to be procured, and shall contain, or incorporate by reference, the applicable terms, and conditions, including any unique capabilities or qualifications that will be required of the contractor.

The RFP shall instruct prospective offerors of the need to demonstrate, within their proposals, their “responsibility.” Each RFP/RFQ shall also specify the factors that will be used in evaluating the merits of proposals received, including price, along with their relative importance.

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

#### **2.2.3.2 Notice and distribution of the RFP/RFQ**

RFPs/RFQs shall be distributed to an adequate number of qualified sources, at least 14 days prior to the date set for receipt of proposals. The RFP/RFQ shall be posted on COG’s publicly accessible website. In addition, potentially qualified contractors on COG’s Vendor Registration System (VRS) list shall be notified via electronic means of the solicitation, and proposals may also be solicited directly from other potential contractors.

#### **2.2.3.3 Evaluation of Proposals**

Evaluation of the proposals received by COG in response to an RFP/RFQ shall be conducted based on price and other factors identified within the RFP/RFQ. These factors typically include considerations relevant to a determination of responsibility (such as financial, human, and organizational capability), as well as other technical considerations (such as the degree to which the proposer is expected, based on

information submitted and available, to achieve the performance objectives, to provide the quality expected, and on the relative qualifications of the proposer's personnel).

The Purchasing Manager shall ensure that an evaluation method is in place, prior to issuance of the solicitation, for evaluating the responsiveness of each proposal, for technical evaluations of each proposal, and for ranking, in order of preference, the proposals that are received in response to the solicitation.

The specified method shall include a mechanism for written reporting of the results of the evaluations, by numerical scores or other acceptable means of assigning rank.

Evaluation of proposals may be conducted by the COG Contracts and Purchasing Staff, or by a Technical Selection Committee ("TSC") selected by the Project Manager subject to the concurrence of the Purchasing Manager.

Final determinations of the "responsibility" of a contractor shall be made by the Contracts and Purchasing staff. The staff, in their review of the issue of responsibility, may be assisted by any department staff or evaluation committee member(s).

#### **2.2.3.4 Discussion and negotiation**

COG may choose not to enter into discussions or negotiations with any offeror, provided that:

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

In other cases, discussion and negotiation shall be conducted, as follows: COG shall engage in individual discussions with qualified offeror(s) deemed fully qualified, responsible, and suitable on the basis of their initial responses. The offeror(s) shall be encouraged to elaborate on their qualifications, performance data, expertise, and other matters relevant to the evaluation criteria specified in the solicitation.

At the conclusion of discussions, COG shall select, on the basis of the evaluation factors referenced in the solicitation, the offeror whose proposal is deemed most meritorious. If a contract satisfactory and advantageous to COG can be negotiated with that offeror, at a fair and reasonable value, then COG may award the contract to that offeror.

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

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

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

#### **2.2.3.5 Federal considerations**

Under federal guidelines applicable to the expenditure of certain funds, time and materials contracts may be used only where:

- (i) There is a written determination that no other form of compensation is suitable.
- (ii) The contract includes a not-to-exceed (ceiling) price that the contractor exceeds at its own risk. Prior to the award of a contract that will involve expenditure of funding falling within the purview of federal regulations, the Facilities and Purchasing Manager shall verify that any time-and-materials compensation is entered into based on documentation of the requisite findings.

#### **2.2.3.6 Award**

Upon conclusion of a competitive proposal process, COG may award a contract to a responsible contractor whose proposal is deemed most advantageous to COG, following any pre-award review required by a federal or state funding agency.

No contract involving an expenditure of \$50,000 or more (regardless of the source of funding) shall be deemed awarded, or shall become binding upon COG, until it has been approved by the Board.

#### **2.2.3.7 Notice of the award**

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

#### **2.2.3.8 Master Award for Indefinite Delivery Indefinite Quantity Solicitations (IDIQ)**

Some COG solicitations, typically RFQ's, are done on the basis of qualifying contractor(s) for a further procurement based on an IDIQ task order process. The resulting task orders will be issued to all the qualified vendors, and they will be asked to provide a proposal for the task order which will be scored along the same lines as a typical RFP.

Contracts resulting from a Master Award are to be known as Master Contracts and can be awarded to more than one contractor for the same solicitation.

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

A competitive sealed bidding process, or Invitation For Bid (IFB), is normally utilized when price is desirable as the principal determinative factor in contractor selection. In order for the sealed bid process to be utilized, the Purchasing Manger should determine in advance that the following conditions are present:

- (i) A complete, accurate, and realistic specification or purchase description is available.
- (ii) Two (2) or more responsible bidders are willing and able to compete effectively for the business.
- (iii) The nature of the transaction lends itself to a firm, fixed-price contract (lumpsum and/or unit-price) and selection of the successful bidder can be made principally on the basis of price.

The Purchasing Manager shall render their determination in writing and a copy of the determination shall be maintained in the purchasing file.

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

##### **2.2.4.1 Issuance of a written solicitation**

A competitive sealed bidding process is initiated through issuance of a solicitation referred to as an Invitation for Bids (“IFB”). The IFB will incorporate a clear and accurate description of the technical requirements and specifications for the goods or services to be procured, and the description will set forth the minimum essential characteristics and standards to which the goods or services must conform if they are to satisfy COG’s intended use.

Particular attention should be given to describing requirements that affect the price, quality, quantity or delivery schedule for the goods or services. If it is impractical or uneconomical to make a clear and accurate description of technical requirements for a particular item, a “brand name or equal” description may be used to define salient characteristics or requirements. A Bid Form shall be included with the IFB, on which the bidder may set forth the fixed price (lump sum or unit cost) of each aspect or component of the desired goods/services.

##### **2.2.4.2 Public notice and dissemination of the IFB**

Notice of the IFB shall be given to an adequate number of qualified sources, at least 14 days prior to the date set for receipt of bids. The IFB shall be posted on COG’s publicly accessible website. In addition, potentially qualified sources on COG’s Vendor Registration System list shall be notified via electronic means of the IFB, and bids may be solicited directly from other potential sources.

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

COG shall instruct bidders to submit their bids via COG’s electronic lock-box portal, and to deliver the sealed bids to COG on a date and time specified within the IFB. COG shall not open or review any bid until the deadline specified within the IFB passes.

On the date and time specified within the IFB, COG will open and announce the dollar amount of each bid, and the name of the contractor who has submitted each bid. The bid tabulation shall be posted on COG's website at the time of the award.

#### **2.2.4.4 Evaluation of the Low Bid**

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

#### **2.2.4.5 Withdrawal of a bid due to error**

A - A bidder may withdraw their bid from consideration if the price bid was substantially lower than the other bids, due solely to a mistake in the bid; provided, however, that:

- (i) The bid was submitted in good faith.
- (ii) The mistake was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid. Any unintentional arithmetic error or unintentional omission must be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

B - If a bid contains both clerical and judgment mistakes, a bidder may withdraw their bid from consideration if:

- (i) The price bid would have been substantially lower than the other bids due solely to the clerical mistake.
- (ii) The clerical mistake was an unintentional arithmetic error, or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid. Any bidder seeking this avenue of withdrawal must clearly demonstrate the error was unintentional by submission of objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

C - Any request for withdrawal of a bid shall be submitted to COG in accordance with the following procedure:

- (i) The bidder shall give notice in writing of their claim of right to withdraw their bid, within two (2) business days after the conclusion of the bid opening procedure.
- (ii) The bidder shall submit original work papers, and other relevant documents and materials, along with such notice.
- (iii) The bidder's request shall affirmatively state whether the bidder requests COG to handle the work papers, documents and materials submitted with the request as trade secrets or proprietary information.

D - Within five (5) days of receipt of a bidder's request for withdrawal of a bid, the

Contracting Officer shall render a determination either granting or denying the request. No request shall be granted when the result would be the awarding of the contract on another bid of the same bidder, or on the bid of a separate bidder in which the ownership of the withdrawing bidder is more than five percent (5%).

If the Contracting Officer denies the withdrawal request, he shall notify the bidder in writing:

- (i) Of the reasons for their decision to deny the withdrawal.
- (ii) That they are awarding a contract to the bidder at the bid price (provided that the bidder is a responsive and responsible bidder).

E - If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid. If the deemed low bidder is responsive and responsible, then COG may award the contract to that bidder at the bid price.

F - No bidder who is permitted to withdraw a bid shall:

- (i) For compensation, supply any material or labor to, or perform any subcontract or other work agreement, for the person or firm to whom the contract is awarded.
- (ii) Otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted. In the event the Contracting Officer determines that either of these circumstances exist, COG shall have a right to terminate the awarded contract.

#### **2.2.4.6 Award**

Following completion of a competitive sealed bidding process, COG may award a contract to the lowest responsive and responsible bidder.

No contract involving an expenditure of \$50,000 or more (regardless of the source of funding) shall be deemed awarded, or shall become binding upon COG, until it has been approved by the Board.

#### **2.2.4.7 Public Notice of Award**

Notice of the award shall be posted on COG's publicly accessible website. In addition, COG shall provide notice of the award directly to each offeror who submitted a bid, and the notice shall reference COG's procurement policy, including COG's protest procedures.

The published Notice of Award shall contain the bid tabulation including proposed prices and ranking of bidders on the COG website.

#### **2.2.4.8 Requests for Submissions**

The formal notice of procurements will be published on the COG and Mid-Atlantic Purchasing Team (MAPT) websites. The MAPT vendor registration system will allow vendors to register to be notified in their category of procurement.



In addition, after award, COG will publish the results of solicitations on the COG website in the following manner:

- Formal Sealed Bid – bid tabulation and award
- Formal Proposal – award and list of proposers

For Request for Proposals or Qualifications the submissions will not be released to the public. No “tabulation” is created for these types of solicitations. Scoresheets with ranking of Proposals or Qualifications submissions will not be released.

### **2.2.5 Alternative Procedures**

Alternative procedures, designed to promote full and open competition, may be used on a case-by-case basis, upon approval of the Executive Director set forth in writing prior to commencement of the procurement process.

The Director’s written approval shall include a description of the written justification for the alternative procedures, including, without limitation, the need to accommodate requirements of special funding sources, federal award conditions, applicable federal or state laws and regulations, or other circumstances. Examples of such procedures include, but are not limited to, the following:

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

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

#### **2.2.5.1 Cooperative Procurement**

From time to time, COG and/or its member jurisdictions engage in solicitations for items used among multiple jurisdictions to maximize the benefits of economies of scale. COG may lead, be a party, or a facilitator to a cooperative procurement. When COG is a participant in a cooperative procurement, the resulting agreement is subject to all the rules and procedures contained in this Policy. The jurisdiction that volunteers to issue the solicitation is referred to as the “Lead Jurisdiction.”

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

COG, when leading cooperative procurements, is permitted to collect a fee based on a percentage of gross sales or some other method determined in advance of the procurement.

*Note:* Procurements conducted by COG itself, to facilitate the expenditure of federal or state funds in accordance with specific award-requirements, shall *not* be deemed or construed as a joint or cooperative procurement between or among COG and any parties that may ultimately benefit from the goods or services procured. These procurements, however, will permit contract riding by other jurisdictions and may allow COG to collect a fee based on the gross sales of any resulting contract rider.

#### **2.2.5.2 Non-Competitive Contractor Selection**

In such cases, selection of a contractor, without competition, may be in the best fiscal and organizational interests of COG. Prior to award of a contract without competition, if federal funding is involved, COG may be required to submit the proposed contract to the funding agency for pre-award review.

Also, any non-competitive contractor selection involving a contract to be funded, in whole or in part, by federal funding requires a cost analysis.

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

A – Sole Source - The goods or services are only available from a single source and, when applicable, an entity that controls funding that will be involved in the purchase (e.g., a federal or state funding agency) who authorizes and approves, in advance, a noncompetitive selection.

Bases for identifying a contractor as a sole source include:

- (i) Proprietary, patented, or copyrighted items are legally available from only one source,
- (ii) Required compatibility of equipment, accessories, software, or replacement parts can only be met by one source; including, without limitation, maintenance, or support services for software during the useful life of the software originally purchased,
- (iii) Required public utility services are available from only one company (e.g., a specific electrical or water utility),
- (iv) A particular contractor or subcontractor has been specified within an award accepted by COG, and
- (v) One contract service provider possesses unique qualifications, of a nature and to such an extent that no other contractor can be found who can perform or provide the services that are the subject of the contract. If unique qualification is claimed with respect to a contract service provider, reference to specific methodologies, licenses, certifications, etc. must be

provided in the determination letter. Mere preference or desirability is not sufficient; conclusory statements as to a service provider's capability, experience, personal know-how, etc. will not be sufficient to support a determination that a contractor is the sole source available to provide specified services.

- (vi) Certain types of services require use of only one provider such as utilities, advertising, and software.

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

C - Emergency - Time is of the essence, and circumstances will not permit a delay resulting from a competitive selection process. To justify a non- competitive selection under this subparagraph, the Facilities and Purchasing Manager must determine in writing, in advance, that time is of the essence, and the determination must set forth:

- (i) Factual information demonstrating that a specific delivery schedule is critical, or that an emergency exists, involving an imminent threat to the safety of an individual or to COG's property.
- (ii) That specific adverse financial or organizational consequences will be sustained by COG or one of its programs if the delivery schedule is not met, or the threat is not immediately addressed.
- (iii) As a result of the foregoing, it is impractical to complete the solicitation and evaluation of quotes/responses from multiple contractors, under either the informal or formal competitive processes provided by this policy, within the necessary time period.

Mere recitation of an administratively established deadline, commissioning date, or implementation schedule, without demonstration of specific adverse consequences resulting from a deviation from the referenced schedule, is not enough to support the determination.

Additionally, an entity that controls funding involved in the proposed transaction (e.g., a federal or state funding agency) must authorize and approve, in advance, a non-competitive selection under such circumstances.

#### D - Special Relationships

- (i) The proposed contract is for: the management and investment of COG's retirement funds; corporate audit services; legal services; legal, expert witness and other services associated with specific litigation or regulatory proceedings; compilation, storage, analysis, and/or evaluation of data required by federal or state law to be maintained confidential.

- (ii) A continuous relationship with a single contractor over a period of time is fiscally advantageous, as demonstrated by a cost-benefit analysis considering issues such as training; familiarity with COG's organizational structure, processes and procedures; the costs of replacement software; etc.
- (iii) Non- competitive selection will not adversely impact the availability of any federal or state funding intended as a source of funds for payment of the contractor.

E – Contract Rider - A procurement for the goods or services has already been conducted by a federal, state, or local governmental entity, council of governments, or public educational institution which has been competitive or meets the requirements for non-competitive procurement of the respective governmental entity. All solicitation and contract documentation must be provided in the file.

NOTE: Typically, sole source contracts cannot contain a rider clause because riding contracts requires a competitive solicitation process.

Non-competitive procurements require the Sole Source/Rider Request Form to be filled out and approved in advance by the Project Manager and the Purchasing Manager. See form on COG's intranet.

#### **2.2.5.3 Records required**

A copy of an approved Sole Source / Rider Request Form and any supporting documents will be kept in the contract file.

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

#### **2.2.5.4 Selection from GSA Schedule And Other Government Schedules**

When a non-competitive selection is determined to be justified in accordance with the Contract Rider Section above, consideration should be given to selection of a vendor listed on the GSA Schedule, or a similar State or Local Schedule.

Where federal funding is involved, selection of a contractor listed on the GSA Schedule will facilitate compliance with documentation of fair and reasonable price.

#### **2.2.5.5 Board Approval Required**

No sole source contract involving an expenditure of \$50,000 or more (regardless of the source of funding) shall be deemed awarded, or shall become binding upon COG, until it has been approved by the Board via the Consent Agenda process.

#### **2.2.6 Solicitations, generally**

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

A- Statements that:

- (i) COG is the procuring authority.

(ii) That COG's Procurement Policy will apply to the selection of a contractor and award of a contract.

(iii) That, by submitting a proposal, quote, or bid in response to the solicitation, the offeror or bidder agrees to abide by the instructions, requirements and procedures set forth within COG's Procurement Policy.

B- Reference to COG's General Terms and Conditions, and Special Conditions, and a statement of their applicability to any contract resulting from the solicitation.

C- Reference to other federal or state requirements, and a statement of their applicability to any contract resulting from the solicitation. Such requirements shall include, but not be limited to, notification of potential bidders and offerors that, where federal funding is involved, the successful bidder or offeror may be required to provide documentary evidence of compliance with OMB A-133 Audit or Single Audit requirements, and (in the event of an audit finding) may be required to provide documentation to COG verifying that the audit finding is corrected in a timely manner; and

D- A statement that no contract involving an expenditure of \$50,000 or more (regardless of the source of funding) shall be deemed awarded, or shall become binding upon COG, until it has been approved by either the COG Board or the TPB.

### **2.2.7 Unsolicited Proposals**

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

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

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

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

**2.2.7.5** The Purchasing Manager may develop additional guidelines or attach additional requirements to the consideration of specific unsolicited proposal(s).

**2.2.7.6** The use of vendor specifications on COG procurements should be done with great care and stay within procurement ethics, best practices and state and federal laws.

## **2.3 COST/PRICE ANALYSIS FOR FEDERAL MONEY**

For purchases funded by federal money, some form of cost or price analysis may be required prior to award of a contract, including for contract modifications. The method and degree of analysis will depend on the specific procurement transaction; however, as a starting point, when required, independent estimates must be obtained before receiving bids or proposals.

The following methods of contracting shall not be used:

- Cost-plus-a- percentage-of-cost.
- Percentage-of-construction-cost.

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

## **2.4 RESPONSIBILITY**

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

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

COG shall track the performance of all contractors and determine the need to debar any non-performing contractors.

### **2.4.1 Check of Excluded Parties and Debarment List**

No contract shall be awarded unless and until the Purchasing Manager verifies that a check of GSA’s Excluded Parties List System has been conducted, and the prospective contractor is not included within that list.

COG may also treat a prospective contractor or subcontractor listed on a centralized State government debarment and suspension list, or on a similar list maintained by the GSA or one of COG’s member local government jurisdictions, as being non-responsible.

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

To be determined responsible, a contractor must have:

A - Financial resources adequate to perform the contract, or the ability to obtain them.

B - Ability to meet the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.

C - A satisfactory performance record.

D - A satisfactory record of integrity and business ethics.

E - Licenses or certifications required by law or governmental authority.

F - No current “debarment” status with any federal or state governmental authority, or with any local government authority among the membership of COG.

G - Ability to comply with DBE Program requirements, or similar requirements.

H - Other characteristics demonstrating that the contractor is, in all respects, capable of performing fully the contract requirements, and who has been prequalified, if required.

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

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

## **2.5 RESPONSIVENESS**

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

Contracts and Purchasing Office staff shall review the submissions and determine if the offeror has provided all requested and required documents in their proposal/bid. If they fail to provide all needed information, they may be deemed not responsive and disqualified.

## **2.6 CANCELLATION OR REJECTION**

Any solicitation, or any and all quotes, bids, or proposals received in response to a solicitation may be canceled or rejected when it would be in COG’s best interests to do so.

The reasons for cancellation or rejection shall be set forth in writing and made a part of the contract file.

## **2.7 VENDOR LIST**

The Purchasing Manager shall be responsible for preparing and maintaining an up-to-date list of qualified and capable sources who may offer goods and services for purchase by COG via the Vendor Registration system (VRS). The VRS shall be available for any vendor to register at any time. Disadvantaged Business Enterprises (DBE) shall be included and identified on the Vendor List.

The Vendor List shall include, for each source:

- An e-mail address to which solicitations may be sent

- A physical address and, if different, a mailing address
- A contact name and telephone number
- A description of the goods/services that the vendor provides
- Indication of whether the source qualifies as a DBE

## **2.8 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (“DBE”)**

COG will utilize Disadvantaged Business Enterprise (DBE) businesses in accordance with its written DBE policy.

In summary, said policy allows awarding points on proposals only for federally or state certified DBEs, and no other more limited certification programs such as Minority Business Enterprise (MBE) Small Business, (SBE) Women, and Minority (SWAM) and other certifications.

## **2.9 USE OF TECHNICAL SELECTION COMMITTEE (TSC)**

The Purchasing Manager may determine to use a TSC to review proposals and make a recommendation for award regarding a contract.

When a TSC is used, it shall adhere to the following requirements:

- In the initial scoring process, the TSC members must review proposals independently unless otherwise determined by the Purchasing Manager.
- TSC members shall review the solicitation, addendums, and all proposals.
- TSC must use scoring sheets which mirror those in the solicitation and score the technical aspects of the solicitation.
- If determined by the Purchasing Manager, the TSC may meet to have a consensus meeting if the scoring is close enough to merit it. NOTE: Prior to this meeting the TSC should not consult with each other on any scores.
- If determined by the Purchasing Manager, the TSC may hold proposer oral presentations if the scoring is close enough to merit it.
- TSC members shall not communicate with vendors until an award of the contract has been made.

See also Technical Selection Committee Guidelines document on COG’s Intranet.

# **3 Protests**

## **3.1 RIGHT TO PROTEST**

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

Any aggrieved bidder or offeror may protest COG’s decision to award a contract. An “aggrieved bidder or offeror” is one who is an actual or prospective bidder or offeror, and who may be eligible for award of a contract if the protest is sustained.

*(Example: a fourth-ranked offeror will not be considered “aggrieved” and eligible to initiate a valid protest, unless the grounds for a protest, if sustained, would disqualify each of the top three (3) ranked bidders or offerors or would require that the solicitation be cancelled and reissued).*

### **3.1.2 Deadline**



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

### **3.1.3 Contents of Protest**

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

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

B - No protest shall lie for a claim presented by an interested party challenging the validity of the terms or conditions of any solicitation. Any such claim shall be deemed "invalid" for purposes of this section.

## **3.2 AUTHORITY TO RESOLVE PROTESTS**

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

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

Decisions of the Executive Director shall be final.

## **3.3 EFFECT OF PROTEST UPON CONTRACT AWARD**

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

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

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

## **4 Contract Formation**

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

- A - Purchase cards
- B - Purchase orders
- C - Formal written contracts
- D - Combination of the above

### **4.1 PURCHASE CARD TRANSACTIONS**

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

B - The use of Purchase Cards shall be subject to the spending limits and other restrictions and requirements set forth in written Purchase Card Policy posted on COG's Internet.

### **4.2 PURCHASE ORDERS**

A purchase order is a written document, signed by an authorized officer or employee of COG, issued to a vendor to authorize the purchase of goods or services in specific quantities and prices.

If no prior offer, contract, or proposal signed by the vendor has been received, then COG's purchase order constitutes an offer by COG that is not enforceable until accepted by the vendor through a signed written confirmation. Confirmation can be made via email or other electronic means.

If a purchase order is used in a situation where COG has previously received a written quote or proposal from a vendor, then the purchase order may be used as a means of documenting COG's acceptance of that quote/proposal; in such cases, the purchase order should, on its face, reference the date of the vendor's written quote/proposal.

In some circumstances the Purchase Order can also be used as a Notice to Proceed.

#### **4.2.1 Preparation**

Purchase orders will be approved by a workflow including, but not limited to, the department head and the Purchasing Manager and shall clearly describe the item(s) being purchased, the contract price/cost, the project number and charge code and the purpose of the purchase.

Each purchase order shall also include, on its face, or by reference to a separate document, a date for performance (e.g., a required delivery date; the date on which services must be completed, etc.).

Each purchase order will be signed by the Contracting Officer or their designee, typically the Purchasing Manager, for the transaction referenced in the purchase order.

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

Transactions authorized by purchase order will reference and adhere to:

A- COG's General Terms and Conditions for Contracts.

B- Any other applicable state or local requirements. Staff shall ensure that applicable requirements have been incorporated by reference into the purchase order or were expressly incorporated by reference into the documents by which quotes or offers were solicited.

C- A list of each of the documents that, together, set forth all of the terms and conditions of the contract.

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

When a COG employee signs a purchase order, they are certifying that

- (i) Funds are available within COG's approved budget, or from additional funding awarded to COG, to cover COG's financial obligation in connection with the purchase.
- (ii) The terms of payment are reasonable and acceptable in accordance with applicable financial and accounting policies of COG.

#### **4.3 FORMAL WRITTEN CONTRACTS**

A formal contractual agreement is a document which sets forth all of the terms and conditions of the parties' agreement for the purchase of goods or services. In cases where a substantial amount of money is involved, complicated terms or conditions apply to a transaction, or both, a formal written agreement is used to ensure that all of the parties' agreements and understandings are set forth in one instrument that is signed by authorized representatives of both parties, as a means of verifying that there has been a "meeting of the minds" as to the obligations set forth within the document.

A formal contractual agreement may be in a format as simple as a letter, or it may consist of multiple pages of terms, conditions, and requirements, with attachments, schedules or exhibits.

A contract can be provided by COG or by the contractor.

The form and content of a written contract document will depend on the nature of a particular transaction.

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

#### **4.4 LEGAL REVIEW**

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

#### **4.5 SIGNATURES**

All contracts must contain the signature of both the contractor and COG's Contracting Officer or their designee.

Contracts that are not signed in compliance with this requirement are voidable at the option of COG.

“Task Order Awards,” that are a result of a Master IDIQ Contract (which has been approved previously via Consent Agenda) that are less than \$100,000 can be signed by the CFO or their designee.

Small purchases (under \$25,000) requiring a COG or vendor contract can be signed by the CFO or their designee.

## 5 CODE OF CONDUCT

Consistent with corporate policy set forth in the Conflicts of Interest provisions of COG’s Board of Directors’ Rules of Procedure, and consistent with COG’s general Human Resources policies, COG employees, members and officers of the Board of Directors, and persons acting as agents of COG shall avoid conflict of interests, as well as situations which create the appearance of a conflict of interest.

If there is any question as to whether a conflict, real or apparent, may exist, COG’s Executive Director should be contacted immediately.

### 5.1 PERSONAL CONFLICTS OF INTEREST

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

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

### 5.2 ACCEPTANCE OF GIFTS OR GRATUITIES

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

An unsolicited item, having a monetary value of \$25 or less, shall be deemed to have nominal intrinsic value (“*de minimus* gift”). An employee, officer or agent accepting a *de minimus* gift shall not be deemed in violation of this Policy; provided, however, that no such employee, officer or agent shall accept more than one *de minimus* gift from the same source (including affiliates) in any calendar year.

An exception is receipt of foodstuffs by employees, at COG’s offices, which may be opened

and shared in COG offices (for example: food baskets or candy).

### **5.3 DISCIPLINARY ACTION**

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

### **5.4 CONSULTANTS WHO PARTICIPATE IN PREPARING SOLICITATIONS**

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

### **5.5 HANDLING REQUESTS FOR RECOMMENDATION**

Requests by contractors or former contractors for letters of recommendation or other similar communications shall be sent to the Purchasing Manager or their designee who shall make or approve any response before it is sent in order to ensure that the response accurately reflects the work of the contractor for COG and avoids any perception of impropriety.

No letters of recommendation or references from COG are permitted to be used in any marketing scheme by a contractor or former contractor. In addition, the COG logo is prohibited from being used in any outside marketing campaign without the express approval of the Executive Director.

The Manager may consult with the Executive Director and General Counsel, if necessary, to ascertain whether a letter of recommendation should be sent.

## **6 Records of Procurement Transactions**

### **6.1 RECORDS OF FORMAL PROCUREMENTS**

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

- Procurement Method
- Award letter including justification
- Contract Type—for example: fixed price, cost reimbursement, etc.
- Contractor Selection—including reasons for contractor selection, and a written responsibility determination for the selected contractor
- Cost or Price Justification

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

### **6.2 RECORDS OF OTHER PROCUREMENTS**

For all other solicitations and procurement transactions, the Purchasing Manager shall maintain a contract file containing a reasonable amount of documentation sufficient to

demonstrate compliance with the requirements of this Policy.

### **6.3 RETENTION PERIOD**

Records of each procurement transaction shall be maintained for the following periods:

- Award and Contract Agreements 7 Years - after formally closed
- Single Source and Competitive Bidding Documentation 5 Years - after formally closed

See COG's Intranet for full Records Retention Policy.

## **7 Contract Administration**

### **7.1 DESIGNATED CONTRACT MONITOR**

The head of a department that initiated a purchase of goods or services, or to whose business the performance of a contract relates, shall designate a contract/project manager to be responsible for monitoring (i) a contractor's performance of a contract and (ii) implementation of the written terms and conditions of the contract.

If a contractor violates any of the terms or conditions of its award, then the responsible contract/project manager shall notify the Purchasing Manager immediately. The Purchasing Manager shall be responsible for taking appropriate action.

Additionally, the responsible contract/project manager will be responsible for reviewing each payment request submitted to COG by the contractor, to ensure that COG has received goods and services in accordance with contract requirements.

### **7.2 COMMENCEMENT OF PERFORMANCE**

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

Except for transactions made with a purchasing card, no COG officer or employee shall authorize the commencement of performance by any contractor, unless and until a contract signed by both COG and the contractor, and a fully executed document has been received by COG. See next section for exception(s).

All contracts in excess of \$25,000 shall be signed by the Executive Director or their designee. Contracts \$25,000 or less shall be signed by the CFO or their designee.

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

Following receipt of a contract signed by both COG and the contractor, COG may issue a Notice to the contractor authorizing commencement of performance ("Notice to Proceed"). The Notice to Proceed could be sent via mail, electronically, or could be in the form of an executed purchase order.

In certain emergency situations a conditional Notice to Proceed may be issued by the Purchasing Manager in the event of unforeseen delays in the execution of a contract.

#### **7.2.3 Amendment of Contract Requirements**

COG and a contractor, by mutual agreement, may amend contract requirements or add/increase contract requirements, so long as the nature and scope of the resulting contract

is consistent with the terms, conditions, and requirements of the original solicitation. So, for instance, COG may extend the time for performance applicable to a service contract, to allow completion of work undertaken but not completed during the original term of the contract.

However, COG may not agree to a modification that excuses a contractor from less than the full performance of all tasks originally contracted for, unless the contractor, in exchange, gives full and fair consideration (discount on contract price, additional work at no charge, etc.). Likewise, COG may not modify a contract to agree to pay additional money for work which was required to be performed by the terms and conditions of the original contract.

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

No fixed price contract may be increased by more than twenty-five (25%) of the amount of the original contract, without the advance written approval of the Contracting Officer. Any contract amendment that would result in an increase of compensation to the contractor of \$50,000 or more must have the advance approval of the COG Board of Directors, whether such contract involves a fixed-price or any other method of compensation.

- Such Board approval would be required, for example, for the renewal or extension of a contract, where (i) neither the solicitation nor the contract document identified the possibility of any renewal term(s), or (ii) the original contract did not require Board approval, however the extension or renewal of the contract would result in a situation where the contractor will receive, over the extended life of the contract, more than \$50,000 from COG.
- Board approval would not be required for renewal of a contract, if the original contract provided for one or more renewal term(s), and the Board approved the original contract, and for which funds are budgeted.

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

### **7.3 CANCELLATION OR TERMINATION**

The Contracting Officer shall be the only COG official or employee who is authorized to cancel or terminate a contract. Prior to any cancellation or termination, the Contracting Officer shall consult with the Office of-General Counsel.

Prior to cancellation or termination, reasonable efforts should be made to avoid possible default by the contractor or by COG. If the need for cancellation or termination cannot be avoided, the Contracting Officer shall consult with the Office of-General Counsel to determine how to proceed in a manner that will minimize adverse financial or other consequences to COG.

### **7.4 DETERMINATION OF COMPLETION**

The contract/project manager shall inform the Purchasing Manager in writing, when, in the estimation of the contract/project manager, a contractor's obligations have been fully and completely performed in accordance with the terms, conditions and requirements of a

contract. Upon receipt of this notice, the Purchasing Manager shall verify that no outstanding issues of performance remain, that no unresolved claims or disputes remain outstanding between the parties, and that, where applicable, a funding agency agrees with the conclusions of the contract/project manager and has approved payment of a proposed final invoice. Upon this verification and following receipt of a final invoice received from the contractor supported by all required documentation, COG may approve a final invoice for payment.

## **7.5 CONTRACT PAYMENTS**

### **7.5.1 Invoices Required**

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

### **7.5.2 Review of Invoices**

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

If properly reviewed and submitted invoices shall be paid by the Office of Finance and Administrative Service. Payment can be made via electronic means using ACH or COG credit card. Contractors should be encouraged to use electronic payment formats rather than paper.

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

## **8 Effective Date of Policy**

This policy was approved by vote of the COG Board of Directors on September 14, 2022 and became effective as of September 15, 2022.

Board Resolution R38-2022 (Attachment A)





Metropolitan Washington  
**Council of Governments**

777 North Capitol Street NE, Suite 300  
Washington, DC 20002

[mwcog.org](http://mwcog.org)

**Attachment A**

**ADOPTION OF CONSENT AGENDA ITEMS  
September 2022**

**C. RESOLUTION ENDORSING THE REMOVAL OF DEBRIEFS FROM THE COG PROCURMENT POLICY**

The board will be asked to adopt Resolution R38-2022 acknowledging receipt of the revised COG Procurement Policy removing two sections relating to debriefs after solicitations and endorsing adoption of the revised policy. The board directs its Executive Director, or his designee, to notify the Office of Finance and Accounting of the board's endorsement.

**I HEREBY CERTIFY THAT the foregoing resolution was adopted by the COG Board of Directors  
September 14, 2022  
Janele Partman  
COG Communications Specialist**