



Heart of Texas Council of Governments

Procurement Policy and Procedure Manual

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INTRODUCTION

HOTCOG is the regional organization through which local governments consider issues and cooperate in solving area wide problems. Through HOTCOG, local governments also initiate efforts in anticipating and preventing problems, thus saving public funds. The 6-county HOTCOG service region is growing, becoming more diverse, and constantly changing. In order to address the needs of citizens and businesses, local governments are providing leadership to guide regional development wisely and manage change constructively.

Councils of Governments (COGs) are political subdivisions of the State of Texas. A COG may purchase goods or a service only if the COG complies with the same provisions for purchasing goods or a service that are equivalent to the provisions, including Chapter 252, Local Government Code and Chapter 2254, Texas Government Code, applying to a local government. COGs must also comply with certain federal requirements when procurement involves the expenditure of federal funds.

Overview of Purchasing Authority

Texas law provides that a COG may enter into a contract for the expenditure of more than \$50,000.00 only if it complies with certain procurement procedures. The options include competitive sealed bidding, competitive sealed proposals, interlocal agreements, and other more specialized contracting vehicles. This manual covers those procurement methods in detail.

Texas state law does, however, provide a number of exceptions to procurement requirements. For example, the Professional Services Procurement Act sets out a special process for selecting architects, engineers, and land surveyors (Tex. Gov. Code Ch. 2254).

This manual also discusses guidelines for purchases under \$50,000.00, as well as those subject to competitive procurement exceptions, although Texas state law does not mandate a set process.

This manual is intended to serve as the primary reference for all procurements conducted within HOTCOG, and a resource for anyone who is interested in doing business with HOTCOG. This manual demonstrates the commitment HOTCOG has to ensuring consistency in its procurement practices, transparency in the process, and the fair and equitable treatment of those who participate in procurements with HOTCOG.

PREFACE

Procurement happens at varied levels within HOTCOG and it is recognized that in order for the day- to-day business operations of the agency to flow continually, there are times when it may be necessary to decentralize the procurement process. In these instances, procurement authority can be delegated to the various departments within HOTCOG as determined by the Executive Director.

All personnel with delegated purchasing authority shall be responsible for using that authority in conformance with the Heart of Texas Council of Governments procurement policies and procedures.

Even if prior procurement authority has been delegated, certain steps of the procurement process require the mandatory involvement of the appropriate Department Head, and are listed below:

Request for Proposal Development:

1. Planning of the RFP
2. Scope Development
3. Scoring Criteria Development
4. Evaluation Process/Final Candidate Selection

ARTICLE I

GENERAL PROVISIONS

ARTICLE I GENERAL PROVISIONS

PART A: Purpose

1.0 The purpose of the HOTCOG Procurement Manual is to provide a resource of procurement best practices for HOTCOG departments so that they may buy goods and services for HOTCOG in accordance with these principles.

PART B: Objectives, Construction and Application

1.1 Objective: The objective of the Procurement Policy is to provide the Heart of Texas Council of Governments, herein after referred to as “HOTCOG,” with the requisite parameters for procuring goods and services under applicable state and federal guidelines. The policies and procedures outlined herein are intended to comply with the requirements of Chapter 252 of the Texas Local Government Code, as well as the requirements of OMB Uniform Grant Guidance Super Circular 2 CFR 200 (Oct. 2015), Circular A-102 and A-87 and the Texas Uniform Grant and Contract Management Standards. More specifically, the underlying purposes and policies of this Procurement Policy are stated below:

- to simplify, clarify, and reflect the law governing procurement by HOTCOG;
- to permit the continued development of uniform procurement policies and best practices, with regard to applicable procurement laws;
- to increase public confidence in public procurement;
- to ensure the fair and equitable treatment of all persons who participate in the procurement process;
- to provide increased economy and efficiency in procurement activities by avoiding unnecessary, unwarranted and duplicative procurements;
- to foster free and open competition;
- to provide safeguards for the maintenance of a procurement system of quality and integrity; and
- to ensure that full accounting is available and given for all procurements.

1.2 Interpretation: This Procurement Policy shall be construed and applied to promote its underlying purposes and policies. The guidelines set forth herein are intended to comply with all applicable state, local, federal and grantor agency rules, regulations, policies and procedures. Detailed operating procedures, which incorporate this Procurement Policy, are to be maintained by the Finance Department of HOTCOG.

1.3 Grantor Agency Policies and Procedures

At no time are these policies intended to be less stringent than required by the grantor agency from which HOTCOG receives specific funds. The written procurement procedures prepared by the source-granting agency shall be followed when funds are expended for the operation of a specific program.

1.4 Standard Terms and Conditions

The Finance Department is responsible for maintaining the Standard Terms and Conditions for all contracts and purchase orders.

1.5 Gender Neutral

All personal pronouns used in this Procurement Policy, whether used in the masculine, feminine or neuter gender, shall mean to include all genders.

1.6 Singular-Plural

Words in the singular include the plural and vice-versa.

1.7 Headings

The headings contained in this Procurement Policy are for reference purposes only and shall in no way affect the meaning or interpretation of this Policy.

1.8 Conflicts

In the event of a conflict between the terms of this Procurement Policy and any applicable state, local or federal statute, code or regulation, or the procurement procedures of the applicable grantor agency, the applicable statute, code, regulation or grantor procurement policy shall control.

1.9 Severability

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

1.10 Free and Open Competition

All procurement transactions, regardless of dollar value, shall be conducted in a manner so as to provide maximum free and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors who develop or draft specifications and other requirements for solicitation instruments (RFPs, ITBs, etc.) will be excluded from competing for such procurements.

1.11 Supplementary General Principles of Law

Unless in conflict with particular provisions of the Procurement Policy, principles of law and equity, including the Uniform Commercial Code, contracts, agency, fraud, misrepresentation, duress, coercion and mistake, shall supplement this Policy.

1.12 Good Faith

The Procurement Policy requires that all parties involved in the negotiation, performance and administration of contracts act in good faith.

1.13 Effective Date

The Procurement Policy applies only to contracts solicited or entered into after the effective date of this Policy: date of approval, September 27, 2018.

1.14 Adoption by HOTCOG

The Procurement Policy is adopted in whole by HOTCOG Executive Committee.

1.15 Public Access to Procurement Information

Procurement information shall be a public record to the extent provided by the Texas Open Records Act and Freedom of Information Act as applicable, and shall be available to the public as provided therein. If a proposal contains information that the bidder considers proprietary and does not want disclosed to the public or used for any purpose other than the evaluation of the offer, all such information must be indicated and clearly marked on each page of the proprietary or confidential document(s).

PART C: Definition of Terms

"Heart of Texas Council of Government (HOTCOG)" The Heart of Texas Council of Governments created under Chapter 391 of the Texas Local Government Code, a political subdivision of the State of Texas.

"HOTCOG Executive Committee" The governing body of HOTCOG. Includes the Full Executive Committee or the Executive Committee.

"Best Value" An assessment of the return which can be achieved based on the total life cycle cost of the item. Includes cost/benefit analysis to define the best combinations of quality, services, time, and cost over the useful life of the acquired item.

"Best Value Bid" A procurement method that emphasizes value over price. The best value might not be the lowest price, generally achieved through the Request for Proposal (RFP) method.

"Bidder" Any person that submits a bid in response to an Invitation to Bid ("ITB").

"Bidder's List" The pre-qualified list of sources used in acquiring goods and services.

"Bid Splitting" The intentional splitting of a single purchase into smaller purchases to avoid formal bidding as required by the Texas Local Government Code. Using several purchase orders during a fiscal year to procure goods/services equal to or greater than the State bid law requirement, for items that should be combined in a single purchase. The code defines three bid-splitting practices: see Component Purchases, Separate Purchases, and Sequential Purchases.

"Buyer" or **"Department Head"** Agency personnel designated responsible for all procurement activity within HOTCOG.

Operations Officer – HOTCOG Executive Director

Financial Officer – HOTCOG Director of Administration

Department Head - HOTCOG Designated Department Head

"Competitive Sealed Proposals" The procurement method whereby HOTCOG prepares Requests for Proposal, sends them to interested offerors and/or publishes an announcement in local periodicals. To be considered, proposals must conform to the RFP. The award of a contract is not generally made at the time proposals are opened; rather, after evaluation, the award is made to the offeror whose proposal is determined to be the most advantageous to HOTCOG, considering the relative importance of price and the other evaluation factors set forth in the RFP.

"Component Purchases" Purchases of the component parts of an item that in normal purchasing practices would be purchased in a whole.

"Construction" The process of utilizing labor to build, alter, repair, improve or demolish any structure, building, or other public improvement. It does not include the routine operation, repair or maintenance of existing structures, buildings or real property.

"Contract" (except as used in the definitions of "grant" and "subgrant") A legally binding agreement between HOTCOG and a vendor or provider or contractor; or a legally binding agreement between a contractor and a subcontractor. Also refers to purchase orders.

"Contractor" Any person, vendor or provider, or entity having a contract with HOTCOG.

"Contract Administrator" A buyer or program manager responsible for the administration of a particular contract.

"Cooperative Purchasing" Procurement conducted by, or on behalf of, more than one public procurement entity including, but not limited to, any county, city, town and other corporate or political entity organized under state entities. Efforts may result in contracts that other entities may "piggyback." Also includes the General Services Commission.

"Designated Authorizing Party" The HOTCOG representative designated to authorize and approve purchases based upon dollar amount and internal organizational structure.

"Disadvantaged Business Enterprise" ("DBE") A for-profit corporation in which at least 51% of all classes of the shares of stock is owned by one or more persons who are economically and socially disadvantaged because of their identification as members of certain groups, including, but not limited to, African Americans, Hispanic Americans and women, as determined and classified by the Small Business Administration (SBA) and/or States of Texas and Arkansas.

"Equipment" Tangible, non-expendable property that is fixed in position in prescribed places and does not lose identity or become integral parts of other items or installations.

"Federal Financial Assistance" Assistance provided by a federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance or direct appropriations; but does not include direct federal cash assistance to individuals. Includes awards received directly from federal agencies, or indirectly through other units of state and local governments.

"Grant" or "Grant-in-Aid" An award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance, paid or furnished by the state or federal government to HOTCOG or other eligible grantee to support a program authorized by law that provides financial assistance through grant or contractual arrangements. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services or construction; a contract resulting from such an award is not a grant, but a procurement contract. The term does not include technical assistance programs which provide services instead of money or other assistance in the form of general revenue sharing, loans, loan guarantees, insurance or contracts which are entered into and administered under procurement laws and regulations.

"Historically Underutilized Business" ("HUB") A corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities is owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians, who have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control; a sole proprietorship formed for the purpose of making a profit that is 100 percent owned, operated and controlled by a person described in Paragraph (A):

- a partnership formed for the purpose of making a profit in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A). Those persons must have proportionate interest in the control, operation, and management of the partnership's affairs;
- a joint venture in which each entity in the joint venture is a historically underutilized business under this subdivision; or
- a supplier contract between a historically underutilized business and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of supplies or materials or otherwise warehouses and ships supplies.

"Inter-local Contract/Agreement" An agreement between HOTCOG and an eligible participating government under the Inter-local Cooperation Act, V.T.C.A. Government Code Chapter 791, by which the parties agree to jointly perform procurement functions.

"Invitation to Bid" ("ITB") All documents, whether attached or incorporated by reference, utilized in soliciting competitive or multi-step sealed bids.

"Micro-Purchase" A purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold of \$3,500.00 in order to expedite the completion of its lowest-dollar small purchase transactions to minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1, and can be periodically adjusted for inflation.

"Minority Business Enterprise" ("MBE") A small business concern wherein at least 51% is owned or controlled in management and daily operations by women or minorities, including, but not limited to, "blacks, Hispanics, Asian-Americans, American Indians and Alaskan natives."

"Negotiated Procurement" A process similar to the competitive sealed bidding procurements except that offerors and HOTCOG discuss or negotiate aspects of the proposal, such as price. Negotiations are held with all offerors in the competitive range, in the order of ranking, based upon the evaluation factors set out in the RFP.

"Offeror" A person that submits a proposal in response to a Request for Proposal (RFP).

“Person” Any business, individual, group of individuals, union, committee, club, organization, vendor or provider, contractor or entity.

“Procurement” The buying, purchasing, renting, leasing, or acquiring of any supplies, equipment or services. It also includes all activities that relate to obtaining any supplies, equipment or services, including, but not limited to, the description of requirements, selection and solicitation of sources, preparation and award of contracts, issuance of purchase orders, and all phases of contract administration.

“Procurement Instrument” The document(s) used to create a legal, binding purchase commitment/contract between HOTCOG and a vendor or provider or contractor. This document may be a purchase order, blanket purchase order or a contract depending on the procurement method.

“Program Management” A coordinator, manager or director responsible for the administration of a particular program.

“Purchase Order” (“P.O.”) A type of procurement contract and is a legally binding agreement between HOTCOG and a vendor or provider.

"Request for Proposal" ("RFP") The document used to solicit proposals from potential providers for goods and services. Price usually not a primary factor; provides for the negotiation of all terms, including price prior to contract award.

“Purchase Requisition” An internal document created by a requestor authorizing the commencement of a purchasing transaction and typically will include a detailed description of the need and other information that is relative to the transaction.

"Responsible Bidder/Offeror" That the bidder or offeror has the capability to meet all of the requirements of the solicitation and the subsequent contract in all respects, including financial, to fully perform the contract requirements; must be able to fully document the ability to demonstrate integrity and reliability to provide good faith performance.

"Responsive Bidder/Offeror" A bidder or offeror that has submitted a bid or response that fully conforms in all material respects in all requirements to the ITB or RFP, including all form and substance.

“Scope of Work” A detailed, written description of the conceptual requirements for the project contained within a Request for Proposal. The scope of work should establish a clear understanding of what is required by the entity.

“Separate Purchases” Purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

“Sequential Purchases” Purchases made over a period of time that in normal purchasing practices would be purchased in one purchase.

"Services" The furnishing of labor, time or effort by a contractor, not involving the delivery of a specific, tangible end product other than reports which are merely incidental to the required performance. The term shall not include employment agreements or collective bargaining agreements. (See Personal, Planning or Professional Services)

"Small Business Enterprise" A business concern, including affiliates, which is independently owned and operated and which is not dominant in its field of operation, and meets the size standard requirements of 13 CFR Part 121.

"Specifications" A precise description of the physical or functional characteristics, or the nature of a product, good, service or construction item. A description of what the purchaser seeks to buy and what a bidder must be responsive to in order to be considered for award of a contract. Specifications generally fall under the following categories: design, performance, combination (design and performance), brand name or approved equal, qualified products list and samples.

"Sub-grant" An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible sub-grantee. The term includes financial assistance when provided by contract, but does not include procurements or any form of assistance which is excluded from the definition of "grant" in this section.

"Sub-recipient" Any entity that receives federal assistance passed through from a prime recipient or another sub-recipient to carry out or administer a program.

"Supplies" All tangible personal property other than "equipment" as defined in this part.

"Vendor or provider" An entity that is responsible for providing generally required supplies, equipment or services to be used by HOTCOG in a particular program, either by the recipient, sub- recipient or the participants. The procurement agreement may either be in the form of a purchase order or a contract.

"Women-Owned Business" A small business concern wherein at least 51 percent of the small business concern is owned by one or more women, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women and the management and daily business operations of the small business concern are controlled by one or more women.

ARTICLE II

PROCUREMENT ORGANIZATION

This article covers the role and responsibilities relative to procurement within HOTCOG and outlines specific areas of procurement approvals needed at various levels.

ARTICLE II
PROCUREMENT ORGANIZATION

PART A: Organization and Contract Administration

2.0 Executive Committee

Establishes HOTCOG Procurement Policy

2.1 Executive Director

Shall be responsible for compliance with and implementation of these policies

2.2 Director of Administration

- Shall be responsible for the administration of these policies and recommends policy changes to the Executive Director and the Executive Committee.
- Shall be responsible for the compliance and implementation of these policies.
- Shall review and approve certain procurement actions to avoid unnecessary or duplicative purchases.
- Shall analyze lease and purchase alternatives to determine the most economical and practical procurement.

2.3 Department Head or Designee

Shall be responsible for:

- Processing procurement requests;
- classification of purchases;
- selection of vendor, providers or contractors;
- maintaining and updating the Bidders' List;
- executing purchase orders and contracts;
- monitoring the terms and conditions of the purchase orders and contracts;
- ensuring the complete and accurate documentation of all procurements;
- maintaining all procurement files and records; and
- all other responsibilities assigned by the Executive Director

2.4 Authorization of Purchases

The Purchase Requisition should contain the following approvals to correspond to the total cost:

- Program Management, Department Head and the Director of Administration for all purchases of \$.01 to \$3,500.00
- Program Management, Department Head and the Executive Director or designee for all purchases of \$3,500.01 to \$49,999.99
- The Executive Committee for all purchases of \$50,000 and above

2.5 Pre-commitment Documents

Pre-commitment documents are purchase requisitions and contract action notices, Interlocal agreements, and are used to initiate procurement transactions. These documents provide a system of authorization and documentation, and should contain the following information:

- date of request;
- department, including contact person;
- date required;
- quantity;
- description of goods and/or services requested;
- authorized signature(s);
- actual or estimated cost;
- project code(s); and
- delivery destination.

2.6 Procurement Instrument

Procurement instruments include Purchase Requisitions and Purchase Orders, Interlocal agreements, or contracts. Each procurement instrument must contain the approval of the Director of Administration, Department Head and if applicable, the Executive Director, which will certify that the purchase satisfies the appropriate bid procedures and applicable grant requirements or restrictions, that adequate funds have been authorized and that appropriate approval(s) have been granted. Purchase Orders are only issued by the Director of Administration.

2.7 Monitoring of Programs

Department Heads and the Director of Administration shall have the responsibility to monitor grant, sub grant funded programs, and all procurements. The monitoring system shall:

- ensure adherence to the system established for the award and monitoring of contracts;
- ensure accountability;
- ensure that contract goals and obligations are established in unambiguous terms;
- require audits to be conducted at regular intervals;
- require prompt corrective action upon evidence of any violations; and
- identify in writing all problems, corrective actions and plans.

2.8 Restrictive Competition Practices Prohibited

Prohibited restrictive practices include, but are not limited to:

- requiring unnecessary experience and excessive bonding;
- placing unreasonable requirements on firms in order to qualify to do business;
- organizational conflicts of interest;
- non-competitive pricing practices between firms;
- non-competitive awards to consultants that are on retainer contracts;
- "brand name" specifications;
- overly restrictive specifications; and
- arbitrary action in the procurement process.

ARTICLE III

PURCHASES OF \$50,000 and UNDER

Non-Competitive and Competitive

Bidding limits are established by law to ensure that sizeable purchases are subjected to fair competition among available, responsible contractors and suppliers and that HOTCOG obtains the best value possible. Even though certain purchases are exempt from the statutory requirements for bids, there will still be adequate controls and competition. This article describes these varied categories of purchases.

ARTICLE III
PURCHASES OF \$50,000.00 and UNDER

PART A: Non-Competitive and Competitive Purchases

3.0 A non-competitive purchase is defined as the procurement of supplies, equipment, services, or other property, that does not cost more than \$50,000 in the aggregate. If the expenditure for a purchase is for less than \$50,000 (“bid limit”), HOTCOG may proceed in one of three ways:

3.0.1 Non-Competitive Micro-Purchase – If the price is less than \$3,500.00, the purchase may be made on a non-competitive basis, meaning that only one (1) written price quotation is required, but three (3) quotes may be required at the discretion of the Executive Director for purchases over \$1,000. The selection of the supplier can be made to the convenience of the department without contacting additional suppliers; however, purchases must be distributed evenly among qualified suppliers.

3.0.2 Competitive Small Purchase – If the price is more than \$3,500.00, but less than \$50,000.00, price quotations should be solicited from three (3) or more qualified contractors/suppliers to ensure the price is fair and in line with the current market. The quotation must be in writing and can be obtained via mail, fax, or e-mail. The Department Heads may negotiate the price as appropriate, or source for additional suppliers, as required.

3.0.3 Competitive Formal Sealed Bid - If the amount of the purchase is nearly \$50,000, HOTCOG may still ask for a sealed bid. This approach gives several advantages, for example, if later purchases cause the total purchase price to exceed the bid limit, the competitive bidding requirement is satisfied. Provisions allowing later purchases on the same terms might be written into the original contract. In addition, bids may be more competitive with a sealed bid. And lastly, conflicts of interest between contractor or supplier and the procuring department are minimized.

Purchases may not be split to circumvent the competitive requirements or the bid limit.

3.1 Selecting the Supplier/Contractor and Making the Purchase

3.1.1 After price quotations are obtained for purchases below the bid limit, the procuring department selects a supplier/contractor and makes the purchase. The supplier with the lowest and best offer meeting the price expectation, reliability, and quality of the product should be used as a basis for selecting the supplier.

3.1.2 After the supplier/contractor has been selected, the request and all associated documentation will then be submitted. The Director of Administration will then authorize final approval and issue the Purchase Order.

3.2 **Departments do not have the authority to place an order with the supplier directly. A Purchase Order is a type of procurement contract and is a legally binding agreement between HOTCOG and a vendor or provider. The Purchase Order is the notice to proceed with the order and contains provisions that are enforceable under contract law. Items ordered without a proper purchase order will be returned upon receipt. Ordering without a purchase order could result in disciplinary action as determined by HOTCOG management.**

ARTICLE IV

PURCHASES OF \$50,000 and OVER FORMAL SEALED BID

Invitation to Bid

The use of formal sealed bids is a method for contracting goods and non-professional services that includes competitive bids, public opening of bids, and awards. As required by LGC 252, HOTCOG solicits formal sealed bids using an Invitation to Bid for contracts over \$50,000. The purpose of this article is to explain the laws, policies, and procedures regarding the formal sealed bid process.

Most formal bids are awarded on the basis of lowest responsible bid, with variations on formal bids including reverse auction and best value procurements. Best value procurements allow for the award decision to be determined by factors other than price. These approaches still follow the standard process, but vary in how the award of the procurement is decided.

ARTICLE IV
PURCHASES OF \$50,000.00 and OVER

PART A: Invitation to Bid

4.0 Elements of an Invitation to Bid (ITB)

Formal sealed bidding is to be used when the conditions in Chapter 252 of the Texas Local Government Code are applicable and when HOTCOG will award a contract to the lowest responsive and responsible bidder whose bid meets the terms and conditions of the Invitation to Bid. All ITBs must clearly state whether the contract will be awarded to the lowest responsive and responsible bidder or whether the contract will be awarded on the basis of best value, otherwise the default award will be made to the lowest bid meeting the defined specifications. When using sealed bidding as a method of procurement, the following steps are usually involved:

- Preparation of the ITB;
- Advertising the ITB;
- Receiving the bids;
- Opening the bids;
- Evaluating the bids;
- Award of the contract.

4.1 Preparing the ITB

The Invitation to Bid must describe the requirements of the requesting department clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements might limit the number of bidders and is prohibited. Specifications should not be written to favor a particular vendor or provider. “Brand name or equal” descriptions may be used as a means to define the performance or pertinent other requirements of the procurement. When used, the specific features of the name brand to be met by the bidder(s) must be clearly specified. The ITB also includes all documents (included or referenced) and are furnished to prospective bidders for the purpose of submitting a bid.

4.2 Reasonable Bidding Time

To avoid restricting competition, or paying higher than necessary prices, department personnel must consider establishing advance planning mechanisms to ensure a reasonable bidding time. In cases of limited bidding time, potential vendor or providers may be excluded from bidding and others may be forced to include contingencies for amounts that with proper time could have been eliminated. Other factors to consider when developing the ITB include:

- Degree of urgency
- Complexity
- Extent of subcontracting
- Notice times See 4.4: Advertising and Publicizing the ITB

- Geographic locations of bidders
- Internal processing times

4.3 Final Review of ITB

Each ITB must be thoroughly reviewed before issuance to detect and correct possible discrepancies or ambiguities that could limit competition or result in non-responsive bids. Department Heads, the Director of Administration and any appointed subject matter experts are responsible for reviewing the ITB documents.

HOTCOG may reject any or all bids when there are sound, documented business reasons in the best interest of the program.

4.4 Advertising and Publicizing the ITB

Section 252.041 of the Texas Local Government Code sets the general rules for the solicitation of bids. A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all ITBs.

- A short summary of the ITB shall be published in the local newspaper or a newspaper of general circulation under Legal Notices. The notice must include a description of the item or where the specifications may be obtained, the time and place for receiving and opening bids, name and address of person to receive bids, basis for bid, either lump-sum or unit pricing, method of payment and any bond requirements.
- Notice of the time and place at which the bids/proposals will be publicly opened must be published at least once a week for two consecutive weeks. The date of the first publication must be before the 14th day from the date of public opening.
- The solicitation package should be sent to all qualified persons on the Bidders' List **after the first newspaper publication**. Potential bidders may not be precluded from qualifying during the solicitation period.
- All ITBs will also be posted on the HOTCOG website.

4.5 Record Keeping in ITB Files

For each Invitation to Bid issued by HOTCOG, the following information will be maintained to show the distribution that was made: the date the ITB was issued and the names and e- mail addresses of prospective bidders who have been alerted about the ITB, a copy of the ITB that was advertised, and a copy of the notice that was advertised in the local newspaper. All other items relevant to the solicitation should also be maintained as part of the ITB file. The Department is responsible for keeping bid documents, including time-stamped documents that provide evidence of receipt, until the procurement is finalized, and then all procurement related documents must be sent to the Director of Administration for record keeping.

4.6 The Pre-Bid Conference

A pre-bid conference may be used as a means of briefing prospective bidders and explaining or clarifying specifications and requirements contained in the ITB as early as possible after the ITB has been issued, but BEFORE the bids have been opened. Verbal responses to questions asked during the pre-bid conferences shall not supersede written material. Any changes to the ITB must be made in writing and posted as Letter(s) of Clarification.

4.7 Letter(s) of Clarification

If it becomes necessary to make any material changes in quantity, specifications, delivery schedules, opening dates, or to correct a defective or ambiguous ITB, the changes should be made in writing and posted to the HOTCOG website via Letter(s) of Clarification.

Before the issuance of any Letter(s) of Clarification, the period of time remaining before the bid opening shall be considered to determine the need to extend the bid opening date, if necessary.

4.8 Cancellation of an ITB (before Bid Opening)

An ITB involves money, time, and effort for HOTCOG and prospective bidders and should not be canceled unless deemed in the best interest of the public, meaning that there is no longer a need for the supplies or services, or when there is a substantial amount of Letter(s) of Clarification, where a new and comprehensive ITB is the best solution. If an ITB is canceled, it shall be removed from the HOTCOG website and notice sent to the Director of Administration.

The notice of cancellation shall: (a) identify the project number and a description of the ITB, (b) give justification of the cancellation, and (c) indicate if there will be a re-solicitation or need in the future for the type of services or supplies involved.

4.9 Submission of Bids

To be considered for an award, a bid must be responsive, which means that the bid must comply with the material aspects of the ITB. Bids should be filled out and submitted in accordance with the instructions outlined in the ITB. Bids must also be received in the designated office outlined in the ITB not later than the exact date and time set forth for the opening of the bids. All bids must be date and time stamped by the Department Head, or department designee, to maintain the integrity of the sealed bidding process.

4.10 Withdrawal of Bids

A bid may not be withdrawn or canceled by the bidder, without the permission of HOTCOG.

4.11 Modification of Bids

Bids may not be altered or amended after the submission deadline. A non-material omission or error may be waived by the buyer if the omission or error:

- relates to a matter of form, not substance;
- has merely a negligible effect on price, quality, quantity, delivery or other contractual conditions; and
- does not otherwise prejudice the other bidders.

4.12 Opening of Bids

All Bids (and any modifications) received before the time set for the opening shall be kept secure and shall not be opened or viewed and should be kept in a secured area. If an ITB has been canceled, the bids shall be returned to the bidders.

Bids must be received by and opened on the date and time specified by the ITB. The Bid opening is open to the public; and if no member of the public attends, a member of another office shall act as a witness.

Late submissions will **not** be considered for award. Bids shall be date/time stamped upon receipt. Incomplete bids must be considered non-responsive, and may not be considered for award unless due to a non-material omission.

- If the incomplete proposal is due to a non-material omission, the buyer may seek to obtain the additional information or waive/correct the non-material omission.
- a non-material omission relates to a matter of form, not substance, or an insignificant mistake that may be waived or corrected without prejudicing the other bidders; i.e., the effect on price, quality, quantity, delivery or other contractual conditions is negligible.

All bids must be sealed with the identification number clearly marked on the outside. Only one bid/proposal may be submitted per envelope. An unmarked envelope may be opened to establish it contains a bid, and then resealed; and the unmarked bid will not automatically be eliminated; however, it does violate the integrity of the process.

Opened bids shall be kept on file and available for inspection, except to the extent properly designated as proprietary or trade secret. The department is responsible for keeping bid documents, including time-stamped documents that provide evidence of receipt, until the procurement is finalized, and then all procurement-related documents must be sent to the Director of Administration for record keeping.

4.13 Rejection of Bids

A bid that fails to conform to the essential requirements of the ITB shall be rejected.

A bid that fails to conform to the delivery schedule, or permissible alternates stated in the ITB, shall be rejected.

A bid shall be rejected when the bidder makes exceptions or imposes conditions that would modify requirements of the ITB or limit the bidder's liability to HOTCOG, since to allow the bidder to impose such conditions would be prejudicial to other bidders.

A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not concern the substance – as distinguished from the form – of the bid, or work an injustice on other bidders. A condition concerns the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

A bid may be rejected if the prices for any line items or sub-line items are materially unbalanced.

Bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date shall be rejected.

Low bids received from bidders determined to be not responsible shall be rejected. When a bid bond or guarantee is required and a bidder fails to furnish the bond or guarantee in accordance with the requirements of the ITB, the bid shall be rejected.

The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition. After submitting a bid, if all of a bidder's assets, or those parts related to the bid, are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Accordingly, HOTCOG shall reject the bid unless the transfer is effected by merger or operation of law.

4.14 Disqualification of Bids

The following occurrences require disqualification of the bid/proposals:

- Unsigned or unauthorized signatures on bids/proposals;
- Bids received after the date and time for opening; or
- Bids where prices are conditional on award of another bid or are subject to unlimited escalation.

HOTCOG may refuse to award a contract to or enter into a transaction with an apparent low bidder if that bidder is indebted to HOTCOG.

4.15 Evaluation of Bids

The Department Head, or department designee, will review the bids to determine the lowest responsive and responsible bidder. Evaluations are based on the criteria included below.

ITBs must clearly state the contract will be awarded to the lowest responsive and responsible bidder, otherwise the default award will be made to the lowest bid meeting the defined specifications.

4.16 Minor Informalities or Irregularities

A minor informality or irregularity is one that is a matter of form, not substance, and also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the ITB that can be corrected or waived and are not prejudicial to the other bidders. The defect or variation is immaterial when the effect on price, quantity, delivery, or other area is negligible when compared to the overall cost or requirements of the supplies or services being acquired. HOTCOG may give the bidder the opportunity, if deemed in the best interest of HOTCOG, to cure any resulting deficiency. Examples include:

- Returning the number of duplicate copies required by the ITB
- Furnishing all required forms (except signature page and price)

4.17 Mistakes in Bids

Current law prohibits corrections in bids after they are opened. If a mistake is purely clerical in nature and would create an undue hardship, the bidder may withdraw its bid. The only exception is when a bidder miscalculates the total price based on a unit price multiplied by quantity. In this case, the unit cost shall be presumed correct and the total price will be recalculated.

4.18 Responsible Bidder

The Department Head, or department designee, must determine that a prospective bidder is responsible and that the prices offered are reasonable before making an award recommendation. Personnel may use the price analysis techniques (see Article XI) as guidelines in making this determination. If the price is deemed unreasonable after a thorough price analysis has been conducted, the Department Head, or department designee, must recommend rejecting all bids.

4.19 Award

After bids are opened and reviewed by the Department Head or department designee, the appropriate HOTCOG personnel will make a recommendation for award to the lowest responsive and responsible bidder. The HOTCOG Executive Committee may approve and make the award to the recommended bidder or it may reject all bids.

Standards for Award:

- HOTCOG reserves the right to award to one or multiple bidders.
- Tie Bids: HOTCOG may award a contract by applying preference to a contractor who is a resident in the HOTCOG area. If all identical bidders are residents, or if none are residents, the contract must be awarded by drawing lots. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three (3) persons and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing. When an award is made by drawing by lot after receipt of equal low bids, the Department Head or department designee shall describe how the tie was broken by providing a written statement that the contract award was made in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot. This does not prohibit HOTCOG from rejecting all bids.

Other Preferences (this language must be included in the solicitation):

Recycled Products—HOTCOG is required to comply with Section 361.426, Texas Health and Safety Code, by giving preference to purchasing products made of recycled materials if the products meet applicable specifications as to quantity and quality. HOTCOG must regularly review its procurement procedures to ensure that the procedures: (1) do not explicitly discriminate against products made of recycled materials; (2) encourage the use of products made of recycled materials; and (3) allow HOTCOG, to the maximum extent economically feasible, to purchase products that may be recycled when they have served their intended use.

Environmental Standards*—HOTCOG may give preference to goods or services of a vendor or provider that demonstrates that the vendor or provider meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality, or require that a vendor or provider demonstrate that the vendor or provider meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.

*The environmental standards preference may be given only if the cost to the governmental agency for the goods or services would not exceed 105% of the cost of the goods or services provided by a vendor or provider who does not meet the standards.

4.20 Notification of Award

Once the contract has been approved, the selected bidders will be issued a Contract Action Notice to move forward.

ARTICLE V

PURCHASES OF \$50,000 and OVER FORMAL SEALED BID

Best Value Bid

A Best Value Bid “BVB” is a combination of competitive procedures designed to obtain the benefits of a sealed bid in combination with the establishment of evaluation selection criteria.

A sealed Best Value Bid may be used when the low bid price is not the sole factor.

This type of procurement method involves the submission of sealed bids which are then evaluated by a pre-selected evaluation committee, with a minimum of three (3) members, using definitive criteria other than the lowest price.

ARTICLE V
PURCHASES OF \$50,000.00 and OVER

PART A: Best Value Bid

5.0 The Best Value bidding process is a sealed bidding process and all sealed bidding procedures previously mentioned for the ITB procedure apply. In addition, the procedures outlined in this section are used.

The lowest cost is not always the best value for certain procurements. Departments must think strategically when considering their procurement needs and not make the mistake of obtaining enough just to meet their immediate need. The considerations should be: “What is the desired outcome of the procurement?” and “What is the best way to achieve this outcome?”

An example of a best value purchase might be the purchase of a heating and air conditioning unit. Departments should consider the total cost of ownership (“TCO”) when purchasing these units. The average life span of the unit, electricity consumption, maintenance record of the unit, and parts availability are a few considerations when looking at the TCO. In addition, departments might consider the qualifications and availability of the service technicians and the proposer’s performance history.

5.1 Receiving the Best Value Bid

The Department Head, or department designee, shall safeguard the BVB against disclosure to unauthorized persons other than the evaluation committee. Then they will conduct a responsiveness verification to ensure that all required information was provided, and remove any references to price or cost.

5.2 Evaluating the Best Value Bid

Contracts to be awarded on the basis of best value are typically evaluated based on the criteria below, including, but not limited to:

- the purchase price;
- life cycle cost;
- the reputation of the bidder;
- delivery terms
- the quality of the bidder's goods or services;
- proposer’s financial resources;
- installation costs;
- the extent to which the goods or services meet HOTCOG's needs;
- the bidder's past relationship with HOTCOG;
- the impact on the ability of HOTCOG to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- the total long-term cost to HOTCOG to acquire the bidder's goods or services;
- other relevant criteria specifically listed in the ITB. These factors may include any of those listed as evaluation factors for an RFP.

The Department Head, or department designee, shall establish a time period for evaluating the BVB. The period may vary with the complexity and number of Best Value Bids involved. However, the evaluation should be completed in an expeditious manner.

Evaluations shall be based on the criteria specified in the BVB. The Department Head or department designee will categorize each Best Value Bid as “acceptable,” “reasonably acceptable,” or “unacceptable.” Any bid that modifies or fails to conform to the essential requirements or specifications of the solicitation shall be considered nonresponsive and categorized as unacceptable. When a BVB is found unacceptable (either initially or after clarification), the Department Head, or department designee, shall score the evaluation criteria of that BVB with zero or minimal points.

The Department Head or department designee may proceed if, in his or her discretion, there are sufficient acceptable BVBs to ensure adequate competition. If there are not, the Department Head, or department designee, shall request bidders whose BVBs may be made acceptable to submit additional clarifying or supplementing information.

In initiating requests for clarification or additional information, the Department Head, or department designee, shall determine an appropriate time for bidders to submit all additional information, and incorporate such additional information as part of their BVBs submitted. Such time may be extended at the discretion of the Department Head, or department designee. If the additional information incorporated as part of a BVB establishes that the BVB is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

5.3 Clarifications and Award without Bidder Discussions

Letters of Clarification are limited exchanges between HOTCOG and bidders that may occur when an award without discussions is contemplated. If award will be made without conducting discussions, bidders may be given the opportunity to clarify certain aspects of their BVB (e.g., the relevance of the bidder’s positive or negative past performance to which the bidder has not previously had an opportunity to respond) or to resolve minor or clerical errors. Award recommendation may be made by the BVB evaluation committee members without engaging in oral discussions with the bidder.

5.4 Clarifications and Award with Bidder Discussions

Oral presentations by bidders requested by HOTCOG may augment written information. Oral presentations may occur at any time in the evaluation process, and are subject to the same restrictions as written information regarding timing and content. They provide an opportunity for dialogue among the parties. Pre-recorded videotaped presentations that lack real-time interactive dialogue are not considered oral presentations, although they may be included in bidder submissions, when appropriate.

A BVB solicitation may require bidders to submit part of their bids through oral presentations. Information pertaining to areas such as a bidder’s capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks

(or other types of tests) may be suitable for oral presentations. In considering the costs of oral presentations, the Department Head, or department designee, and the BVB evaluation committee should consider alternatives to on-site oral presentations, such as telephone or video conferencing.

When oral presentations are used, the BVB must provide bidders with sufficient information to prepare the presentations. Accordingly, the BVB may describe:

- The types of information to be presented orally and the associated evaluation factors that will be used;
- The qualifications for personnel that will be required to provide the oral presentations;
- The requirements for – and any limitations or prohibitions on – the use of written material or other media to supplement the oral presentations;
- The location, date, and time for the oral presentations;
- The restrictions governing the time permitted for each oral presentation;
- The scope and content of exchanges that may occur between HOTCOG’s participants and the bidder’s representatives as part of the oral presentations.

5.5 Certifications/Statements

HOTCOG requires that interested proposers comply with the certifications listed below:

1. Executive Orders 12549 and 12689, Debarment and Suspension, 29 CFR Part 98.510 and part 180, certification requirement;
 - No award may be made, at any tier, to a party who is debarred, suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.
2. Prohibition Against Lobbying with Appropriated Funds, 31 U.S.C. § 1352 (West Supp. 1994)
 - No appropriated funds may be expended by the recipient of a federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in the awarding, making, entering into, extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. Each person who requests or receives a federal contract, grant, loan or cooperative agreement must file a declaration affirming the above.
 - Certify that they have not made a prohibited payment:
 - upon submission of any request for consideration for award of a federal contract, grant, loan or cooperative agreement;

- upon receipt of such federal monies unless such a certification was previously filed; and
 - at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in said declaration.
- Any person receiving a sub-grant must make such a certification.
3. Certification Regarding Drug-Free Workplace Requirements
 4. Funding Agencies may require additional certifications and will be included as required.

5.6 Award

The Department Head, or department designee, shall compile the total scores based on the individual evaluation committee members' final score matrices. Based on these scores, the BVB evaluation committee selects the highest ranked bidder as the best respondent to the BVB. The appropriate HOTCOG personnel will make a recommendation for award. The HOTCOG Executive Committee may approve and make the award to the recommended bidder or it may reject all bids.

5.7 Notification of Award

Once the contract has been approved, the selected bidders will be issued a Contract Action Notice to move forward.

5.8 Protest Procedures (See Article X for full language)

Protest procedures must contain:

- contact person;
- time period for submission of protests;
- trigger events for submission, responses and replies to protests; and
- statements regarding right to reject any and all bids, right to recall all or portions of the BVB and right to terminate contract for convenience.

ARTICLE VI

PURCHASES OF \$50,000 and OVER FORMAL SEALED BID

Request for Proposal

A Request for Proposal “RFP” is a competitive process appropriate for procuring high technology goods and services and certain professional services that are not governed under the Professional Services Procurement Act, which has different rules for professional services such as architecture and engineering.

RFPs are appropriate for other goods and services where the best value may not be the cheapest item, but rather a combination of price and other factors as well.

This type of procurement method involves the submission of sealed bids which are then evaluated by a pre-selected evaluation committee, with a minimum of three (3) members, using definitive criteria other than the lowest price.

ARTICLE VI
PURCHASES OF \$50,000.00 and OVER

PART A: Request for Proposal

6.0 Using the Request for Proposal

The RFP process is complex and will often take longer than the other procurement methods mentioned. Requests for Proposals are often used for the following goods or services:

- Certain professional services such as consulting services, software design, and other services not covered by the Professional Services Procurement Act (Texas Government Code Chapter 2254);
- Data processing equipment and software;
- Telecommunication equipment and radio and microwave systems;
- Electronic distribution control systems, building energy management systems, and technical services related to those items; and
- Creation or modification of software systems.

When using the RFP as the procurement method, the department must specify all the criteria, including price, which will be considered in determining which proposal represents the overall best value to HOTCOG. Criteria that is objective (measurable) and subjective may be used to evaluate; although cost is not the primary factor, it should be a significant consideration when evaluating a proposal.

Advance Planning for the RFP Evaluation Process: The first step is to engage the Department Head to ensure proper guidance through the RFP process. As part of the early stages of the RFP development, departments must appoint evaluation committee members with a minimum of 3 to 5 people with the expertise for the product or service required. There is no maximum number of evaluators; however, the evaluation will become more complex and time consuming with larger numbers of people to coordinate. The evaluation committee should be comprised of members that bring as much knowledge as possible to ensure the best proposal is selected.

6.1 Final Review of RFP

Each RFP must be thoroughly reviewed before issuance to detect and correct possible discrepancies or ambiguities that could limit competition or result in non-responsive proposals. Department Heads and the Director of Administration, and any appointed subject matter experts are responsible for reviewing the RFP documents.

HOTCOG may reject any and all proposals.

6.2 The RFP Process

Generally, the steps listed below are part of the RFP process, and can be applied as applicable to the type of goods or services being procured.

- Department identifies the need and selects a lead for the solicitation
- RFP Document produced, reviewed, and approved as required
- Public Advertisement of the RFP
- Pre-Proposal Conference
- Submission of the proposals
- Evaluation of the proposals by HOTCOG
- Selection of two or more proposals rated most advantageous to HOTCOG
- Oral presentations from selected proposers (optional)
- Invitation to selected proposers to make Best and Final Offer (“BAFO”)
- Evaluation of BAFOs
- Contract negotiations with one or more parties whose BAFOs are selected
- Staff recommendation of most advantageous proposal
- Award of contract by HOTCOG Executive Committee

6.3 Elements of the RFP

The RFP may consist of the many sections listed below; however, the Department Head, or department designee, may delete, add or reorganize these sections to meet the proposal requirements upon approval by the Director of Administration.

- RFP cover page
- General Information
- Defined terms
- Overview of work
- Instructions for proposing
- Proposer qualifications
- Evaluation criteria
- Contract term and/or terms to extend contract
- Statement of Work
- Technical specifications, if relevant
- Engineering standards, drawings and artwork, if relevant
- Pricing schedule [price list(s) or line-item pricing, hourly]
- Contingent pricing (overtime and emergency work)
- Shipping and Freight requirements
- General terms and conditions
- DBE requirements
- Grantor agency requirements
- General information

- Packaging requirements
- Guaranty or warranty
- Bonding requirements
- Safety requirements
- Regulation, license, or permit requirements
- Attachments
- Exhibits
- On-site testing & inspections
- Protest procedures

6.4 Preparing the RFP

The request for proposal is better constructed when using a standard structure, and it is useful to divide the core sections of the RFP into categories and should, at a minimum, include the following:

Cover Page: A one-page summary of the main events to the RFP and includes the RFP Name and Project Number, Department name, opening date, pre-proposal conference information, HOTCOG contact name, number of copies to submit, address to submit or deliver proposal, and other details or instructions pertinent to the RFP.

Objective: A simple statement summarizing what HOTCOG intends to accomplish.

Background: A brief narrative providing historical information relative to the events driving the need for the RFP, and should be limited to information declared necessary to help proposers understand the requirements.

Statement of Work/Scope of Work: *The most important part of any RFP is this section.* This part contains the technical specifications, deliverables, and performance requirements of the goods or services being procured, and provides a general description of the answers to the questions what, when, where, and how. What does the department want? When is it needed? Where does the department want it? How many or how much does the department need? The purpose of writing an SOW is to assure that the proposer delivers what the user wants it to deliver. For this reason, the SOW should specify the performance requirements of the deliverables being requested, not merely describe them. The scope of work should provide a description of the following:

- A description of the services or products
- Specified drawings/schematics, diagrams, if any
- Pricing methods (unit price, time & materials, lump sum, etc.)
- Schedule—when deliverables are required.
- Contract term—the approximate contract start and completion dates
- Level of experience—the level of experience in the type of work to be

performed

- Qualifications—the minimum qualifications required from proposer

Submission Requirements/Proposal Contents: Lists the specific instructions for the proposer to construct their response and the format for submission.

Contractual Requirements: Contains those contract clauses that are not scope related, but are required to minimize risk to HOTCOG, ensure that HOTCOG receives what it has bargained for, and clarifies the rights and remedies available to both parties. This includes, but is not limited to:

- Insurance
- Liquidated damage provisions
- Contract changes
- Contract administration
- Payment schedules
- Warranty
- Bonding requirements (if applicable)

Special Conditions: This section tells the proposer what information should be submitted with the proposal and any special conditions related to the competitive proposal process itself, such as:

- Title VI Requirements
- Equal Employment Opportunity
- DBE Goal (if applicable)
- Debarment Certification Statement
- Conflict of Interest
- Compliance with Federal Regulations
- Compliance with Grantor Agency Requirements

SOW, requirements and contract clauses should not be placed in this section. Only the word “proposer” should be used to describe the person(s) doing the proposing. Such words as “contractor, vendor, provider, supplier, consultant,” etc., should not be used.

Exhibits: Additional forms necessary for the proposal process and to standardize submissions by all proposers. This might include:

- Conflict of Interest Form
- Debarment Certification Statement
- Pricing Structure Form
- References list
- Other forms (as required) for standardization

Attachments: Used to incorporate information or requirements related to the scope of work such as diagrams, installation site plans, statistical data, equipment layout, architectural drawings, special regulations, etc.

Evaluation Criteria: The RFP must specify the area in which the proposals will be evaluated and should include the related weights given or listed in the order of importance.

6.5 Advertising and Publicizing the RFP

Section 252.041 of the Texas Local Government Code sets the general rules for the solicitation of bids. A reasonable time for interested proposers to prepare and submit proposals shall be allowed in all RFPs.

- A short summary of the RFP shall be published in the local newspaper or a newspaper of general circulation under Legal Notices. The notice must include a description of the item or where the solicitation package may be obtained, the time and place for receiving and opening proposals, and name and address of person to receive proposals.
- Notice of the time and place at which the proposals will be publicly opened must be published at least once a week for two consecutive weeks. The date of the first publication must be before the 14th day from public opening.
- The solicitation package should be sent to all qualified persons on the Bidders' List **after the first newspaper publication.**
- All RFPs will also be posted on the HOTCOG website.

6.6 Record Keeping in RFP Files

For each Request for Proposal issued by HOTCOG, the following information will be maintained by the Department Head or department designee to show the distribution that was made: the date the RFP was issued and the names and e-mail address of interested proposers who have been alerted about the RFP, a copy of the RFP that was advertised, and a copy of the notice that was advertised in the local newspaper. All other items relevant to the solicitation should also be maintained as part of the RFP file.

6.7 Letter(s) of Clarification

If it becomes necessary to make any material changes in delivery schedules, opening dates, or to correct a defective or ambiguous RFP, the changes should be made in writing and posted to the HOTCOG website via Letter(s) of Clarification.

Before the issuance of any Letter(s) of Clarification, the period of time remaining before

the proposal opening shall be considered to determine the need to extend the proposal opening date, if necessary.

6.8 Cancellation of an RFP (before Bid Opening)

An RFP involves money, time, and effort for HOTCOG and interested proposers and should not be canceled unless deemed in the best interest of the public, meaning that there is no longer a need for the goods or services, or when there is a substantial amount of Letter(s) of Clarification so that a new and comprehensive RFP is the best solution. If an RFP is canceled, it shall be removed from the HOTCOG website and notice sent to the Director of Administration.

The notice of cancellation shall: (a) identify the project number and a description of the RFP; (b) provide justification of the cancellation; and (c) clarify if there will be a re-solicitation or need in the future for the type of services or goods involved.

6.9 Submission of Proposals

To be considered for an award, a proposal must be responsive, which means that the proposal must comply with the material aspects of the RFP. Proposals should be filled out and submitted in accordance with the instructions outlined in the RFP. Proposals must also be received in the designated office outlined in the RFP not later than the exact date and time set forth for the opening of the proposals. All proposals must be date and time stamped by the Department Head, or department designee, to maintain the integrity of the competitive sealed process.

6.10 Withdrawal of Proposals

A proposal may not be withdrawn or canceled by the offeror without the permission of HOTCOG.

6.11 Modification of Proposals

Proposals may not be altered or amended after the submission deadline. A non-material omission or error may be waived by the buyer if the omission or error:

- relates to a matter of form, not substance;
- has merely a negligible effect on price, quality, quantity, delivery or other contractual conditions; and
- does not otherwise prejudice the other offerors.

6.12 Opening of Proposals

All proposals (and any modifications) received before the time set for the opening shall be kept confidential, shall not be opened or viewed, and should be kept in a secured area. If an RFP has been canceled, the proposals shall be returned to the offerors.

Proposals must be received by and opened on the date and time specified by the RFP. The response opening is open to the public; and if no member of the public attends, a member of another office shall act as a witness. **The person who opens the proposal should only read the name of the firms who have submitted an RFP if requested by an interested party; no other information is revealed at that time, as the contents of the offers must remain confidential until the date of contract award.** The department is responsible for keeping proposal documents, including time-stamped documents that provide evidence of receipt, until the procurement is finalized, and then all procurement-related documents must be sent to the Director of Administration for record keeping.

Late submissions will **not** be considered for award. Proposals shall be date/time stamped upon receipt. Incomplete proposals must be considered non-responsive, and may not be considered for award unless due to a non-material omission.

- If the incomplete proposal is due to a non-material omission, the buyer may seek to obtain the additional information or waive/correct the non-material omission.
- a non-material omission relates to a matter of form, not substance, or an insignificant mistake that may be waived or corrected without prejudicing the other bidders; i.e., the effect on price, quality, quantity, delivery or other contractual conditions is negligible.

All proposals must be sealed with the identification number marked outside the envelope. Only one proposal may be submitted per envelope. An unmarked submission may be opened to establish it contains a proposal and be resealed. The unmarked proposal will not automatically be eliminated; however, it does violate the integrity of the process.

Opened proposals shall be kept on file and available for inspection, except to the extent properly designated as proprietary or trade secret. The Department is responsible for keeping proposal documents, including time-stamped documents that provide evidence of receipt until the procurement is finalized. Then all procurement-related documents must be sent to the Director of Administration for record keeping.

6.13 Rejection of Proposals

A proposal that fails to conform to the essential requirements of the RFP shall be rejected.

A proposal shall be rejected when the offeror makes exceptions or imposes conditions that would modify requirements of the RFP or limit the offerors liability to HOTCOG, since to allow the offeror to impose such conditions would be prejudicial to other offerors.

Proposals received from any person or concern that is suspended, debarred, proposed for debarement or declared ineligible as of the proposal opening date shall be rejected.

Proposals received from offerors determined to be not responsible shall be rejected. When a bid bond or guarantee is required and an offeror fails to furnish the bond or guarantee in accordance with the requirements of the RFP, the proposal shall be rejected.

The originals of all rejected proposals, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition. After submitting a proposal, if all of an offeror's assets or those parts related to the proposal are transferred during the period between the proposal opening and the award, the transferee may not be able to take over the proposal. Accordingly, HOTCOG shall reject the proposal unless the transfer is effected by merger or operation of law.

6.14 Disqualification of Proposals

The following occurrences require disqualification of the proposals:

- Unsigned or unauthorized signatures on proposals;
- Proposals received after the date and time for opening; or
- Proposals conditional on award of other proposals.

HOTCOG may refuse to award a contract to or enter into a transaction with a proposer that is indebted to HOTCOG.

6.15 Evaluating the Proposal

The evaluation team will determine how the proposal will be evaluated using the criteria specified in the RFP, and an evaluation matrix will be developed to score the individual proposals by each member of the evaluation committee. The scoring matrix is the scoring worksheet and will become part of the RFP file. The scoring matrix should be completely developed prior to the release of the RFP, as many times the development of this worksheet drives the need for adjustments or additions needed within the RFP document. **At the very least, the matrix must be developed prior to the opening of the proposals.**

Criteria not included in the RFP cannot be used in the scoring matrix and cannot be used to rank a proposal. The scoring matrix can be included in the RFP if desired, but it is not required.

Cost is typically the most significant evaluation factor, but there are many procurements where skills and relevant experience may be more important than cost. In these instances, the scoring matrix should identify these critical areas with the appropriate ratings and should be assigned higher weights than the other criteria. The table below is an example of a simple matrix in which cost is the most critical factor:

Evaluation Criteria (Example)	Weight (Example)
Cost	40%
Proposed Methodology	40%
Qualifications of Firm/Staff	15%
Financial Stability	5%

Evaluations may be conducted using any rating method or combination thereof, including numerical weights and points (percent of), and ordinal methods of scale (1 to 5, etc.). The relevant strengths and weaknesses must be documented on the evaluation matrix. Each evaluation should minimally consist of:

- **Cost:** Competition sets the reasonableness of price; therefore, comparing the prices of all the proposals gives the evaluators a point of reference in determining if the proposed cost satisfies the requirements of the RFP.
- **Qualifications/Experience:** This is the proposer’s ability to perform successfully. Also, take into account past performance information, proposed key personnel, subcontractors, etc.
- **Strategy or Implementation Plan:** This is the area that reflects the overall plan or strategy that the proposer will use to meet the requirements of HOTCOG. Consider the project timeline, training, equipment, implementation, or solution by the proposer to meet HOTCOG’s overall objective.
- **Financial Stability:** This indicates the proposer’s ability to financially support the project. Consider the length of time the company has been in business, annual revenues and expenditures, current projects, and other factors that can impact the available finances of the company. **When requesting Financial Statements in the RFP, the Department must consult with the Director of Administration or designee to review the financial information submitted from the proposer.**

Scoring sheets shall be completed, signed and dated by the reviewing party and shall be maintained by the Department Head, or department designee, as part of the procurement record.

6.16 Communications with Proposers (After the RFP release)

The RFP should advise proposers that they must channel all communications concerning the RFP through the Department Head, or department designee, and to no other person or member of HOTCOG Executive Committee. All communications should be in writing and should be responded to by a letter of clarification with copies to all proposers on the mailing list and posted to the HOTCOG website. Failure to observe this rule,

including, but not limited to, attempts to contact HOTCOG Board members directly in regard to the RFP, may be justification for rejection of the violator's proposal.

6.17 The Pre-Proposal Conference

The pre-proposal conference can be mandatory or optional and is a meeting of the department, end-user(s), and interested proposers. It is generally used for reviewing the requirements of the RFP with the interested proposers and end-users and to ensure that all interested proposers have a clear understanding of the requirements of HOTCOG, as well as to promote competition. Pre-proposals often times uncover the market conditions that the end-user may not be aware of and could drive the need for letters of clarification to be issued.

The pre-proposal conference should take place no earlier than ten (10) days after the release of the RFP to maximize attendance and ensure that all the interested proposers have had adequate time to thoroughly read the RFP and prepare substantial questions.

6.18 Pre-Proposal Site Visits

Some projects will necessitate a site visit by proposers, such as those with installation requirements. The point of contact for arranging a site visit should be included in the RFP cover. A general site orientation "walk through" may be discussed during the pre-proposal conference with a site visit scheduled that day or at a later date.

6.19 Interviews/Oral Presentation

Interviews/Oral presentations provide an opportunity for respondents to highlight the strengths and unique aspects of their proposal and to provide answers to questions the department may have regarding the proposal. Demonstrations of product functionality are recommended when appropriate, such as for information technology procurements or solution-based procurements.

The selected proposers should each be given the same amount of time to make their interviews/oral presentations to the evaluation team. During the presentation, evaluation team members may ask questions about the proposal or product. When in-person presentations or demonstrations are not possible, the presentation may be made by telephone or on-line conference.

6.20 Best and Final Offers

After the interviews/oral presentations, if any, or after all original proposals are evaluated, proposers judged by the committee to have made the most advantageous offers may be invited to submit a Best and Final Offer ("BAFO").

The Department Head, or department designee, shall clearly notify the selected Proposers in writing that they are being invited to submit a BAFO and that they have the opportunity to:

- Modify the initial offer;
- Update or lower pricing based on any changes the department has made;
- Include any added inducements that will improve the overall score in accordance with the RFP's evaluation plan.

Upon receipt of the BAFOs, the evaluation team will revise its original evaluation(s) based on the information submitted in the BAFO and select the top or the top two proposers recommended for an award.

6.21 Award

A recommendation will be presented to the Budget/Personnel Committee of the HOTCOG Executive Committee for approval to negotiate and execute a contract with the ranked Firms in descending order. However, the final approval and selection of award lies with the Executive Committee / Executive Committee. HOTCOG reserves the right to delay that date as needed and to reject any and all proposals as deemed in its best interest.

6.22 Certifications/Statements

HOTCOG requires that interested proposers comply with the certifications listed below:

6.22.1 Executive Orders 12549 and 12689, Debarment and Suspension, 29 CFR Part 98.510 and part 180, certification requirement;

- No award may be made, at any tier, to a party who is debarred, suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

6.22.2 Prohibition Against Lobbying with Appropriated Funds, 31 U.S.C. § 1352 (West Supp. 1994)

- No appropriated funds may be expended by the recipient of a federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in the awarding, making, entering into, extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement. Each person who requests or receives a federal contract, grant, loan or cooperative agreement must file a declaration affirming the above.
- Certify that they have not made a prohibited payment:
 - upon submission of any request for consideration for award of a federal contract, grant, loan or cooperative agreement;

- upon receipt of such federal monies unless such a certification was previously filed; and
 - at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in said declaration.
- Any person receiving a sub-grant must make such a certification.

6.22.3 Certification Regarding Drug-Free Workplace Requirements.

6.22.4 Funding Agencies may require additional certifications and will be included as required.

6.23 Contract Negotiation

Negotiations (written/oral) shall be conducted with all responsible, responsive offerors deemed to be in the competitive range; i.e., have a reasonable chance of being selected for award.

- The competitive range is determined by a technical evaluation of proposals received based upon the evaluation factors;
 - The review and rating of proposals must be consistently applied to assure equal treatment and arms-length transaction;
 - Data collected in the cost reasonableness review should be used to outline strengths and weaknesses of the proposed budget; and
 - All changes resulting from negotiation should be documented.
- Types of contracts: cost reimbursement, fixed-unit price and fixed-unit price/performance based contracts.
- Award the contract to the offeror whose proposal is determined to be the most advantageous to HOTCOG, considering the relative importance of price and the other evaluation set forth in the request for proposals.
- Notify all unsuccessful offerors of the award in writing.

6.24 Debriefing

Requests for a debriefing must be made within one week of notification of non-selection. HOTCOG reserves the right not to conduct debriefings if requests are made after that time.

6.25 Notification of Award

Once the contract has been approved, the selected proposer will be issued a Contract Action Notice to move forward.

6.26 Protest Procedures (See Article X)

Protest procedures must contain:

- contact person;
- time period for submission of protests;
- trigger events for submission, responses and replies to protests; and
- statements regarding right to reject any and all proposals, right to recall all or portions of the RFP and right to terminate contract for convenience.

ARTICLE VII

CREDIT / CHARGE CARD PURCHASES

Credit / Charge Cards are a convenient way for HOTCOG departments to make incidental purchases of supplies and services in amounts that will not reach the bid limit within the fiscal year.

The Director of Administration will maintain a Credit / Charge Card(s) with a single-transaction limit and a monthly transaction limit pre-determined by Finance. All cards have a maximum card amount determined by the user function.

ARTICLE VII
CREDIT / CHARGE CARD PURCHASES

PART A: Credit / Charge Card Purchases

7.0 Using a Credit / Charge Card

The need to use a Credit / Charge Card is established when the purchase of goods or services is for official HOTCOG business. Once issued the card user will ensure that the use of the card does not violate established HOTCOG spending limits, or procedures. All procurement policies must be followed when utilizing a Credit / Charge Card.

7.1 Purchases that may be made with a Credit / Charge Card

Credit / Charge Cards may be used to purchase goods or services not prohibited in this policy or in violation of their funding agreements. The total purchased with the Credit / Charge Card must not exceed the limits associated with each card. Finance may authorize purchases in excess of the pre-determined limit and the formal bid limit established by the State of Texas during incidents which may include, but are not limited to: emergency preparedness, inclement weather, disasters, or any other conditions that may affect Health and Safety of the region.

7.2 Purchases that may NOT be made with a Credit / Charge Card

Prohibited purchases include, but are not limited to, the following:

- Cash Advances;
- Personal Expenditures;
- Texas Sales Tax;
- Office Supplies;
- Technology (without prior written approval from IT-see Article XVII-Supplements for full list of items requiring approval);
- Online Gaming/Betting;
- Jewelry;
- Gambling
- Or any items or services for personal use

7.3 Individual Responsibility

Card users are responsible for the security of their cards; the cards should be treated with the same level of care as that would be used with their own personal credit or debit cards. Unsolicited requests for account information should be verified before any credit card information is released. In addition to securing the card, card users **MUST** retain all receipts for all purchases.

If a receipt is lost, the card user must obtain a copy from the bank or supplier. Faxed or computer-generated invoices are acceptable. The first eight digits of the card number should be blocked from a receipt showing the entire 16-digit card number.

7.4 Declined Transactions

Occasionally a supplier may receive a “decline” response from bank after attempting to complete a card transaction. The decline could be for multiple reasons: exceeds spending limit; incorrect expiration date; billing address incorrect; or a purchase outside of the correct spending profile. The card user should contact the Director of Administration for resolution if the transaction is declined.

7.5 Returns of item(s) purchased with the Credit / Charge Card

Upon the return of any merchandise purchased with a Credit / Charge Card to a supplier, the card user is responsible for obtaining a credit memo from the supplier. The credited amount is then re-applied to the card, or the vendor or provider can refund the amount to HOTCOG via a reimbursement check. **Cash refunds are prohibited.**

7.6 Lost or Stolen Cards

If a card has been lost or stolen, the card user must immediately notify Finance.

7.7 Unauthorized Use of a Credit / Charge Card

Purchases that a department’s management or the Director of Administration or Finance Department deem inappropriate will be referred back to the Card user for justification. If unauthorized charges appear in the Monthly Statement:

- The Director of Administration must investigate all circumstances surrounding the alleged misuse and in such cases where there is evidence substantiating a violation of procedure or policy, refer that information to the appropriate authority for investigation and/or disciplinary action
- In those cases where there is evidence of negligence in the use of a card, but no fraudulent acts have been committed, the card user must surrender the card, and may be subject to disciplinary action.

Any employee having knowledge of violations of this procedure or policy governing the use of the Credit / Charge Card shall immediately report violations to the Director of Administration. Card users suspected or accused of misuse, fraud, or theft be denied access to the card. Further disciplinary actions, if necessary, will be administered in accordance with HOTCOG policies and procedures.

7.8 Disputed Credit / Charge Card Purchases

Card users are responsible for immediately resolving any disputes between themselves and the supplier on the item(s) purchased. Cardholders should advise the Finance Department and Director of Administration of any disputes and the agreed upon resolution to avoid inappropriate charges to grants.

ARTICLE VIII

SPECIAL CASES AND EXCEPTIONS

In some instances, procurement can be made with exception to bid limits and State Law requirements. This section describes the following special cases, and exceptions:

- Emergency Procurements**
- Sole Source Procurements**
- Procurements through Cooperative Purchasing Agreements**
- Professional, Planning, Personal and Pass-thru Services**

ARTICLE VIII
SPECIAL CASES AND EXCEPTIONS

PART A: Special Cases and Exceptions

HOTCOG may, but is not obligated to, use any competitive procurement process it deems desirable for the procurements listed below, unless the use of competitive procurement is otherwise restricted.

Unless otherwise specified by law or program requirements, all contracts and/or purchase orders shall be awarded by competitive sealed bidding Invitation for Bid (ITB) process pursuant to applicable federal and state laws, rules and regulations.

8.1 Emergency Procurements

Emergency procurements should be made as competitively as possible under the circumstances. Emergency purchases are those purchases necessary because:

- public calamity that requires the immediate appropriation of money
- unforeseen damage to public machinery, equipment or property

Procedures for Emergency purchases are as follows:

1. A written determination of the basis for the emergency and for the selection of a particular contractor, vendor or provider shall be required prior to issuing an emergency purchase order.
2. As soon as practicable, a record of each emergency procurement shall be made and shall include the contractor's name, the amount and type of the contract, and a listing of the items procured under the contract.
3. All documentation must then be submitted to the Director of Administration for the appropriate approvals as soon as possible.

8.2 Public Health and Safety

Procurement necessary to preserve or protect public health or safety is not required to be competitively bid. Purchases to protect health and public safety do not need to be made in connection with a public calamity in order to be exempt. This exemption includes contracts for solid waste disposal.

Procedures for Public Health and Safety:

- 8.2.1 A written determination of the basis for the public health and safety provision and for the selection of a particular contractor, vendor or provider shall be required prior to justifying the purchase under the provision.

8.2.2 All documentation must then be submitted to the Director of Administration for approval.

8.3 Sole Source Procurement

Sole Source procurements are procurements of goods or services that are available from just one vendor or provider. **A sole source purchase is not to be used to avoid competition.** Sole source purchases above \$50,000.00 must be approved by the HOTCOG Executive Committee.

Sole source procurement is limited to the following:

- There is no other product or service available that can perform the equivalent functions to the sole source product or service;
- The product is only available from a regulated or natural monopoly;
- Patent or Copyright prohibits other sources from distribution;
- Maintenance or repair functions call for the Original Equipment Manufacturer “OEM” parts. This means that no other entity except the OEM is able to maintain, repair, or replace for parts or services.

Items that are only available from one source “single source” are not automatically considered a sole source item. Often, the manufacturer may have distributors that resell their products as “authorized distributors.” It should be verified that the manufacturer does not have authorized distributors; if it is determined that distributors exist, competition should be sought from each distributor.

If, after soliciting a number of sources, competition is deemed inadequate:

- HOTCOG must have demonstrated a "good faith effort" that it has solicited qualified providers through the small purchase, sealed bids or competitive proposal processes.
- is authorized by the grantor agency, if applicable.
- All documentation (sole source forms) must then be submitted to the Director of Administration for approval.

Procedures for Sole Source Procurement:

- The process may be initiated with an ITB, RFP, RFQ or the Informal Solicitation process.
- A written determination of the basis for the public health and safety provision and for the selection of a particular contractor, vendor or provider shall be required prior to justifying the purchase under the provision.

- The sole source contractor is required to submit a “Sole Source Certification Statement” that certifies the entity is the manufacturer of the item and provider of the service (as applicable), and that there are no authorized resellers or distributors.
- The sole source contractor is required to submit complete bid/proposal documentation, including a description of the work to be accomplished and a proposed price.
- Negotiations should be conducted with the sole source to obtain the best possible price since the lack of competition may lead a vendor, provider or contractor to charge unreasonably high prices.
- The negotiations should be documented and retained in the procurement file along with the sole source justification.

Approval of Grantor Agency (if applicable)

- HOTCOG must receive prior written concurrence from grantor agency for any sole source procurement expected to exceed \$50,000.00.
- If specifications and conditions of a solicitation have been drawn to describe a product which is proprietary to one vendor or provider, without language which permits an equivalent product to be supplied, written justification of the requested specifications or conditions must be submitted.

8.4 Cooperative and Interlocal Agreements

Under Texas Law, HOTCOG may participate in a cooperative purchasing program with another local government or a local cooperative organization (as defined by Texas Local Government Code Chapter 271), to include state and federal contracts, provided that HOTCOG purchases the goods and services in accordance with the cooperative purchasing requirements. In that scenario, HOTCOG is deemed to have satisfied state bid laws for the purchase of the goods or services. Examples of Cooperative Agreements HOTCOG can utilize to procure goods and services are below:

- Department of Information Resources (DIR)
- Texas Multiple Award Schedule (TXMAS)
- National Intergovernmental Purchasing Alliance (National IPA)
- The Cooperative Purchasing Network (TCPN)

HOTCOG must determine that the cooperative agreement program being used to procure the goods or services satisfies the requirements of the State of Texas competitive bid law of the Texas Local Government Code Chapter 252.

8.5 U.S. General Services Administration (GSA) Contract Purchases

HOTCOG may also make certain purchases by taking advantage of the U.S. General Services Administration contracts with vendor or providers. GSA is the purchasing agent for the Federal Government and offers a cooperative purchasing program for local governments and eligible entities to make purchases through two specific GSA schedules:

- Schedule 70 (Information Technology) - Features a wide variety of information technology products and services including mobile device and mobile application management (MDM/MAM) tools, automated data processing equipment (firmware), software, cloud computing services, hardware, support equipment, and professional services
- Schedule 84 (Security/Law Enforcement Equipment) - Features alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services.

Procedures for Cooperative Agreements follow the same procedures for small purchases, but only require **one written quote**. Any amount over \$50,000.00 requires HOTCOG Executive Committee approval.

8.6 Professional, Planning and Personal and Pass-thru Services

8.6.1 Professional Services (See RFQ Supplement-Article XVII)

Professional services under Chapter 2254 include: accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, and bond counsel services. Competitive bidding is also prohibited for the employment of a person who is licensed or registered as a CPA, an architect, a landscape architect, a land surveyor, a physician, an optometrist, a professional engineer, a real estate appraiser or a registered nurse.

Other professional services, such as general legal services, are exempt from competitive bidding or competitive proposal requirements, but are not under Chapter 2254. Professional services are defined as services that involve “predominately mental or intellectual, rather than physical or manual, skills” and that require “special knowledge or attainment and a high order of learning, skill and intelligence.”

- Chapter 2254, Texas Government Code, requires that a contract/purchase order for the purchase for professional services be awarded on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price. In procuring services, HOTCOG is also subject to State and Federal procurement requirements contained in the Uniform

Grant Management Standards (UGMS).

- In the case of architectural, engineering or land surveying services, Chapter 2254 requires that HOTCOG first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications and then attempt to negotiate with that provider a contract at a fair and reasonable price.
- A contract for professional services as described in Chapter 2254 may NOT be awarded on the basis of competitive bids.

8.6.2 Selection Methods for Professional Services

- In order to comply with UGMS, HOTCOG will procure professional services using a Request for Qualifications (RFQ). Contract award must be based on demonstrated competence and qualifications to perform the services for a fair and reasonable price.
- The solicitation should include a statement of qualifications; public notice; and the RFQ must describe the services required and outline in detail the information and data required of each provider.
- Selection of architectural, engineering, or land surveying services must be based on selection of the most highly qualified provider based on demonstrated competence and qualifications (RFQ), provided HOTCOG can negotiate a fair and reasonable price. If a satisfactory agreement cannot be negotiated with the most highly qualified provider, HOTCOG must end negotiations with that provider and select the next most highly qualified provider to negotiate a contract at a fair and reasonable price. Selection of other professional services may be made (at HOTCOG option) by RFQ, RFP.

8.6.3 Planning Services

Planning services are those services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan or regional councils.

By policy and to comply with UGMS, HOTCOG will use the Request for Proposal (RFP) process for the procurement of planning services.

8.6.4 Personal Services

Personal services involve a contract in which the contractor himself is required to perform the service.

By policy and to comply with UGMS, HOTCOG will use the Request for Proposal (RFP) process for procurement of personal services.

8.7 Selection Methods for Planning and Personal Services

Selection of personal or planning services will be made using a Request for Proposal (RFP).

- Contract must be awarded to the offeror whose proposal is determined to be the most advantageous to HOTCOG, considering the relative importance of price and the other evaluation factors set forth in the request for proposals.
- Selection of personal or planning services may (at HOTCOG's option) be made based on competitive bid to the lowest responsible bidder or to the bidder providing best value to HOTCOG.
- A Request for Qualifications (RFQ) or other selection methods may also be used under Texas state procurement law; other restrictions may apply.

8.8 Pass-Through Services

The procurement of pass-through services from private and non-profit services providers will be completed through the Request for Proposal (RFP) process or as directed by the granting agency.

8.9 Other exemptions

HOTCOG may, but is not obligated to, use any competitive procurement process it deems desirable; i.e., ITB, RFP or RFQ for the procurements listed below, unless the use of competitive procurement is otherwise prohibited.

- Contracts for work that is performed and paid for by the day as the work is in progress.
- Contracts for paving, drainage, street widening and other public improvements if at least 1/3 of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements.
- Purchase of land or a right-of-way.
- A public improvement project already in progress authorized by the voters of a municipality for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by voters.
- Payment under a contract in which the developer participates in the construction of a public improvement as provided by the Texas Local Government Code chapter pertaining to municipal regulation of subdivisions and property development.
- The purchase of electricity.
- Services performed by the blind or severely disabled.
- Goods purchased for subsequent resale.

- Purchase of rare books, papers or other library materials for a public library.
- The purchase of personal property sold at an auction by a state licensed auctioneer at a going out of business sale meeting certain requirements, by a political subdivision, state entity or an entity of the federal government, or under an interlocal contract for cooperative purchasing administered by a regional planning commission.
- Bonds or warrants issued in connection with the construction of a seawall.

8.10 Unsolicited Offers or Proposals

An unsolicited offer/proposal is any offer/proposal other than one submitted in response to an ITB, RFP or RFQ. To be considered by the buyer, the unsolicited offer/proposal must:

- not be for an item required by law to be competitively bid or proposed;
- be in writing; and
- be evaluated by the buyer to determine its utility and benefit to HOTCOG.

8.11 Lease/Purchase Agreements

The leasing of property and/or equipment is encouraged in lieu of purchasing where leasing is the most economical procurement approach.

8.12 Federal Excess or Surplus Property

HOTCOG is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and/or property whenever feasible and for the purpose of reducing procurement costs.

ARTICLE IX

CONSTRUCTION RELATED CONTRACTS

ARTICLE IX
CONSTRUCTION RELATED CONTRACTS

PART A: Construction Related Contracts

HOTCOG Construction Contracts must be compliant with the Davis-Bacon Act WH Publication 1246 (Revised April 2009). Section 1 Title 40 of the United States Code, Subsections 3141-3144, 3146, and 3147 of this title by Pub. L. 107-217, Secs. 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, and 1304.

9.1 Facility Construction

When entering into a contract for the construction of a facility, HOTCOG may use any of the following methods that provide the best value under Chapter 271 of the Texas Local Government Code:

- Competitive Sealed Bidding;
 - HOTCOG must award a competitively bid contract for construction services to the bidder offering the best value based on the criteria set forth below. The contract is not required to be awarded strictly to the lowest responsible bidder.
- Competitive Negotiation;
- a design-build contract;
- a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager; or
- a job order contract for the minor repair, rehabilitation, or alteration of a facility.

A “facility” includes buildings the design and construction of which are governed by accepted building codes.

A facility does not include highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

HOTCOG must determine which method it will use prior to advertising. If HOTCOG is not using competitive bidding, it must select the method which provides it with the best value.

HOTCOG must publish in the request for bids, proposals, or qualifications all the criteria that will be used to evaluate the bidder/offerors and the relative weights given to the criteria. In awarding a contract, HOTCOG may consider the following:

- purchase price;
- reputation of the bidder and of the bidder's goods or services;
- the quality of the bidder's goods or services;
- extent to which the goods or services meet HOTCOG's needs;
- bidder's past relationship with HOTCOG;
- impact on the ability of HOTCOG to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- total long-term cost to HOTCOG to acquire the bidder's goods or services; and
- other relevant criteria specifically listed in the ITB, RFP or RFQ.

A construction contract using competitive bidding or competitive proposals must be awarded to the bidder/offeror who offers the best value to HOTCOG based on the published selection criteria and on its ranking evaluation. HOTCOG must document the basis for its decision regarding the contract award.

ARTICLE X

PROTEST and DEBRIEFING

A response to an Invitation to Bid or a Request for Proposal requires an entity expend a significant amount of time and effort. HOTCOG must make an effort to respond to all of those who submit responses to bids and proposals to inform them of the outcome of the solicitation.

This article covers the process in the event of a protest or a request for debriefing by a bidder/offeror.

ARTICLE X
PROTEST and DEBRIEFING

PART A: Protest and Debriefing

Providing responses to the outcome of a solicitation can help to alleviate the potential for bid protest. It is HOTCOG's goal to provide responding entities with full information and explanation regarding its procurement process and its intent to give the contracting entity a fair and open opportunity to compete for HOTCOG's business consistent with the guidelines established in this manual.

10.0 Requests for Debriefing

Requests for a debriefing must be made within one week of notification of non-selection. HOTCOG reserves the right to not conduct debriefings if requests are made after that time.

10.1 Procedures for Debriefing

A bidder or proposer shall, upon written request, be debriefed and furnished the basis for the selection decision and contract award. Debriefings of successful and unsuccessful respondents will be done orally. The Department Head should normally chair any debriefing session. Individuals who conducted the evaluations shall provide supporting documentation. At a minimum, the debriefing information shall include:

- The overall evaluated cost or price and technical rating, if applicable, of the debriefed respondent, and past performance information on the debriefed respondent;
- The overall ranking of all respondents; and
- A summary of the rationale for award.

The debriefing shall **NOT** include point-by-point comparisons of the debriefed respondent's proposal with those of other respondents. Moreover, the debriefing shall not reveal any information prohibited from disclosure or exempt from release. Such information may include, but is not limited to:

- Trade secrets;
- Proprietary information;
- Privileged or confidential manufacturing processes and techniques;
- Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
- The names of individuals providing reference information about a respondent's past performance.

10.2 Resolution of Protested Solicitations and Awards

The following language should be included where appropriate in all HOTCOG solicitations:

Any Proposer who is aggrieved in connection with a purchase transaction may file a grievance. The grievance may be filed at any phase of the procurement, and up to five (5) days after the HOTCOG Executive Committee public agenda is posted for action regarding the questioned item. Grievances filed more than five (5) working days after action by the HOTCOG Executive Committee will not be deemed timely and will not be considered. In order for a Proposer to enter the grievance process, a written complaint must be sent to the Executive Director of HOTCOG by certified mail and sent to 1514 S. New Road, Waco, Texas 76711, and must include the following:

1. Name, mailing address and business phone number of the complainant.
2. Appropriate identification of the procurement being questioned.
3. A precise statement of the reasons for the protest.
4. Supporting exhibits, evidence or documents to substantiate any claims.

The grievance must be based on an alleged violation of HOTCOG's Procurement Procedures, a violation of State or Federal Law (if applicable), or a violation of applicable grant or contract agreements to which HOTCOG is a party. Failure to receive a procurement award from HOTCOG in and of itself does not constitute a valid grievance. Upon receipt of grievance, the Executive Director will initiate the informal resolution process.

The Director of Administration or Department Head responsible for the solicitation shall contact the complainant and all interested parties and attempt to resolve the allegations informally within ten (10) working days from the date of complaint. If the allegations are successfully resolved by mutual agreement, documentation will be forwarded to the Director of Administration of the resolution with specifics on each point addressed in the original complaint.

If the Director of Administration or Department Head is not successful in resolving the allegations, the complaint, along with the comments, will be forwarded to the Director of Administration immediately. The Director of Administration will review all documentation. All interested parties will be given written notice of the date, time, and place of hearing and an opportunity to present evidence. A written decision will be issued within five (5) working days after the hearing along with notice of appeal rights.

The complainant may appeal the Director of Administration's decision by submitting a written appeal, within five (5) working days, to the Executive Director of HOTCOG. The Executive Director, upon receipt of a written notice of appeal, shall contact the complainant and schedule a hearing within ten (10) working days. The Executive Director of HOTCOG has the option of appointing a Hearing Officer to preside over the hearing. If appointed, the Hearing Officer shall conduct a hearing and forward a summary and recommended resolution to the Executive Director.

The decision reached by the Executive Director or his designee shall be final and conclusive. This decision will be forwarded to the complainant in writing within thirty (30) working days.

The Proposer may, if it elects to do so, appeal the final and conclusive decision of the Executive Director to a court of competent jurisdiction.

ARTICLE XI

COST/PRICE ANALYSIS

Before undertaking any procurement activity, a cost analysis or price analysis should be performed. The end result of price analysis is to ensure fair and reasonable pricing of a product or service.

ARTICLE XI
COST/PRICE ANALYSIS

PART A: Independent Cost/Price Analysis

Independent cost or price analysis may be performed prior to every procurement action, including contract modifications to assist in the evaluation of the procurement. An independent cost estimate is required when:

- the offeror must submit the elements of his estimated cost (for professional, consulting and architectural/engineering services contracts); and
- when adequate price competition is lacking, such as sole source procurements, change orders or contract modifications.

A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

11.0 Procedure:

11.0.1 Obtain an independent cost or price analysis from:

- informational solicitations from more than one dependable vendor, provider or source;
- catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation; or
- historical data.

11.0.2 A cost reasonableness review is conducted, which includes, but is not limited to, reviewing:

- prior experience and effectiveness;
- line item budget analysis;
- profit/program income;
- the amount of the total budget;
- the amount of the administrative budget;
- all cost items and salaries;
- all cost items with respect to relevancy and appropriateness in accomplishing the services provided;
- travel reimbursement policies;
- cost per positive termination, entered employment in relation to similar training, length of time and quality; and
- cost per contract hour.

11.1 Purpose

The purpose of the cost reasonableness review is to

- assure that all costs are properly allocated and classified;
- list any high or questionable costs;
- assure that an organization-wide cost allocation plan is provided where the bidder has multiple sources of funding;
- list any questionable issues of purchase or lease;
- assure that the cost of audit is covered;
- review staffing sources and salaries to assure budgetary limitations;
- assure that staff salaries are properly allocated to administration or training;
- determine adequacy of staffing for particular activities;
- list high or questionable staff salaries and benefits;
- list low cost or unreasonable staffing; and
- perform a comparative analysis including a comparison of activities and services to be offered, staffing patterns and costs proposed. This analysis may be used to assess the reasonableness of costs through competition, and the reasonableness of proposed cost may be established by performing a comparative analysis of an item or service that is currently available in the local service delivery area, including comparisons with current market rates.

11.1.0 A price analysis may be conducted by comparing price quotations submitted or by comparing price quotations with current market prices, considering any discounts. The analysis includes a comparison of prices paid for the same or similar products in the past, as well as the current market rate, including consideration of quantities, production and delivery rates. In-house estimates of cost may also be used.

11.2 Elements of the Cost Analysis

A cost analysis shall include a review, evaluation and verification of each element of cost submitted in the line item budget to determine whether costs are reasonable, necessary and allowable under applicable cost principles. Each cost contributes to the total price. The cost and pricing data is used to evaluate:

- specific cost elements;
- the necessity of specific costs;
- reasonableness of amounts estimated for the necessary costs;
- reasonableness of allowances for contingencies;
- basis for allocation of indirect costs;
- appropriateness of allocation of indirect costs to the proposed contract; and
- reasonableness of the total price.

11.3 Record Keeping of the Cost Analysis

The independent cost or price analysis must be kept as part of the procurement record, even if only included as a memorandum to the file. Acceptable documentation reflects:

- RFP solicitation procedures;
- ITB solicitation procedures;
- small purchase method;
- catalog pricing; i.e., for tuition;
- recent past pricing for similar goods or services, either by HOTCOG or others in the vicinity;
- "yardsticks" developed from models designed to identify and price the mix of resources considered necessary for achievement of delivery within the expected performance range; and
- cost/price analyses conducted to test and compare the valuation of each element listed in the budget with a cost considered reasonable in the current environment.

11.4 Cost and/or Pricing Documentation

- copy of line item budget;
- cost allocation plans for costs prorated between different funding sources;
- contractor-approved wage and benefit schedules for funded positions;
- travel reimbursement policies;
- calculations, bids and/or documentation used to determine start-up, equipment and supply costs;
- cost determination of training courses and week-cost considerations;
- records certifying name(s) of individuals who performed/approved the cost reasonableness review; and
- records showing differences in quality or service or output.

ARTICLE XII

CONTRACT ADMINISTRATION

Following the award of a contract, the management actions that must be taken to assure full compliance with all of the terms and conditions contained within the contract document, including price. Action steps that assure that the contractor is in full compliance with the entire contract. Contract administration activities include payment, monitoring of progress, inspection and acceptance, quality assurance, monitoring and surveillance, modifications, negotiations, contract closeout, and other activities.

ARTICLE XII

CONTRACT ADMINISTRATION

PART A: Contract Administration

12.0 Contract Types

The procurement instrument shall be in accordance with specific grantor procurement standards. The instrument, contract, or purchase order shall be appropriate for the particular procurement and for promoting the best interest of the Agency and the grant program involved.

- Fixed price contracts or purchase orders;
- Cost reimbursement contracts or purchase orders;
- Incentive contracts;
- Time and Materials (T&M) contracts;
- **A Cost plus a Percentage of Cost or Percentage of Construction Cost shall not be used.**

12.1 Payment

- Lump Sum upon completion of contract; or
- Unit Price; or
- Percent of completion (construction contracts only).

12.2 Contract Execution and Approval Procedures

A contract is a legal agreement and commitment from HOTCOG which, under terms and conditions, requires a contractor or vendor or provider to carry-out specific tasks or provide specific goods and services. Competitive bid procedures will be adhered to in accordance with purchasing Procedures, Article III. Contract approvals will be obtained in accordance with Article II. All contract administration action; i.e., contract authorization, contract approval, contract amendment, and contract closure, must be accompanied with and transmitted by a Contract Action Notice. The following procedures describe contract administration requirements for all HOTCOG contracts. The Department:

1. Receives authorization from a funding agency in the form of grant award or contract document or action by HOTCOG Executive Committee to incur costs against project or program.
2. Prepares the proposed work program and budget.
3. Recommends contractor or vendor or provider to provide tasks, goods, and services in accordance with terms and conditions of the approved grant or program and Source Selection and Contract Formulation, Article III.
4. Negotiates and prepares contract agreement utilizing the appropriate General Contract Provisions.

5. Prepares and approves Contract Action Notice.
6. Notifies the accounting department to establish the contract in HOTCOG's accounts and to accept charges incurred as of the contract effective date.
7. Obtains required approval authorizations in accordance with Article II Of the Procurement Policy. This process is documented on the Contract Action Notice.
8. Department Heads shall maintain a copy of all contract documents in its files, with the original copy being maintained by the Director of Administration. Finance Department files will be the official records file for all procurement and contract documents.

12.3 Contract Amendment Procedures – See also Article IV, Modification and Termination of Contracts.

1. Department initiates a contract amendment whenever expenditures and/or scope of work vary from approved budget amounts and contract terms. See Article IV, Modification and Termination of Contracts.
2. Department prepares description of Amendment and Contract Action Notice.
3. Finance assists Department with program/project budget worksheets. Approves Contract Action Notice.
4. Department obtains approval on Contract Action Notice in accordance with established approval authorities' requirements. See Article II. Distributes contract amendments in accordance with contract distribution procedures.

12.4 Contract Closure Procedures

No charges should be made to contracts which have ended, except for costs which were incurred during the contract period. In addition, all costs incurred in the authorized period should be submitted to HOTCOG no later than 70 days after contract end, or sooner if required by the Funding Agency. Contract closure procedures to be used are as follows:

- | | |
|-------------|--|
| Department: | <ol style="list-style-type: none">1. Not later than 80 days after contract end, submit a Contract2. Includes closeout documents, final billings, etc. as appropriate3. Approves Contract Action Notice and sends notice and documentation to Finance Department. |
| Finance: | <ol style="list-style-type: none">4. Will not accept or make any additional charges to the contract upon receipt of this notice. Finance will then designate the contract inactive and remove it from the active accounts. |

12.5 Contract Administration

The Finance Department shall maintain the original copy of all contract documents. Each department will send the executed original copy of the contract and supporting documentation to the Director of Administration which will be the official records file for all procurement, financial and/or legal documents.

ARTICLE XIII

MODIFICATION and TERMINATION OF CONTRACTS

ARTICLE XIII
MODIFICATION AND TERMINATION OF CONTRACTS

13.0 Definitions

"**Change Order**" means a written order signed by the buyer, directing the contractor to make changes.

"**Modification**" means any written alteration in specifications, delivery point, rate of delivery, period of performance, quantity, or other provisions of the contract, as well as any associated price adjustments, accomplished by mutual action of the parties to the contract.

13.1 Modifications

If changes in plans or specifications are necessary after the performance of the contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, HOTCOG may approve change orders or modifications to make the changes. All changes or modifications to the contract must adhere to the following guidelines:

- The total contract price may not be increased because of the change order or modification unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants.
- If a change order or modification involves a decrease or an increase of \$50,000 or less, HOTCOG's Executive Committee may delegate general authority to an administrative official to approve the change orders.
- The original contract price may not be increased by a change order or modification under Section 252.048, Texas Local Government Code, by more than 25%. The original contract price may not be decreased by more than 25% by change orders without the consent of the contractor.

13.2 Requirements to Re-compete

HOTCOG must re-compete where the modification results in the procurement of supplies, equipment or services that:

- are substantially and materially different from that for which competition was held;
- result in a change in the terms or conditions of a contract that interferes with or defeats the purpose of competitive procurements; or
- are tantamount to an unjustified sole source procurement.

13.3 Improper Justifications for Modification

- on-site contractor, familiar with existing conditions, provides greater assurance of satisfying the agency's needs; or
- making an award with the intent to change contract specifications by a subsequent modification.

13.4 Termination of Contracts

Termination for Convenience:

General

13.4.1 For contracts in excess of \$10,000, a contract may be terminated because of circumstances beyond the contractor's control, for cause and for convenience.

13.4.2 The termination for convenience clause must include the termination procedures and the basis for settlement.

Process

13.4.3 HOTCOG may terminate a contract, in whole or in part, for the convenience of HOTCOG by providing the contractor with thirty (30) calendar days advance notice in writing, specifying the part of the contract to be terminated and when the termination becomes effective.

13.4.4 The contractor shall cancel, withdraw or otherwise terminate any outstanding orders or subcontractors related to the performance of the contract, or the part of the contract to be terminated, and shall cease to incur costs hereunder. HOTCOG shall not be liable to the contractor, subcontractor or any creditor for costs incurred after the date of termination. The contractor shall settle all liabilities and claims arising out of the termination of subcontracts and orders connected to the terminated work. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

13.4.5 A grant contract may only be terminated for convenience as follows:

- By the grantor agency with the consent of HOTCOG, in which case the parties shall agree upon the termination conditions, including:
 - the effective date; and
 - in case of a partial termination, the portion to be terminated.

- By HOTCOG upon written notification to the grantor agency, stating:
 - the reasons for such termination;
 - the effective date; and
 - for partial terminations, the portion to be terminated. In the event of a partial termination, if the grantor agency determines that the remaining portion will not accomplish the purposes for which the award was made, the grantor agency may terminate the award in its entirety.

13.4.6 The Contract Administrator may require the contractor to transfer title and deliver to HOTCOG in the manner and to the extent directed by the buyer:

- any completed materials and/or supplies/equipment; and
- such partially completed supplies/equipment and/or construction materials, including, but not limited to, supplies, materials, tools, parts, drawings, plans, information and contract rights as the contractor has specifically produced or specifically acquired for the performance of the terminated part of this contract.
- The contractor shall protect and preserve the property in the possession of the contractor in which HOTCOG has an interest. If HOTCOG does not exercise this right, the contractor shall use its best efforts to sell such materials, supplies and/or equipment in accordance with the pertinent standards of the Uniform Commercial Code. *The exercise of the Termination for Convenience clause in no way implies that HOTCOG has breached the contract.*

13.5 Compensation

13.5.1 The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience, together with any cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within one (1) year from the effective date of termination, the buyer may pay the contractor, if at all, an amount set in accordance with subparagraph (13.5.3) below.

13.5.2 The Contract Administrator and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost and pricing data. The settlement must not exceed the total contract price plus settlement costs reduced by amounts previously paid by HOTCOG and less any lawful offsets or credits due. This includes, but is not limited to, the proceeds of

any sales of construction materials, supplies and/or equipment and the contract price of the work not terminated.

13.5.3 Absent complete agreement under subparagraph (13.5.2) above, the buyer shall pay the contractor the following amounts, not to exceed the total contract price plus the reasonable settlement costs reduced by any lawful offsets or credits:

- the cost of such work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract had been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- costs of settling and paying claims arising out of the termination of subcontracts or orders; and
- reasonable settlement costs of the contractor reasonably necessary for the preparation of settlement claims and supporting data.

13.6 Termination for Default

HOTCOG may terminate a contract, in whole or in part, when it has determined that the contractor has substantially violated any provision of this contract.

13.6.1 HOTCOG may terminate a contract, in whole or in part, when it has determined that a contractor, subcontractor, or sub-grantee has violated specific provisions of the grantor agency regulations and directed corrective action has not been taken. Grounds for default include, but are not limited to:

- failure to perform pursuant to the terms and conditions of the contract; and
- violations of grantor agency rules or regulations.

13.6.2 Termination for Default Clause must be included in all grant contracts in excess of \$25,000.00.

13.6.3 Notwithstanding the termination of the contract and subject to the buyer's directions, the contractor shall take timely, reasonable and necessary action to protect and preserve property, equipment and/or supplies in possession of the contractor in which HOTCOG has

an interest.

13.6.4 Payment for completed supplies, equipment or services delivered and accepted by HOTCOG shall be at the contract price. Payment for the protection and preservation of property, equipment and/or supplies shall be in an amount agreed to by the parties. HOTCOG may withhold from amounts due to the contract amounts deemed necessary by the Contractor Administrator to protect HOTCOG against loss because of outstanding liens or claims of former lien holders and to reimburse HOTCOG for the excess costs incurred in procuring similar supplies, equipment and services.

13.6.5 The rights and remedies provided are in addition to any other rights and remedies provided by law, under HOTCOG procurement policy or under this grant or contract.

13.7 Resolution of contract disputes

- Upon breach or default, HOTCOG shall give the contractor written notice of default. If the default is not remedied to the satisfaction and approval of HOTCOG, default will be declared.
- Upon breach of contract or default, HOTCOG may exercise any and all of its rights afforded by law, including, but not limited to, those referenced in the General Contract Provisions.

13.8 Solicitations or Awards in Violation of the Law

Contracts awarded in violation of the competitive process or otherwise in violation of the law are voidable by HOTCOG.

ARTICLE XIV

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

ARTICLE XIV

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

PART A: Policies

14.0 Policy Statement:

It shall be the policy of HOTCOG to assist small, DBE, MBE, women-owned businesses and HUBs in learning how to do business with HOTCOG. It shall be a further policy of HOTCOG that these sources shall have the maximum feasible opportunity to compete.

14.1 Bidder/Offeror Statement:

It shall be a mandatory provision of every solicitation that a bidder or offeror include a statement that said bidder or offeror will comply with this policy.

14.2 Recommended Approach

To ensure that HOTCOG's policy to assure that small, MBEs, DBEs, women-owned businesses, and HUBs are utilized, the following affirmative steps are recommended to be taken, including the contractor and subcontractor:

- Include qualified small, MBEs, DBEs, women-owned businesses, and HUBs on the Bidders' List. State lists may be utilized to locate such businesses, such as the Texas Certified Disadvantaged Business Directory (a/k/a HUB Directory) or the Texas Department of Commerce "Texas Market Place" bulletin board;
- Assure that small, MBEs, DBEs, women-owned businesses, and HUBs are solicited whenever they may be potential sources. In this regard, the buyer should investigate new sources and advertise when feasible in minority publications;
- When economically feasible and where not in contravention of competitive bidding requirements, HOTCOG should divide the total requirements into smaller tasks or quantities so as to permit maximum small, MBE, DBE, women-owned businesses and HUB participation;
- Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce, the Minority Business Development Agency in the Department of Labor, the Texas General Services Administration and other similar agencies for locating such businesses;
- Require that prime contractors take affirmative and meaningful steps toward retaining small, MBE, DBE, women-owned businesses and HUB subcontractors;
- Procure goods and services from labor surplus areas;

- If the requirement permits, establish delivery schedules that encourage small, MBEs, DBEs, women-owned businesses, and HUBs to participate; and
- Advertise, at least annually, in a newspaper of general circulation for small, MBEs, DBEs, women-owned businesses and HUBs to be added to the Bidders' List.

14.3 Buyer Responsibility

For such affirmative steps to be meaningful, the buyer should review all solicitations, offers and bids to confirm such affirmative actions, including the execution of the Bidder/Offeror Statement. In addition, steps should be taken to ensure that once a contract is awarded to a small, MBE, DBE, women-owned business, and/or HUB, or that once the award is given to a contractor with such a subcontractor, then such business is retained during the entire performance of the contract.

14.4 Prime Contractor Effort

Failure of a contractor to take meaningful affirmative steps at soliciting and retaining small, MBEs, DBEs, women-owned businesses and HUBs may be considered as a factor in evaluating future bids under non-compliance with public policies.

14.5 Expenditure Amount Required to Solicit DBE Participation

In making expenditures of more than \$3,000.00 and less than \$50,000.00, HOTCOG must contact at least 2 HUBs on a rotating basis, based on information provided by the Texas General Services Commission. If the list fails to identify a historically underutilized business in the area, then HOTCOG is exempt from this section.

ARTICLE XV

ETHICS

ARTICLE XV
ETHICS

PART A: Standard of Conduct

15.0 Elected Officials and Chief Executive Officers

Chapter 176 of the Local Government Code outlines conflict disclosure filing requirements for elected officials and chief executive officers of Texas political subdivisions, including regional councils. There are also disclosure requirements for those seeking to do business with HOTCOG.

▪ **Conflict Disclosure Filing**

Board members and the Executive Director are required to file a conflicts disclosure statement when the official becomes aware that HOTCOG has a contractual or business relationship or is considering such a relationship and:

- The person has a business or employment relationship with the official; or
- The person has a business or employment relationship with a family member of the official, within the first degree of consanguinity; or
- The person has given the official or the official's family a gift, excluding food, lodging, transportation or entertainment, with an aggregate value of \$250 or more within the preceding twelve (12) months.

▪ **Vendor or provider and Consultant Disclosure**

All vendor or providers or consultants contracting or seeking to contract with HOTCOG for the sale or purchase of property, goods, or services exceeding \$50,000.00 must file a conflict of interest questionnaire with HOTCOG within seven (7) days of submitting: (a) bid, RFP, proposal or other document relating to a potential agreement with HOTCOG; or (b) entering into contract negotiations with HOTCOG.

15.1 Conflict of Interest Questionnaire

15.1.1 Specification/Proposal required language

Texas House Bill 914, codified as Chapter 176 of the Local Government Code, requires vendor or providers and consultants contracting or seeking to do business with HOTCOG to file a conflict of interest questionnaire (CIQ). The required questionnaire is located at the Texas Ethics Commission website www.ethics.state.tx.us/forms/CIQ-New-2015.pdf and a copy is included with this bid/proposal request. It may also be found, along with a list of HOTCOG officers subject to HB 914 disclosure requirements, on HOTCOG's website, www.HOTCOG.org. The CIQ must be completed and filed with the bid/proposal response. Vendor or providers and consultants that do not include the form with the response and fail to timely provide it may be disqualified from consideration by HOTCOG.

15.1.2 **Records Administrator**

The Director of Administration is the records administrator for purposes of filing required disclosures.

15.1.3 **Penalties and Defense to Prosecution**

Knowingly violating this law is a Class C misdemeanor. Filing of the required disclosure no later than the seventh day after receiving notice of violation is a defense to prosecution.

15.2 **Employee and Agents**

No employee or agent of HOTCOG shall participate in the negotiation, evaluation, selection, discussion, award or administration of a contract or procurement supported by public funds if a conflict of interest, either real or apparent, would be involved. An employee or agent of HOTCOG shall at all times avoid the appearance of impropriety.

- A conflict arises when an HOTCOG employee or agent, or any member of his/her immediate family, or a partner or a person or an organization which employs or may employ in the near future any of these individuals, has a financial or other substantial interest in any entity which may be considered for the award.
 - "Immediate family" refers to any person related within the second degree of affinity (marriage) or within the third degree of consanguinity (blood) to the party involved.
 - "Substantial interest" for purposes of this section, means the person:
 - owns 10% or more of the voting stock or shares of the entity; or
 - owns 10% or more or \$5,000.00 or more of the fair market value of the entity; or
 - received funds from the entity in excess of 10% of the person's gross income for the previous year; or
 - is related to an employee or agent in the first degree of consanguinity or affinity.

No employee or agent of HOTCOG shall demand, agree, accept or solicit gratuities, favors or anything of monetary value from contractors, potential contractors, bidders, offerors or parties to sub-agreements. No contractor, bidder, offeror or party to a sub-agreement shall offer or tender anything of monetary value to any employee or agent of HOTCOG.

15.3 **Course of Conduct in the Event of a Conflict**

In the event of a real or apparent conflict of interest, as set forth above, the affected employee or agent must adhere to the following procedures:

15.3.1 Sign a declaration of a possible conflict of interest. A declaration must also be made on the record where:

- the agent, employee or immediate family member is a board member of a bidder, offeror or proposer;
- the agent or employee is voting on an indirect affirmation of a contract relationship, such as on the job training plan; or
- the agent or employee is voting on a rival proposal, though there is no direct competition.

15.3.2 If applicable, abstain from voting on any procurement action:

- where the employee or agent directly represents an organization or may receive a direct financial benefit; or
- where the employee or agent is in direct competition with a proposal or bid which would provide a direct financial benefit.

15.3.3 Abstain from participating in the procurement process, which includes, but is not limited to, discussions, lobbying, rating, scoring, recommending, explaining or assisting in the design or approval of the procurement process:

- on contracts with the organization he/she represents or from which he/she receives a direct financial benefit; or
- on contracts with organizations in which a family member might realize a direct financial benefit.

15.4 Violations and Remedies

Violations of the provisions of this Article constitute misconduct, subjecting the violator to any and all penalties prescribed by law.

When the procurement involves state or federal programs and/or funds, penalties, sanctions or other disciplinary actions shall be imposed for violations of the code of conduct/conflict of interest standards by HOTCOG employees or agents or by persons, contractors or their agents to the extent permitted by state or local law, rules or regulations.

Appropriate sanctions, penalties or disciplinary actions shall be applied for violations. Violations of state or federal law shall be referred to the proper authority having jurisdiction over same.

ARTICLE XVI

RECORDS RETENTION

ARTICLE XVI

RECORDS RETENTION

PART A: Records Retention

Although each agency may have its own requirements for records retention, HOTCOG is focused on retaining records under one policy, and if possible urges departments to maintain electronic copies when possible.

16.0 Policy

All procurement-related records must be maintained by HOTCOG as defined by the records retention schedule approved by the Texas State Library and Archives Commission. This schedule establishes mandatory minimum retention periods for records that are usually found in local governments, regardless of type. To obtain a copy or for questions on the retention period of a record, please contact HOTCOG Custodian of Records at 254-292-1800.

If there is litigation or a claim, or if the audit report covering the contract has not been accepted, then the records shall be retained until the resolution of such litigation, claim or audit. At a minimum, records retained shall include but are not limited to:

- correspondence, notes and memoranda relating to the procurement, including RFPs, ITBs, bids and proposals received and any other procurement form and notes on verbal transactions and telephone or facsimile quotations;
- notes comparing quotations and relating to the basis for the award, including all negotiations;
- notes and correspondence relating to the acceptance or rejection of bids, proposals or quotations;
- any and all documents reflecting the rationale for the method of procurement, selection of contract type, contractor selection or rejection, rating criteria, cost/price analysis forms, cost reasonableness determination and the basis for contract price;
- any and all documentation reflecting the basis for sole source procurements, citing the authorizing authority and the basis for selection of the particular vendor or provider;
- a copy of public media advertisements;
- decision letters, notice of award and/or non-selection, fully executed contracts, including amendments/modifications, contract performance evaluations, progress reports, signature authorities, cost or pricing data, payment processing justifications, property and equipment records;
- copies of required insurance policies;
- monitoring/audit reports and any other required reports and financial reconciliations; and
- all contract closeout documents and records.

16.1 Records Retention for Negotiated Procurements (RFP)

Records or files for purchases in amounts in excess of \$50,000.00 shall reflect, at a minimum:

- justification for use of negotiation in lieu of competitive sealed bidding;
- the basis for contractor selection;
- the basis for the cost or price negotiation; and
- record of any action taken by the Executive Committee.

16.2 Records Retention for Competitive Sealed Bidding (ITB/BVB)

Records or files for purchases shall reflect, at a minimum:

- the basis for contractor selection, including the evaluation of best value criteria, if best value is the basis for contract award; and
- the record of any action taken by the Executive Committee.