

**METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS
777 NORTH CAPITOL STREET, N.E.
WASHINGTON, D.C. 20002**

RESOLUTION APPROVING AN UPDATED COG PROCUREMENT POLICY

WHEREAS, it has long been the policy of COG to follow competitive contractor selection procedures in connection with the purchase of goods and services, to ensure that goods and services are obtained at reasonable costs, and, to the maximum extent practical, to assure open competition among vendors interested in doing business with COG; and

WHEREAS, this Board has reviewed a comprehensive update and revision of COG's Procurement Policy, dated July 10, 2013, which updated policy has been reviewed by COG staff and the General Counsel with a recommendation to this Board for approval; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS THAT:

The Board approves the attached Procurement Policy dated July 10, 2013.

I HEREBY CERTIFY THAT the foregoing resolution was approved and adopted by the COG Board of Directors at its regular meeting held on July 10, 2013.

***Nicole Hange
Acting Executive Board Secretary***



Metropolitan Washington
Council of Governments

PROCUREMENT POLICY

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The Metropolitan Washington Council of Governments
777 North Capitol Street, NE, Suite 300
Washington, DC 20002**

July 10, 2013

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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:

A-National Capitol Regional Transportation Planning Board (“TPB”)

B-Metropolitan Washington Air Quality Committee (“MWAQC”)

C-Blue Plans Intermunicipal Agreement Regional Committee

D-Clean Air Partners

E-Washington Area Housing Partnership

F-Other policy boards or committees, as approved by COG’s Board of Directors

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 Request for Proposals, or specific aspects of such proposals. A TSC, where utilized, shall consist, at a minimum, of: (i) the Contracts and Purchasing Manager and (ii) a representative of the department that will be responsible for contract management. Any TSC may also include other individuals who have knowledge or expertise that would facilitate the evaluation process (*for example: other COG employees; representatives of a Grantor agency; representatives of affiliated organizations, such as the local government membership of COG, etc.*). If any TSC will include persons other than those referenced in (i) and (ii) above, the designation of the membership of the TSC for a particular procurement shall be established by the Contracts and Purchasing Manager, with the concurrence of the Contracting Officer, prior to the issuance of the RFP.

1.4 Procurement Responsibilities

1.4.1 Executive Director

The Executive Director shall have responsibility for the administration and proper implementation of this Policy.

1.4.2 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.

The COG employee holding the position of **Contracts and Purchasing Manger** shall be responsible for assisting the Executive Director with the administration and implementation of this Policy. The Contracts and Purchasing Manager, subject to the approval of the Office of General Counsel, shall have authority to develop 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.

For each contract, other than transactions completed with a Purchasing Card, a COG employee shall be assigned to serve as **contract/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 documents, by-laws

Under the FIFTH of the Council of Governments' Articles of Incorporation (1965) COG has the power to purchase, otherwise acquire, real and personal property, and to make contracts and incur liabilities therefor.

Further, according to COG's Bylaws (2013):

A-The chair of the Board of Directors must execute all contracts requiring a seal, under the seal of the corporation, unless the signing and execution thereof has been expressly delegated by the Board to some other officer, employee or agent of the corporation. Any such delegation should be evidenced by a resolution.

B-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 Director of Finance.

1.5.1.2 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.

1.5.1.3 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.

1.5.1.4 Requirements of specific grantors

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 grant funding, and where specific grant 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 grantor's mandated conditions or requirements are more specific, or more restrictive, than those set forth within this Policy, COG will comply with the grantor's conditions and requirements.

1.5.2 Federal requirements

1.5.2.1 FAR

COG will adhere to federal acquisition regulations (FAR) and other federal laws and regulations, when necessary or appropriate (e.g., *when federal grant conditions, or when documents such as cooperative agreements, sub-grant agreements, or master agreements for receipt of federal funding, require such adherence*).

1.5.2.2 OMB Circulars

As a non-profit organization and a recipient of federal grants, COG will adhere to the requirements of applicable federal Office of Management and Budget (OMB) Advisory Circulars, including, without limitation the following (incorporated herein by reference):

A-Advisory Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

B-Advisory Circular A-122, Cost Principles for Non-Profit Organizations

C-Advisory Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations

D-Federal Transit Administration (FTA) Circular 4220.1

1.5.2.3 CFR Guidance

Through the Code of Federal Regulations (CFR), federal agencies provide guidance for implementation of Advisory Circular A-110 and the laws and regulations referenced therein. For instance, the Environmental Protection Agency (EPA)'s requirements for implementation of A-110 are set forth within 40 CFR Part 30, "*Uniform Administrative Requirements for Awards and Sub awards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations*." These CFR regulations shall be followed to the extent required of COG as a recipient of federal grants from EPA. Likewise, COG will adhere to CFR guidance published by other federal agencies from which COG receives funding.

1.5.2.4 Unified Work Programs

Certain programs required by federal law, (e.g., Metropolitan Transportation Planning) require organizations and public agencies to work cooperatively towards the implementation of a specific federal requirement. When disbursing federal funds received for the support of such undertakings, COG will follow procedures outlined in OMB Circular A-110 and the laws and regulations referenced therein, or other applicable federal laws, regulations and requirements.

1.5.2.5 IRS Regulations and Guidelines

Among the issues regulated and enforced by the IRS is whether a particular individual is properly classified as an independent contractor, or whether such individual should be classified, paid and treated as an employee. Any contract for services with an independent

contractor who is an individual shall be reviewed periodically by COG’s Department of Human Resources, 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

Before proceeding with a purchase of goods or services funded, in whole or in part, by federal or state grant funds, COG may be required to obtain the advance written approval of a funding Grantor. The Contracts and Purchasing Manager shall verify that requests for such outside approvals have been timely submitted to the Grantor for consideration. No purchase transaction shall proceed, and no contract shall be awarded or entered into, until the Contracts and Purchasing Manager has received the required written approval of the Grantor. A copy of such approval shall be maintained in the contract file.

The Executive Director, or other person serving as Contracting Officer, shall not execute any contract involving an expenditure of \$25,000 or more (regardless of the source of funding) unless and until such contract has been approved by the Board.

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 Authorized Procedures

In its procurement of goods and services, COG will implement one of the following methods to select a supplier or contractor:

2.2.1 SMALL PURCHASE PROCEDURES (INFORMAL PROCUREMENT)

Small purchase procedures consist of relatively simple and informal solicitation methods, where the goods or services being procured do not exceed the amount of \$25,000. If small purchase procedures are used, price or rate quotations shall be solicited from qualified sources. The following table sets forth COG’s requirements for small purchases.

If goods or services are anticipated to cost:	The following solicitation method shall be used:
Cost/price: Less than \$5,000	No Competition Required-- A purchase at this level is considered a minor purchase, and no competitive quotes are required, so long as the price to be paid is fair and reasonable. Use of contractors listed on the GSA ¹ Schedule, or similar state schedules, is encouraged. Although solicitation of multiple prospective contractors in a particular instance is not required, over time orders should be distributed among various contractors.

¹ General Services Administration (GSA)

<p>Cost/price: \$5,000 or more, but less than \$10,500</p>	<p>Solicitation of 2 Written Quotes, minimum—COG staff shall solicit written price or rate quotes from at least two sources. The solicitation shall be in writing and shall contain sufficient detail to allow accurate pricing of the goods or services to be procured.</p> <p>If a simple description of goods or services will not be sufficient, in the determination of the Contracts and Purchasing Manager, then a Statement of Work (SOW) shall be included as part of the solicitation of quotes. Where a SOW is necessary, it shall be accompanied by a list of factors that will be used to evaluate responses. 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> <p>Documentation of each solicitation, and any written quotes received in response, shall be placed in the contract file. Prior to making a purchase, the Contracts and Purchasing Manager shall confirm that the price to be paid is fair and reasonable, and shall document how this determination was derived. Use of GSA and other state or local government purchasing schedules, as a source of contractors to be solicited, is encouraged.</p>
<p>Cost/price: \$10,500 or more, but Less than or equal to \$25,000</p>	<p>Solicitation of 3 Written Quotes, minimum-- COG staff shall solicit written price or rate quotes from at least four sources. The solicitation shall be in writing and shall contain sufficient detail to allow accurate pricing of the goods or services to be procured. If a simple description of goods or services will not be sufficient, in the determination of the Contracts and Purchasing Manager, then a Statement of Work shall be included as part of the solicitation. Where an SOW is necessary, it shall be accompanied by a list of factors that will be used to evaluate responses.</p> <p>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> <p>Documentation of each solicitation, and any written quotes received in response, shall be placed in the contract file. Use of GSA and other state or local government purchasing schedules, as a source of contractors to be solicited, is encouraged.</p>

2.2.2 COMPETITIVE PROPOSALS (FORMAL PROCUREMENT)

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or a cost-reimbursement method (“time and materials”) of compensation will be utilized—or some combination thereof. If this method of contractor selection is utilized, then the process of selecting a supplier or contractor will follow the following process:

2.2.2.1 Issuance of a Written Solicitation

Competitive proposals are initiated through issuance of a solicitation referred to as a Request for Proposals (“RFP”). Each RFP shall indicate in general terms that which is

sought 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 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: architectural, engineering services, accounting, actuarial, and legal.]

2.2.2.2 Notice and distribution of the RFP

RFPs shall be distributed to an adequate number of qualified sources, at least 10 days prior to the date set for receipt of proposals. At a minimum, the RFP shall be posted on COG’s publicly-accessible website. In addition, potentially qualified contractors on COG’s Vendor Registration list shall be notified via electronic mail of the solicitation, and proposals may also be solicited directly from other potential contractors.

2.2.2.3 Evaluation of Proposals

Evaluation of the proposals received by COG in response to an RFP shall be conducted based on **price and other factors** identified within the RFP. These factors typically include factors relevant to a determination of responsibility (such as financial, human, and organizational capability), as well as other technical factors (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 Contracts and 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 Contracts and Purchasing Manager, or by a team or committee of persons selected by the Contracts and Purchasing Manager subject to the concurrence of the Contracting Officer. A team or committee may include a Technical Selection Committee (TSC).

Final determinations of “responsibility” of a contractor shall be made by the Contracting Officer, based on a review, report and recommendation of the Contracts and Purchasing Manager. The Contracts and Purchasing Manager, in his review of the issue of responsibility, may be assisted by any team or evaluation committee conducting other aspects of proposal evaluation.

2.2.2.4 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, **and** **(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 price. The Contracts and 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 two (2) or more offerors deemed fully-qualified, responsible and suitable on the basis of their initial responses. The offerors shall be encouraged to elaborate on their qualifications, performance data or staff 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 price, 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 price.

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, 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.

2.2.2.5 Federal considerations

Under federal guidelines applicable to the expenditure of certain grant funds, see e.g., 44 C.F.R. §13.36(b)(10), time and materials contracts may be used only where: (i) there is a written determination that no other form of compensation is suitable, and (ii) the contract includes a not-to-exceed (ceiling) price that the contractor exceeds at its own risk. Prior to award of a contract that will involve expenditure of grant funding falling within the purview of 44 C.F.R. §13.36(b)(1), or any similar federal regulation, the Contracts and Purchasing Manager shall verify that any time-and-materials compensation is entered into based on documentation of the requisite findings.

2.2.2.6 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 grantor. No contract involving an expenditure of \$25,000 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.

2.2.2.7 Notice of the award

Notice of contract award shall be posted on COG's publicly-accessible website. In addition, 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 SEALED BIDS (FORMAL PROCUREMENT)

A competitive sealed bidding process 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 Contracts and 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 or more responsible bidders are willing and able to compete effectively for the business; and **(iii)** the nature of the transaction lends itself to a firm, fixed-price contract (lump sum and/or unit-price) and selection of the successful bidder can be made principally on the basis of price. The Contracts and Purchasing Manager shall render his 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:

2.2.3.1 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.

2.2.3.2 Public notice and dissemination of the IFB

Notice of the IFB shall be given to an adequate number of qualified sources, at least 10 days prior to the date set for receipt of bids. At a minimum, the IFB shall be posted on

COG's publicly-accessible website. In addition, potentially qualified sources on COG's Vendor Registration list shall be notified via electronic mail of the IFB, and bids may be solicited directly from other potential sources.

2.2.3.3 Public Opening and Announcement of Bids

COG shall instruct bidders to submit their bids in sealed envelopes, and to deliver the sealed bids to COG on a date, and at a time and location specified within the IFB. COG shall mark each bid received with the date and time of receipt, and COG shall not open or review any bid until the date, and at the time and location, specified within the IFB.

On the date, and at the time and location 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.

2.2.3.4 Evaluation of the Low Bid

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

2.2.3.5 Withdrawal of a bid due to error

A-A bidder may withdraw his 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, and (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, which unintentional arithmetic error or unintentional omission can 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 his bid from consideration if (i) the price bid would have been substantially lower than the other bids due solely to the clerical mistake, and (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, and the bidder clearly demonstrates this 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 his claim of right to withdraw his bid, within two 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; and (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 his decision to deny the withdrawal, and (ii) that he is 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, or (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.

2.2.3.6 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 \$25,000 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 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 inform those unsuccessful offerors of COG's protest procedures.

2.2.4 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 grant 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 bidding 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 bids. Award is then made to the lowest, responsive and responsible bidder.

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.

Example 3: yet another acceptable alternative might be the selection of a contractor who has been already been awarded a contract for the goods or services sought to be procured by COG, if (i) the member jurisdiction's contract was awarded following a competitive selection process, and (ii) the contract awarded to the contractor contemplated that the contractor's goods and services would be made available to other entities upon the same terms and conditions, including pricing.

Example 4: another acceptable alternative would be COG's participation as a party to a cooperative procurement transaction conducted by one of its member jurisdictions. For the purposes of this Policy, the term "cooperative procurement" refers to the combining of COG's requirements with those of one or more of its member jurisdictions, to obtain the benefits of volume purchases, reduction in administrative expenses, or some other desirable shared benefits.

In cooperative procurements where COG is a participant, one of COG's member jurisdictions shall serve as the issuer of the solicitation, and the member jurisdiction's procurement laws, policies and procedures will govern the selection of a contractor. *Note:* Procurements conducted by COG itself, to facilitate the expenditure of federal or state grant funds in accordance with specific grant 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.²

2.2.5 NON-COMPETITIVE CONTRACTOR SELECTION

Occasionally, as a practical matter, (i) there exists only source of goods or services sought to be procured; or (ii) following the solicitation of quotes, offers or bids under one of the competitive selection processes described above, competition is inadequate; or (ii) the nature of the relationship with a particular contractor is one involving special confidentiality, or fiduciary, advisory services. 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, for non-competitive contractor selection involving a contract to be funded, in whole or in part, by federal funding, cost analysis is always required.

² COG publishes a separate policy, titled "*User's Guide to Cooperative Procurement.*" The User's Guide sets forth the manner in which COG will provide administrative assistance to its member jurisdictions with various tasks associated with the conduct of a cooperative or joint procurement transaction undertaken by one or more of those jurisdictions. However, that User's Guide applies to procurements in which COG itself is not a party to the transaction, and any resulting contract will be with the member jurisdiction(s), not COG. In such circumstances, the member jurisdiction's procurement policies and procedures apply.

2.2.5.1 Written determination required, in advance

The Contracts 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-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 Grantor) 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 a grant accepted by COG;

(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 preferability 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.

or

B-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 Grantor) authorizes and approves, a noncompetitive selection; or

C-**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 Contracting Officer 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 and **(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 Grantor) must authorize and approve, in advance, a non-competitive selection under such circumstances; *or*

D- **(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., **and** **(iii)** non-competitive selection will not adversely impact the availability of any federal or state grant funding intended as a source of funds for payment of the contractor.

2.2.5.2 Records required

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

2.2.5.3 Selection from GSA Schedule

When a non-competitive selection is determined to be justified in accordance with paragraph 2.2.5.1(B) or (C), above, consideration should be given to selection of a vendor listed on the GSA Schedule, or a similar State or Local Schedule. Where federal grant funding is involved, selection of a contractor listed on the GSA Schedule will facilitate compliance with documentation of fair and reasonable price.

2.2.5.4 Board Approval Required

No sole source contract involving an expenditure of \$25,000 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.

2.2.6 USE OF GOVERNMENT SCHEDULES

COG may choose to purchase goods or services from the GSA Schedules, or from similar state purchasing schedules. If federal or state grant funding is involved, advance written permission shall be obtained from the Grantor.

2.2.6.1 Source of Quotes, Small Purchase Procedure

COG may, at any time, use the GSA or other government schedules as a source of contractors from which to solicit quotes or proposals: *see* Small Purchase Procedures, preceding above.

2.2.6.2 Selection of GSA or other Schedule Contractor, without review of multiple quotes

COG may place an order or award a contract to any Schedule contractor that can meet COG's needs, without review of multiple quotes or proposals, under the following circumstances:

A-Following a Determination rendered pursuant to 2.2.5.1(B) or (C), as set forth above; or

B-For orders of supplies or services of less than \$25,000, provided that the contractor selected has not been awarded a contract by COG within the 12 months preceding the date of award.

2.2.6.3 Selection of GSA or other Schedule Contractor, upon review of multiple quotes

COG may place an order or award a contract to any Schedule contractor that can meet COG's needs, without formal competition, under the following circumstances:

A-For orders of supplies or services of \$25,000 or more, and

B-The following process is followed:

Supplies and Services not requiring a Statement of Work: survey or review the price lists of three Schedule contractors; seek price reductions where appropriate; evaluate; and select the contractor who can offer the best overall combination of quality, price and various elements of the required supplies or services that, in total, are optimal relative to COG's needs. If the applicable Schedule does not include three contractors who meet COG's requirements, then fewer than three may be surveyed or reviewed.

Supplies and Services requiring a Statement of Work: prepare a written solicitation that includes a statement of work and evaluation criteria; transmit the request to three Schedule contractors; evaluate responses; and select the contractor who can offer the best overall combination of quality, price and various elements of the required supplies or services that, in total, are optimal relative to COG's needs. If the applicable Schedule does not include three

contractors who meet COG's requirements, then fewer than three may be surveyed or reviewed.

2.2.6.4 Board Approval Required

No contract involving an expenditure of \$25,000 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.

2.2.7 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, and **(iii)** that, by submitting a quote, proposal or bid in response to the solicitation, the bidder or offeror 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 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 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 \$25,000 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.

2.3 Cost/Price Analysis

For purchases funded by federal grant 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, and 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 perform successfully the terms, conditions and requirements of a proposed contract. 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 Contracting Officer, based on a review, report and recommendation of the Contracts and Purchasing Manager. The Contracts and Purchasing Manager, in his review of the issue of responsibility, may be assisted by any team or evaluation committee 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.

2.4.1 Check of GSA Excluded Parties List

No contract shall be awarded unless and until the Contracts and 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 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; and

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, COG’s Contracting Officer should make and sign a written determination which states the basis for the finding of non-responsibility, and the Contracts and 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. The Contracting Officer’s decision is final, except as provided in Section 3.1.3.A, following below.

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. COG 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.

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 Contracts and 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 (“Vendor List”). The Contracts and Purchasing Manager shall update the Vendor List on a regular basis. DBEs, small businesses, minority-owned firms, women's business enterprises, etc. 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; and
- a description of the goods/services that the vendor provides
- indication of whether the source qualifies as a small business, minority-owned firm or women’s business enterprise
- annotation as to whether the vendor is known to have been debarred by any federal, state or local contracting authority (*federal non-procurement debarment and suspension regulations set forth in 40 CFR part 32, implementing Executive Orders 12549 and 12689, “Debarment and Suspension,” may restrict COG from entering into contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities*).

2.8 Disadvantaged Business Enterprises (DBEs)

COG will utilize disadvantaged business enterprises in accordance with its written DBE policy.

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 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.

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

COG’s 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 5 working days after receipt of a protest, stating his findings and the reasons for the action taken; however, the Executive Director may, in his sole discretion, afford an interested party the opportunity to present his valid protest in person before a final decision is rendered. If an in-person hearing is afforded, the Executive Director shall render his written decision within 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 three instruments to authorize purchases and contractually bind COG to a purchase of goods or services: (1) purchase cards; (2) purchase orders, and (2) formal written contracts.

4.1 Purchase Card transactions

A-Purchase Cards may be used for purchases of goods and services, subject to compliance with the Small Procedures or 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.

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. Purchase orders are commonly used in procurement transactions that involve smaller amounts of money and minimal terms and conditions (e.g., office supplies; office equipment).

If no prior offer 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. If a purchase order is used in a situation where COG has previously received a signed, 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.

4.2.1 Preparation

Purchase orders will be approved by a department head and the Contracts and 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 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-The requirements of 40 CFR Part 30, if required, and to 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

Before a COG officer or employee signs any purchase order he or she shall obtain verification from the Contracts and Purchasing Manager that (i) funds are available within COG's budget, or from grant funding awarded to COG, to cover COG's financial obligation in connection with the purchase and (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. 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 formal written contracts.

4.4 Legal review

The Office of 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

Except for transactions completed with a Purchasing Card, all contracts must contain the signature of both the contractor and COG's Contracting Officer. Contracts that are not signed in compliance with this requirement are voidable at the option of COG.

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 its 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, agent, or board member, or his or her 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 a 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 Contracts and 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. An official file containing the Executive Director's copies of such opinions shall be maintained in the Office of the Executive Director.

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 \$5 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 food-stuffs 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 or Executive Director, as applicable, up to and including termination of his 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.

6 RECORDS OF PROCUREMENT TRANSACTIONS

6.1 Records of formal procurements

The Contracts and 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
- 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 Contracts 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 a period of three (3) years from the date final payment is made by COG in connection with the transaction, or for such other time period as may be required by federal or state law or regulations, or by applicable grant requirements.

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 Contracts and Purchasing Manager immediately. The Contracts and 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 has been received by COG.

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”).

7.2.3 Modification of contract requirements

COG and a contractor, by mutual agreement, may delete 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 \$25,000 or more must have the advance approval of the COG Board, 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 \$25,000 from COG.
- On the other hand, 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.

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 Contract and 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 Contract and 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 Grantor 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, and 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 grantors, have been satisfied (for example: in addition to review by a contract/project manager, each invoice will also be reviewed by COG's Department of Finance and Accounting for compliance with applicable contractual, financial and accounting requirements).

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 Contracts and Purchasing Manager 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 Board of Directors, on July 10, 2013, and shall become in effect as of July 10, 2013.