



BOARD OF DIRECTORS

Wednesday, September 14, 2022
12:00 P.M. - 2:00 P.M.
Walter A. Scheiber Board Room

Virtual participation upon request; Public livestream on website

AGENDA

- 12:00 P.M.**
- 1. CALL TO ORDER**
Christian Dorsey, COG Board Chair
 - 2. CHAIRMAN'S REPORT**
Christian Dorsey, COG Board Chair
- 12:05 P.M.**
- 3. EXECUTIVE DIRECTOR'S REPORT**
Chuck Bean, COG Executive Director
 - 4. AMENDMENTS TO THE AGENDA**
Christian Dorsey, COG Board Chair
- 12:15 P.M.**
- 5. APPROVAL OF THE MINUTES FROM JULY 30, 2022**
Christian Dorsey, COG Board Chair
Recommended Action: Approve minutes.
 - 6. ADOPTION OF CONSENT AGENDA ITEMS**
Christian Dorsey, COG Board Chair
 - A. Resolution R36-2022 – Resolution authorizing COG to receive a grant from the Federal Transit Administration for its Enhancing Mobility Innovation program
 - B. Resolution R37-2022 – Resolution authorizing COG to procure and enter into a contract for regional water resilience advocacy and public affairs services
 - C. Resolution R38-2022 – Resolution endorsing the removal of debriefs from the COG Procurement Policy**Recommended Action: Adopt Resolutions R36-2022 – R38-2022.**

- 12:20 P.M. 7. REGIONAL ELECTRIC VEHICLE DEPLOYMENT**
Chuck Bean, COG Executive Director
Jeff King, COG Climate, Energy, and Air Programs Director
- Continuing the conversation from the COG Leadership Retreat, the board will be briefed on next steps to advance the regional electric vehicle deployment efforts including developing a regional EV Deployment Clearinghouse and creating a Regional EV Deployment Working Group.
- Recommended Action: Receive briefing and adopt Resolution R40-2022.**
- 12:40 P.M. 8. WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY GENERAL MANAGER/CEO INTRODUCTION AND PRIORITIES**
Randy Clarke, WMATA General Manager and CEO
- The board will hear from the recently hired Washington Metropolitan Area Transit Authority (WMATA) General Manager and CEO on his priorities and plans for Metro.
- Recommended Action: Receive briefing.**
- 1:15 P.M. 9. EFFORTS TO INCREASE WATER SUPPLY RESILIENCE IN THE METROPOLITAN WASHINGTON REGION**
Greg Emanuel, Arlington County Department of Environmental Services Director
Jamie Bain Hedges, Fairfax Water General Manager
Tom Hilton, WSSC Water Planning Division Leader
Apera Nwora, DC Water Government Affairs and Public Policy Director
- The board will be briefed on collaborative efforts by water utilities and local governments to improve the resiliency of the region’s water supply, including a feasibility study in the 2022 Water Resources and Development Act (WRDA) to address the Washington Aqueduct’s current single source for water and significantly improve the region’s security and resilience.
- Recommended Action: Receive briefing and adopt Resolution R39-2022.**
- 1:55 P.M 10. OTHER BUSINESS**
- 2:00 P.M. 11. ADJOURN**
The next COG Board Meeting will take place virtually on Wednesday, October 12th from 12:00 – 2:00 P.M.

AGENDA ITEM #2

CHAIRMAN'S REPORT

Viewpoint: The more aligned localities are in fighting regional ills, the more successful they will be

By Christian Dorsey
Jul 29, 2022

As we all watch with cautious optimism to see if our federal partners can meet the moment in addressing the many challenges we face as a nation, jurisdictions throughout the National Capital Area are embracing their responsibility in addressing regional issues that impact our current quality of life and our prospects for future sustainability and prosperity.

Traditionally, priorities like our housing shortfall, racial disparities and climate change were treated as discrete issues, but if we are to make meaningful progress in any of those areas, we must recognize that they're also interconnected. At the local level, this means that increases in the housing supply that are not close to transit will not advance our climate goals, and if that housing is not affordable to middle- and lower-income households, inequities across a broad range of factors will deepen.

The best path forward is to focus on concrete steps that advance a broader strategy. This understanding informed the work of colleagues at the Council of Governments, which recently adopted Region United, a planning framework for 2030 centered on creating more inclusive, connected, transit-oriented communities.

To be clear, our intent with this framework is action, not virtue signaling. Right now, area officials are collaborating on a variety of fronts. And while some of this work may fly under the radar, the success of these initiatives will go a long way in helping us achieve our vision for a better future.

Take housing, for example. Less than three years ago, we came together to endorse a set of ambitious regional targets, emphasizing the need for greater partnership among the public, private and nonprofit sectors. We still have a long way to go — our region is currently producing about 10,000 fewer units per year than we need — but some promising efforts have taken root.

The Amazon Housing Equity Fund has already provided hundreds of millions of dollars to preserve and increase the supply of affordably priced housing near transit, including financing a new grant program administered by COG. In Arlington County alone, the fund has already helped us preserve more than 1,300 affordable housing units in neighborhoods with traditionally

underserved populations, while also financing more than one thousand committed affordable units within a short walk to Metrorail.

We've also seen the District of Columbia and neighboring jurisdictions take bold new steps through investments and legislation to increase their housing supply. And Fairfax and Prince George's counties have incorporated housing affordability into their economic development plans.

Local governments and partners are also prioritizing equity in their decision-making and planning. I am heartened to see that COG's equity emphasis areas have quickly become part of the region's planning vocabulary. These areas are about 350 census tracts which are home to a higher share of people of color or with lower incomes compared to the regional average. This makes them important locations for additional attention and support. While originally developed for the region's transportation plan, COG has begun analyzing health outcomes, climate and environmental impacts, and other subject areas within these tracts so that as we progress as a region, we don't leave anyone behind.

In Montgomery County, officials have been using equity emphasis areas to help target investments in its capital improvement program budget or by its green bank. WMATA's new Strategic Plan for Joint Development highlights that 70% of proposed projects near Metro-owned land will serve the region's equity emphasis areas.

In the coming years, we hope more governments, as well as our business and philanthropic partners, take advantage of this planning tool to identify needs in their communities, assess progress and expand opportunities for all of our residents.

Regarding climate change, we all know that new federal action and funding are essential, but area leaders are not going to wait to address this existential challenge. From our region's core to outer jurisdictions, local governments are implementing numerous climate plans, which will contribute to our regional goal of a 50% reduction in greenhouse gasses below our baseline level by 2030.

To spur even greater progress, COG is just kicking off the development of a regional electric vehicle infrastructure deployment plan. The plan will assess the number of charging stations needed to support the future fleet of electric vehicles and optimal locations for them. By working together to create a more consistent and coordinated network in our multistate region, we will also put ourselves in a better position to pursue potential cooperative purchases as well as state and federal grants, especially new funding related to the Infrastructure Investment and Jobs Act.

The fact that our region is aligned in our priorities, like climate, equity and housing, is a key strength as we navigate through these uncertain times. That local governments are closely partnering to turn these priorities into action is even more important.

Christian Dorsey is vice chair of the Arlington County Board and chair of the Metropolitan Washington Council of Governments board of directors

AGENDA ITEM #3

EXECUTIVE DIRECTOR'S REPORT



MEMORANDUM

TO: COG Board of Directors
FROM: Chuck Bean, COG Executive Director
SUBJECT: Executive Director's Report – September 2022
DATE: September 7, 2022

POLICY BOARD & COMMITTEE UPDATES

National Capital Region Transportation Planning Board (TPB) – In June the TPB approved the *Visualize 2045* long-range transportation plan and the Transportation Improvement Program (TIP) and Plan update. The TPB also adopted on-road transportation sector greenhouse gas (GHG) reduction goals and adopted seven GHG reduction strategies. Also approved were four Regional Roadway Safety Program projects and Congestion Mitigation Air Quality Improvement Program (CMAQ) 2022-2025 performance targets. In July, the TPB approved \$5.1M in Maryland Transportation Alternatives Set-Aside Program (TAP) funding for the Frederick & Pennsylvania Line (F&PL) Railroad Trail, received map updates to Equity Emphasis Areas, and approved the Car Free Day proclamation.



NEW APPLICATIONS OF EQUITY EMPHASIS AREAS
Less than a year after being endorsed by the COG Board of Directors and incorporated into *Region United: Metropolitan Washington Planning Framework for 2030*, Equity Emphasis Areas (EEAs) are becoming part of the region's planning vocabulary.

[Read the news highlight/view updated map](#)

Climate, Energy, and Environment Policy Committee (CEEPC)

– At its July meeting, CEEPC learned about Resilient Fairfax, the development of a comprehensive Climate Adaptation and Resilience Plan for the county and the community to reduce risk to county residents, businesses, and infrastructure. CEEPC was also briefed on TPB's climate mitigation goals and strategies as well as its climate resilience initiatives.

Chesapeake Bay and Water Resources Policy Committee (CBPC) – In July, CBPC members were briefed on the meaning of the EPA health advisory for per- and poly-fluoroalkyl substances (PFAS) and about COG's drought plan. Members also planned for the upcoming annual Bay Forum with the EPA and states in September and remodeled its annual paper competition.

Food and Agriculture Regional Member (FARM) Policy Committee – In July, FARM [sent a letter](#) urging the Biden Administration to incorporate a set of priorities in a new national strategy that will be announced during the White House Conference on Hunger, Nutrition, and Health in September. In

August, the committee strategized on a letter to the region's U.S. Senators to urge their support for the Healthy Meals, Healthy Kids Act (H.R. 8450) which is expected to be voted on in the House in the fall.

Region Forward Coalition (RFC) – In July, the RFC heard from Montgomery County Health & Human Services and SAMU First Response on how they are providing a humane response to legal migrants arriving in the region who are seeking asylum. The coalition recommended the COG Board consider a resolution expressing support for the migrants, which the board approved later in July. In addition, the coalition was briefed by Mary's Center and Culmore Clinic on strategies to overcome the barriers to healthcare access for immigrant populations.

OUTREACH & PROGRAM HIGHLIGHTS

2030 Framework – COG Executive Director Chuck Bean presented *Region United* to the City of Rockville, Frederick County, City of Alexandria, and Prince William County.

Employer Recognition Awards – In June, COG's Commuter Connections program recognized five local employers and organizations for their outstanding commute alternative programs at the 25th annual Employer Recognition Awards ceremony.

[Learn more about the awardees.](#)

Homeless Services – In July, COG staff hosted a joint virtual workshop with the Human Services Policy Committee (HSPC) and the COG Homeless Services Committee for city, county, and state elected officials and government staff to discuss aligning racial equity objectives, identifying next steps to be included in the draft regional homeless services racial equity plan, and developing shared accountability for the plan's success.

Drinking Water and Wastewater Survey – COG's Community Engagement Campaign (CEC) conducted the [third annual survey](#), helping area water and wastewater utilities understand and respond to residents' awareness about their water.

Go Recycle – In June, COG ran its annual Go Recycle campaign, a regional effort to help educate area residents about the benefits of recycling and how to do it properly. Visit, www.gorecycle.org for more information and resources.



TPB APPROVES UPDATED LONG-RANGE TRANSPORTATION PLAN

The approved update to *Visualize 2045*, the region's federally-mandated, long-range transportation plan includes highway and transit projects totaling \$233 billion, that meet ozone air quality standards and other federal requirements.

[Learn more about the plan](#)

MEDIA HIGHLIGHTS

COG Board Chair Christian Dorsey discusses local action to address regional challenges - *The more aligned localities are in fighting regional ills, the more successful they will be.*

[Washington Business Journal – Op-ed by Chair Christian Dorsey.](#)

COG Executive Director Chuck Bean discusses regional priorities with Washington Post – *Want to curb traffic? Build homes near jobs and transit, COG leader says.*

[The Washington Post – Q&A by COG Executive Director Chuck Bean.](#)

D.C.-area office occupancy rates and transit ridership – *Offices have reopened. Persuading commuters to fill them isn't so simple.*

[The Washington Post – Quotes COG Planning Data and Research Program Director Tim Canan.](#)

Housing in the region – *New development means gentrification, right? Not necessarily, says a recent study.*

[Washington Business Journal – Quotes COG Housing Program Manager Hilary Chapman.](#)

TPB approves local Maryland trail project for federal funding – *Regional board approves \$5.1M grant for Frederick-Walkersville rail trail*

[Frederick News-Post – Quotes COG Transportation Planner John Swanson.](#)



PODCAST: THE FUTURE OF THE ECONOMY
On this episode of Think Regionally, host Robert McCartney talks with leaders in the government and non-profit sectors, including COG Board Member and Prince George's County Executive Angela Alsobrooks about new efforts to promote long-term economic growth and inclusive prosperity.

[Listen to the episode or read the transcript](#)

AGENDA ITEM #4

AMENDMENTS TO THE AGENDA

AGENDA ITEM #5

APPROVAL OF THE MINUTES

**METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS
777 North Capitol Street, NE
Washington, D.C. 20002**

**MINUTES
COG Board of Directors Meeting
July 30, 2022**

BOARD MEMBERS AND ALTERNATES: See attached chart for attendance.

SPEAKERS: None

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

COG Board Chair Christian Dorsey called the meeting to order at 1:12 P.M. and led the Pledge of Allegiance.

2. CHAIRMAN'S REPORT

There was no Chairman's Report.

3. EXECUTIVE DIRECTOR'S REPORT

COG Executive Director Chuck Bean briefed the board on a recent meeting he organized with other COGs in the National Association of Regional Councils (NARC) and NARC's counterpart for the European Union called METREX (Metropolitan Exchange) to discuss impacts of absorbing large numbers of displaced people or refugees and how it impacted community infrastructure.

4. AMENDMENTS TO AGENDA

There were no amendments to the agenda.

5. APPROVAL OF MINUTES

The minutes from the June 8, 2022 board meeting were approved.

6. ADOPTION OF CONSENT AGENDA ITEMS

- A. Resolution R32-2022 – Resolution authorizing COG to receive a grant from the Federal Transit Administration (FTA) for its innovative coordinated access and mobility pilot program
- B. Resolution R33-2022 – Resolution authorizing COG to procure and enter into a contract to survey and identify a quantitative and qualitative trash threshold
- C. Resolution R34-2022 – Resolution expressing support for legal migrants arriving to the Washington Metropolitan region as a result of policies implemented by border states

The board voted to pass Resolutions R32-2022 – R33-2022 on the consent agenda. City of Fairfax Vice Mayor David Snyder requested to pull Resolution R34-2022 from the consent agenda for discussion. COG Vice Chair Kate Stewart provided background on the current migrant situation in our region. Many board members commented on and expressed their support of the resolution. Resolution R34-2022 was approved.

ACTION: Approved Resolutions R32-2022 – R34-2022.

7. EXECUTIVE SESSION

The board met in a closed executive session to discuss personnel matters.

ACTION: Approved Resolution R35-2022.

8. OTHER BUSINESS

Calvin Hawkins recognized Phyllis Randall for her work at the National Association of Counties.

9. ADJOURN

Upon motion duly made and seconded, the meeting was adjourned at 2:06 P.M.

July 30, 2022 Attendance

<u>Jurisdiction</u>	<u>Member</u>	<u>Y/N</u>	<u>Alternate</u>	<u>Y/N</u>
<i>District of Columbia</i>				
Executive	Hon. Muriel Bowser		Ms. Beverly Perry Mr. Wayne Turnage Ms. Lucinda Babers	
	Mr. Kevin Donahue		Eugene Kinlow	Y
Council	Hon. Phil Mendelson			
	<i>Hon. Charles Allen</i>	Y		
<i>Maryland</i>				
Bowie	Hon. Tim Adams			
Charles County	Hon. Reuben Collins		Thomasina Coates Gilbert Bowling	
City of Frederick	Hon. Michael O'Connor	Y		
Frederick County	Hon. Jan Gardner		Ms. Joy Schaefer	
College Park	Hon. Denise Mitchell	Y	Hon. Patrick Wojahn	P
Gaithersburg	Hon. Robert Wu		Hon. Neil Harris	
Greenbelt	Hon. Emmett Jordan	Y	Hon. Kristen Weaver	
Laurel	Hon. Craig Moe		Hon. Keith Sydnor	
Montgomery County				
Executive	Hon. Marc Elrich	Y	Mr. Richard Madaleno Ms. Fariba Kassiri	
Council	Hon. Tom Hucker		Mr. Gene Smith	
	Hon. Nancy Navarro			
Prince George's County				
Executive	Hon. Angela Alsobrooks		Ms. Tara Jackson	Y
Council	Hon. Calvin Hawkins	Y		
	Hon. Sydney Harrison			
Rockville	Hon. Bridget Donnell Newton			
Takoma Park	<i>Hon. Kate Stewart</i>	Y	Hon. Peter Kovar	
Maryland General Assembly	Hon. Brian Feldman			
<i>Virginia</i>				
Alexandria	Hon. Justin Wilson	Y	Hon. Kirk McPike	
Arlington County	<i>Hon. Christian Dorsey</i>	Y		
City of Fairfax	Hon. David Meyer	Y	Hon. Janice Miller	
Fairfax County	Hon. Jeff McKay	Y	Hon. James Walkinshaw	
	Hon. Penelope Gross	Y	Hon. Daniel Storck	
	Hon. Rodney Lusk	Y	Hon. Walter Alcorn	
Falls Church	Hon. David Snyder	Y	Hon. David Tarter	
Loudoun County	Hon. Juli Briskman	Y		
Loudoun County	Hon. Phyllis Randall	Y		
Manassas	Hon. Mark Wolfe	Y		
Manassas Park	Hon. Darryl Moore	Y		
Prince William County	Hon. Ann Wheeler	Y		
	Hon. Andrea Bailey	Y		
Virginia General Assembly	Hon. George Barker			

9/7/2022 11:41 AM

Total Voting Present: 22

Y = present, voting

P = present as alternate in addition to primary

AGENDA ITEM #6

ADOPTION OF CONSENT AGENDA ITEMS

ADOPTION OF CONSENT AGENDA ITEMS
September 2022

A. RESOLUTION AUTHORIZING COG TO RECEIVE A GRANT FROM THE FEDERAL TRANSIT ADMINISTRATION FOR ITS ENHANCING MOBILITY INNOVATION PROGRAM

The board will be asked to adopt Resolution R36-2022 authorizing the Executive Director, or his designee, to receive and expend grant funds from the Federal Transit Administration (FTA) Enhancing Mobility Innovation (EMI) Program; Catalog of Federal Domestic Assistance (CFDA) number: 20.530 – Public Transportation Innovation in the amount of \$250,000 in federal funds and \$62,500 in matching funds from the District, Maryland, and Virginia Departments of Transportation for a total budget of \$312,500. The purpose of the project will be to design an open-source, cross platform mobile application to convert existing and future vanpools into microtransit providers to provide additional mobility solutions to environmental justice populations. Partnerships with employers and vanpool operators in the region through Commuter Connections will be used to improve occupancy rates on existing vanpools and set the groundwork for new vanpool formation. This will create a self-sustaining cycle in which new vanpool formations will provide wider mobility options for commuters and additional microtransit routes. No COG matching funds required.

B. RESOLUTION AUTHORIZING COG TO PROCURE AND ENTER INTO A CONTRACT FOR REGIONAL WATER RESILIENCE ADVOCACY AND PUBLIC AFFAIRS SERVICES

The board will be asked to adopt Resolution R37-2022 authorizing the Executive Director, or his designee, to expend COG funds from the Department of Environmental Programs Regional Water Fund and COG water utility contributions in an amount not to exceed \$90,000. The resolution also authorizes the Executive Director, or his designee, to proceed with procurement of a contractor, or contractors, and enter into a contract to provide water resilience advocacy, public affairs, federal policy and legislative consulting services. COG is working with a coalition of regional water utilities and the Interstate Commission on the Potomac River Basin to secure federal funding for a study regarding a secondary water supply for the District of Columbia and surrounding jurisdictions, and for implementation of the study recommendations. The selected firm will work with COG and our member water utilities to refine and implement a strategic legislative plan for COG and partners to execute, including identification of legislation, dates, and member engagement.

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.

PROCUREMENT POLICY

October 2021

PROCUREMENT POLICY

Adopted October 13, 2021

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

Contributing Editors: Julie Mussog, CFO, Rick Konrad, Facilities and Purchasing Manager, Steve Kania, Communication Manager, Gail Crichlow, Contracts and Purchasing Specialist, Chris Pipinou, Contracts and Purchasing Specialist.

ACCOMMODATIONS POLICY

Alternative formats of this document are available upon request. Visit www.mwcog.org/accommodations or call (202) 962-3300 or (202) 962-3213 (TDD).

TITLE VI NONDISCRIMINATION POLICY

The Metropolitan Washington Council of Governments (COG) operates its programs without regard to race, color, and national origin and fully complies with Title VI of the Civil Rights Act of 1964 and related statutes and regulations prohibiting discrimination in all programs and activities. For more information, to file a Title VI related complaint, or to obtain information in another language, visit www.mwcog.org/nondiscrimination or call (202) 962-3300.

El Consejo de Gobiernos del Área Metropolitana de Washington (COG) opera sus programas sin tener en cuenta la raza, el color, y el origen nacional y cumple con el Título VI de la Ley de Derechos Civiles de 1964 y los estatutos y reglamentos relacionados que prohíben la discriminación en todos los programas y actividades. Para más información, presentar una queja relacionada con el Título VI, u obtener información en otro idioma, visite www.mwcog.org/nondiscrimination o llame al (202) 962-3300.

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Attachment A- Consent Agenda Approval of the Revised Procurement Policy October 13, 2021

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 Debriefings~~

~~Within five (5) days of a contract award or other time period set forth in the RFP/RFQ, an offeror may seek a debriefing by filing a notice with the Contracts and Purchasing Office. The debriefing is at COG's option based on available staff time and resources.~~

~~During the debriefing, the offeror may request information and discuss its proposal with the Manager or other COG staff whom the Manager requests to attend the debriefing; however, such information shall not include the other proposals, proposed prices, or rankings of other offerors.~~

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 Debriefings

~~An offeror may seek a debriefing by filing a notice with the Contracts and Purchasing Office. It is at the discretion of COG's Purchasing Manager to schedule such a meeting based on the availability of time and staff to accommodate the request.~~

~~During the debriefing, the offeror may request information and discuss its proposal with the COG staff, whom the Purchasing Manager requests to attend the debriefing. Unlike RFP/RFQ debriefs this type of debriefing can include the release of the bid tabulation including price and ranking of bidders.~~

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 October 13, 2021, and became effective as of ~~xx/xx/xxxx~~

Board Resolution ~~Rxx-xxxx~~ (Attachment A)



Metropolitan Washington
Council of Governments

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

mwcog.org

AGENDA ITEM #7

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY GENERAL MANAGER/CEO INTRODUCTION AND PRIORITIES



Randy Clarke
General Manager and CEO
Washington Metropolitan Area Transit Authority

Randy Clarke joined the Washington Metropolitan Area Transit Authority (WMATA) as General Manager and CEO in July 2022. He's not just Metro's GM/CEO; he's also a customer who uses the service every day. The insight Randy gets from his daily rides helps him lead Metro to innovate and improve on behalf of customers.

Before joining Metro, Randy served more than four years as President and CEO of Capital Metro in Austin, Texas, where he helped secure one of the country's largest voter-approved transit referendums in US history. The initiative, called Project Connect, resulted in a multi-billion-dollar infusion for CapMetro's capital program.

Prior to his work in Austin, Randy held key leadership positions in public transportation around the country. He served as the Vice President of Operations and Member Services for the American Public Transportation Association (APTA) in Washington DC from 2016 to 2018.

Randy also spent more than six years in various positions with the Massachusetts Bay Transportation Authority (MBTA) in Boston, including Deputy Chief Operating Officer and Assistant General Manager of Engineering, Maintenance and Preparedness, and Senior Director of Security.

Originally from Nova Scotia, Canada, Randy holds a bachelor's degree in Political Science and History from Acadia University and a master's degree in Public Policy from the University of Southern Maine. He lives in Washington DC with his wife Kimberley (they met in Boston while riding the subway to a Red Sox game) and their two dogs.

You can follow Randy on Twitter [@wmataGM](https://twitter.com/wmataGM).

AGENDA ITEM #8

EFFORTS TO INCREASE WATER SUPPLY RESILIENCE IN THE METROPOLITAN WASHINGTON REGION



CONGRESS MUST ACT NOW: Include the Holmes-Norton Washington Aqueduct Provision in WRDA 2022, Authorize and Appropriate Funding for Secondary Water Source

Problem – Single Source of Water for Major Metropolitan Area

The Potomac River is the metropolitan Washington region’s primary source for drinking water. It is the only source of drinking water for the District of Columbia and Arlington County— the only major metropolitan area of the country to have no redundancy built into the water system. If there were an accidental chemical spill upstream like the Elk River spill in West Virginia in 2014, a natural disaster, severe drought, or a deliberate attack on the region’s water infrastructure, there is no backup source for water [storage or supply]. A severe incident would affect most of the approximately 5.7 million people who live and work in the area, or the federal, state, and local government entities that need reliable water infrastructure to operate in the region. The full impact of a water supply shortage is not fully known, but the potential for a humanitarian and economic crisis should not be underestimated.

Did you know:

- The Potomac River provides 78% of the water for the metro region. The Potomac provides 100% of water for Washington, DC and Arlington, VA via the Washington Aqueduct.
- A total loss of Potomac River water supply would lead to all of DC and Arlington losing water within a 24-hour period and much of Fairfax, VA and suburban Maryland losing water within days.

Complicating things further: Washington, DC and the surrounding metropolitan region do not control this source of water – the US Army Corps of Engineers (USACE) does. Water is supplied through the Washington Aqueduct, which is owned and operated by the USACE. Therefore, the resiliency of the water supply for the region requires action from the Federal government in collaboration with state and local partners working together to address this potentially devastating, but avoidable water supply challenge.

Solution – Federal Government Action

Congress must authorize—and provide appropriations for—the USACE to move forward with a feasibility study to address this problem. In the [2022 U.S. Army Corps of Engineers \(USACE\) Report to Congress on Future Water Resource Development](#) the metropolitan Washington region was identified as eligible for authorization of a feasibility study in the Water Resources and Development Act (WRDA) 2022 to address its current single source for water and significantly improve the region’s security and resilience.

ASK – Include the Holmes-Norton Washington Aqueduct Provision in WRDA 2022, Authorize and Appropriate Funding for Secondary Water Source

The USACE took the first step by including a recommendation for a feasibility study for a secondary water source for the region. In addition, the U.S. House of Representatives included authorization for a study in their recently passed WRDA 2022 ([H.R. 7776](#)). Given the potential vulnerabilities to the sole source water supply in the metropolitan Washington region, **Congress must act now** to address a secondary water source through WRDA and the annual appropriations process.

NATIONAL CAPITAL REGION WATER SUPPLY RESILIENCE

– FACT SHEET –



Interstate Commission on the Potomac River Basin (ICPRB)

30 W. Gude Drive, Suite 450
Rockville, MD 20850
Tel: (301) 274-8120

The Potomac River supplies 78% of the Washington, DC, metropolitan area's water, with public water supply intakes located in the river just upstream of the city. During drought, water from three upstream reservoirs can be released if necessary to increase river flow. Public water suppliers in the region utilize the Potomac River as a source of raw water and distribute treated water to homes, businesses, and critical government facilities. Combined, they serve five million residents and over three million workers in the District and surrounding Maryland and Virginia jurisdictions. The region depends on water for use by residents and workers for drinking, cooking, bathing, and flushing toilets, use by hospitals and other medical facilities, fire suppression, and cooling water for industrial air conditioning systems.

Current threats to the region's water supply include more severe droughts due to climate change and potential spills polluting the Potomac River. The region's water suppliers rely heavily on the Potomac River and would be faced with moderate to severe water shortages in the event of a loss of their Potomac supply. A shutdown of Potomac River intakes is predicted to result in a critical loss of water in some areas of the region after just one day.

ICPRB's 2017 study, [Washington Metropolitan Area Water Supply Alternatives](#), evaluated a suite of options to address increased drought severity in the face of climate change and identified use of a local quarry to store an emergency backup supply of water as a recommended option. A subsequent ICPRB study, the [Washington Metropolitan Area Water Supply Reliability Study: Demand and Resource Availability Forecast for the Year 2050](#) (2020), updated and refined the evaluation of benefits of additional supplemental storage. Another expert study, the *National Capital Region Water Supply and Distribution System Redundancy Study*, completed in 2016 for the Metropolitan Washington Council of Governments, concluded that raw water storage in a local quarry was an effective solution to the threat of water shortages. Other cities have also acquired quarries to increase resiliency. For example, Atlanta was formerly 100% dependent on the Chattahoochee River. As a solution, the city acquired the Bellwood Quarry Reservoir that increased its backup supply of water from 3 days to between 30 and 90 days.

In short, there are ways to increase the resiliency of the DC area's water supply. An existing quarry, located in Montgomery County, Maryland, could potentially be converted to a regional raw water storage reservoir with tunnels to carry water by gravity to Washington metropolitan area treatment plants. The estimated project cost is \$800 million. The time to start planning for such a facility is now.

The ICPRB is committed to continuing its role of assisting in the cooperative management of regional water resources and facilitating dialog between the multiple stakeholders where it has the authority, resources, and relevant expertise, in studying water resources problems, developing solutions, and sharing relevant information with policymakers and the public.

**METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS
777 NORTH CAPITOL STREET, NE
WASHINGTON, DC 20002**

**RESOLUTION SUPPORTING A FEDERAL WATER FEASIBILITY STUDY FOR THE METROPOLITAN
WASHINGTON REGION AS PART OF THE 2022 WATER RESOURCES AND DEVELOPMENT ACT**

WHEREAS, the Potomac River supplies 78 percent of the metropolitan Washington region's drinking water; and

WHEREAS, public water suppliers in the metropolitan Washington region utilize the Potomac River as a source of raw water and distribute treated water to homes, businesses, and critical government facilities, serving five million residents and over three million workers in the District and surrounding Maryland and Virginia jurisdictions; and

WHEREAS, the federal government has provided treated water to the District of Columbia and parts of Northern Virginia since the time of the Civil War, ensuring that the seat of government is supplied with a reliable and safe source of water for drinking, sanitation and fire suppression; and

WHEREAS, threats to the region's water supply such as severe droughts due to climate change, accidental spills polluting the Potomac River, and other risks, could all result in a complete loss of Potomac River water supply and severe regional water shortages; and

WHEREAS, COG's Region United Metropolitan Washington Planning Framework for 2030 calls for integrated planning to achieve goals for high capacity transit, housing targets, and sustainability in our region, all of which depend upon a resilient and abundant regional water supply; and

WHEREAS, in October 2020 the Board adopted Resolution R45-2020 endorsing climate resilience goals of becoming a Climate Ready Region by 2030 and fully Resilient Region by 2050, and strong actions are needed to meet the region's climate mitigation and resiliency goals, including actions to improve regional water supply resilience against drought and other climate threats; and

WHEREAS, the 2022 USACE Report to Congress on Future Water Resource Development identified the metropolitan Washington region as eligible for authorization of a feasibility study in the Water Resources Development Act (WRDA) 2022 to address the Washington Aqueduct's current single source for water and significantly improve the region's security and resilience; and

WHEREAS, it is expected that the feasibility study results will include recommendations for improving water supply resilience in the metropolitan Washington region, such as off-river water storage options identified in previous studies carried out by COG and others; and

WHEREAS, the U.S. House of Representatives included authorization for a study in its version of WRDA 2022 (H.R. 7776), which passed on June 8, 2022.

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

The Board strongly supports provisions of the U.S. House of Representatives WRDA 2022 bill (H.R. 7776) that authorize a study of water supply, including the identification of a secondary water source and additional water storage capability for the metropolitan Washington region, and urges the Congress to authorize and appropriate funding for this study. The board directs the Executive Director, or his designee, to send a letter to leadership of the appropriate congressional committees stating COG's support for authorization and appropriation of federal funding for a study of water supply. Furthermore, after the water supply study is completed and a preferred alternative is identified, the Board authorizes COG to work with other partners in a coalition to obtain full project approval, funding, and subsequent project execution to mitigate threats to and improve resilience of the region's water supply.

AGENDA ITEM #9

REGIONAL ELECTRIC VEHICLE DEPLOYMENT

**METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS
777 NORTH CAPITOL STREET, NE
WASHINGTON, DC 20002**

RESOLUTION ENDORSING EFFORTS TO SUPPORT ELECTRIC VEHICLE DEPLOYMENT

WHEREAS, in 2019, the Intergovernmental Panel on Climate Change updated its guidance to recognize that the world is already experiencing the impacts of global warming and to avoid most severe climate impacts greenhouse gas emissions must fall by at least 45 percent from 2010 levels by 2030 and to carbon neutrality by 2050; and

WHEREAS, metropolitan Washington is already experiencing the impacts of a changing climate, including increases in temperature and precipitation; and

WHEREAS, COG's Region Forward Vision includes a sustainability goal that calls for a significant decrease in greenhouse gas emissions, with substantial reductions from the built environment and transportation sector; and

WHEREAS, in October 2020 the Board adopted Resolution R45-2020 endorsing an interim 2030 climate mitigation goal of 50 percent greenhouse gas reduction below 2005 and climate resilience goals of becoming a Climate Ready Region by 2030 and Climate Resilient Region by 2050; and

WHEREAS, CEEPC recognizes that strong actions are still needed to avoid the most severe climate impacts and developed the 2030 Climate and Energy Action Plan to include recommended actions to meet the region's climate mitigation and resiliency goals; and

WHEREAS, the plan facilitates an equitable transition toward zero emission vehicles, in addition to zero energy buildings, zero waste, and assessing the region's climate hazards and vulnerabilities; and

WHEREAS, as discussed at the 2022 COG Leadership Retreat, Electric Vehicle (EV) planning and deployment is a priority for the region and COG's member governments; and

WHEREAS, increased collaboration to support EV plans, programs, and policies within local governments and as a region is necessary to transition towards zero emission vehicles and meet our regional goals outlined in the 2030 Climate and Energy Action Plan.

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

1. COG's Climate, Energy and Air Program will establish and maintain an Electric Vehicle (EV) Deployment Clearinghouse. This clearinghouse will provide members information on: (1) local EV Plans (government and community-wide), (2) local planning, zoning, permitting, and incentive policies related to EVs and EV infrastructure; (3) local EV and EV charging station related procurement and installation/operations support agreements; and (4) grant and partnership opportunities for EVs and EV charging stations.

2. Establish a Regional EV Deployment Working Group under COG's Climate, Energy and Environment Policy Committee (CEEPC), to serve as a forum for members to collaborate and coordinate actions related to deploying EVs and EV infrastructure. The working group will focus on: (1) information sharing and collaborating on local EV deployment plans; (2) developing templates for policies pertaining to local planning, zoning, and permitting to bring efficiencies to the process of EV infrastructure installation; (3) developing model partnership agreements (for site hosting, O&M of charging stations, etc.) for use by member governments; (4) developing white papers on "deal structures" for local governments to consider when working within the industry to build EV charging infrastructure; (5) developing model incentive programs for consideration by members to expedite EV purchase and/or EV infrastructure installation; (6) identifying and supporting opportunities to pursue regional grants for EV and/or EV infrastructure.

AGENDA ITEM #10

OTHER BUSINESS

AGENDA ITEM #11

ADJOURN