

COASTAL BEND COUNCIL OF GOVERNMENTS PROCUREMENT POLICIES AND PROCEDURES

ARTICLE I

GENERAL PROVISIONS

PART A: PURPOSE, ACQUISITION PLANNING, RESPONSIBILITIES & DEFINITION

1-101 *Purpose:* The purpose of the Procurement Policy is to provide the Coastal Bend Council of Governments (CBCOG) 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 general requirements of OMB Uniform Guidance, 2 CFR Part 200.317-326 Procurement Standards, and Appendix II to Part 200-Contract Provisions for Non-Federal Entity Contracts under Federal Awards, and the State of Texas Uniform Grant Management Standards. More specifically, the underlying purposes and policies of this Procurement Policy are:

1. to simplify and clarify the law governing procurement by the Coastal Bend Council of Governments;
2. to permit the continued development of procurement policies and procedures;
3. to provide consistency in the procurement practices of the Coastal Bend Council of Governments with regard to pertinent procurement laws;
4. to increase public confidence in public procurement;
5. to ensure the fair and equitable treatment of all persons who participate in the procurement process;
6. to provide increased economy and efficiency in procurement activities by avoiding unnecessary, unwarranted and duplicative procurements; to enter into state and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services;
7. to foster free and open competition;
8. to provide safeguards for the maintenance of a procurement system of quality and integrity;
9. to ensure that full accounting is available and given for all procurements;
10. to ensure standards of conduct covering conflicts of interest and governing the

actions of its employees engaged in the selection, award and administration of contracts; and

11. to ensure the use state or local excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces costs.

The Coastal Bend Council of Governments' procurement policies and procedures have been revised to comply with OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200.318 – 200.326.

Standards of Conduct- No Coastal Bend Council of Governments' employee or board member are allowed to participate in the selection, award, or administration of a contract supported by a Federal or State of Texas award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the COG employee or board member, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The COG employee or board member must neither solicit nor accept gratuities favors or anything of monetary value from contractors or parties to subcontracts.

A COG employee or board member that violates the Coastal Bend Council of Governments' Standards of Conduct will be subjected to disciplinary action. For a COG employee this may entail suspension from employment without pay. A COG board member this may entail suspension from voting rights for a period of time or dismissal as a COG board member.

Acquisition Planning- All purchases made by an employee of the Coastal Bend Council of Governments must be necessary for the grant program or programs in which the purchases will be charged to. All employees who participate in the purchasing process shall coordinate their department's purchase requisitions with other departments in order to consolidate purchases to obtain a more economical purchase. This requires planning purchases in particular consumable supplies.

Responsibilities

The Coastal Bend Council of Governments must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of proposal procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

The Coastal Bend Council of Governments must maintain records sufficient to detail the history of procurement. The records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract price.

The Coastal Bend Council of Governments must use good administrative practices and sound business judgement for the settlement of all contractual and administrative issues arising out of procurements.

Selection of Responsible Contractors

The Coastal Bend Council of Governments will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources. The Coastal Bend Council of Governments will not enter into contracts with contractors who are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Competition: The Coastal Bend Council of Governments must conduct all procurement transactions providing full and open competition consistent with 2CFR 200.318. In order to ensure objective contractor performance and eliminate unfair competitive advantage, the Coastal Bend Council Governments must prohibit contractors that develop or draft specifications, requirements, statements of work and invitations for bids or requests for proposals from competing from the procurement. The Coastal Bend Council of Governments must not restrict competition by doing the following:

1. Placing unreasonable requirements on firms in order to disqualify them from doing business.
2. Placing unreasonable experience and excessive bonding.
3. Noncompetitive pricing practices between firms or between affiliated companies
4. Noncompetitive contracts to consultants that are on retainer contracts
5. Specifying only a brand name product instead of allowing “an equal” product to be offered

The Coastal Bend Council of Governments must procure in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

The Coastal Bend Council of Governments must ensure that all solicitations include the following:

Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other important requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated.

Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

The Coastal Bend Council of Governments must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods or services are current and include enough qualified sources to ensure maximum open and free competition. The Coastal Bend Council of Governments must not preclude potential bidders from qualifying during the solicitation period.

The Coastal Bend Council of Governments will take the necessary affirmative action steps to assure that minority businesses, women's business enterprises and labor surplus area firms are used when possible. The Council's affirmative action steps will include the following:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
2. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.
3. Dividing total requirements when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
4. Establishing delivery schedules, where the requirement permits maximum participation by small and minority businesses and women's business enterprises.
5. Using the services and assistance as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. Requiring the prime contractor, if subcontractors are to be let, to take the affirmative steps listed in (1) through (5).

1-102 **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.

1-103 **Grantor Agency Policy and Procedures:** At no time are these policies intended to be more stringent than required by the grantor agency from which Coastal Bend Council of Governments receives specific funds. The written procurement prepared by the source-granting agency shall be followed when funds are spent for the operation of a specific program.

1-104 **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.

1-105 **Singular-Plural:** Words in the singular include the plural and vice versa.

1-106 **Headings:** The headings contained in this Procurement Policy are for reference purposes only and shall not in any way affect the meaning or interpretation of this Policy.

1-107 **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.

1-108 **Severability:** Invalidation of any 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.

1-109 **Free and Open Competition:** All procurement transactions, regardless of dollar value, whether advertised or negotiated, shall be conducted in a manner, so as to provide maximum free and open competition. Coastal Bend Council of Governments should be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. 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, IFBs, etc.) will be excluded from competing for such procurements.

1-110 **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.

1-111 **Good Faith:** The Procurement Policy requires that all parties involved in the negotiation, performance and administration of contracts act in good faith.

1-112 **Effective Date:** The Procurement Policy applies only to contracts solicited or entered into after the effective date of this Policy, January 1, 2017.

1-113 **Public Access to Procurement Information:** Procurement information shall be a public record to the extent provided by the Texas Open Records Act and the 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 documents(s).

PART B: DEFINITION OF TERMS

1-201 **"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 combination of quality, services, time, and cost over the useful life of the required item.*

1-202 **"Best Value Bid"** *a procurement method that emphasizes value over price. The best value might not be the lowest; generally achieved through the Request for Proposal (RFP method).*

1-203 **"Bidder"** means any person that submits a bid in response to an Invitation for Bid ("IFB").

1-204 **"Bidders' List"** means the pre-qualified list of persons which is used in acquiring goods and services. The Bidders' List must be kept current and include sufficient qualified sources

to ensure maximum free and open competition.

1-205 "**Bid Splitting**" *the intentional splitting of a single purchase into smaller purchase 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.*

1-206 "**Buyer**" *agency personnel designated responsible for procurement activity within the CBCOG*

1-207 "**CBCOG**" means the Coastal Bend Council of Governments created under Chapter 391 of the Texas Local Government Code as a political subdivision of the State of Texas.

1-208 "**Competitive Sealed Bids**" means the procurement method whereby the Coastal Bend Council of Governments drafts the specifications, schedule and other conditions for award and sends the bid package to interested bidders and/or publishes an announcement on the CBCOG's website and in local periodicals. To be considered, bids must conform to the Invitation for Bid (IFB). Bid opening is a formal, public procedure where the award is made to the lowest responsive, responsive bidder. Award is not generally made at bid openings; rather the prices are read publicly and, after evaluation, the award is made.

1-209 "**Component Purchases**" *means purchases of the component parts of an item that in normal purchasing practices would be purchased in a whole.*

1-210 "**Construction**" *the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.*

1-211 "**Contract**" means a legal instrument by which the Coastal Bend Council of Governments purchases property or services needed to carry out the project or program under a Federal Award.

1-212 "**Contractor**" means any person, vendor, or entity having a contract with the Coastal Bend Council of Governments generally providing the required supplies, equipment or services to be used in a particular program.

1-213 "**Contract Administrator**" *program manager responsible for the administration of a particular contract.*

1-214 "**Cooperative Purchasing**" means 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 such as the General Services Commission and the Houston-Galveston Area Council Cooperative Purchasing.

1-215 ***"Designated Authorizing Party"*** means the Coastal Bend Council of Governments representative designated to authorize and approve purchases based upon dollar amount and internal organizational structure.

1-216 ***"Disadvantaged Business Enterprise" ("DBE")*** means 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 State of Texas.

1-217 ***"Equipment"*** means tangible, personal property (including information technology systems) having a useful life of more than two years and an acquisition cost of \$5,000.00 or more per unit.

1-218 ***Federal Award*** means the federal financial assistance that a non-federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.

1-219 ***"Federal financial assistance"*** means assistance provided by a federal agency in the form of grants, cooperative agreements, non-cash contributions or donations of property including donated surplus property, direct appropriations; food commodities and other financial assistance except for assistance in the form of loans, loan guarantees, interest subsidies, and direct federal cash assistance to individuals. It includes awards received directly from federal agencies, or indirectly through other units of state and local governments.

1-220 ***Federal awarding agency*** means the Federal awarding agency that provides a Federal award directly to a non-federal entity

1-221 ***Federal interest-*** means for the purpose of 200.329 Reporting on real property or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a federal award, the dollar amount that is the product of the federal share of total project costs and the current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

1.222 ***Grant agreement*** – means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-federal entity that, consistent with 31 U.S.C. 6302, 6304. It is used to enter into a relationship the principal purpose of which is to transfer anything of value from the federal awarding agency or pass-through entity's direct benefit or use. It is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the federal awarding agency or pass through entity and non-federal entity in carrying out the activity contemplated by the federal award.

1-223 ***"Historically Underutilized Business" ("HUB")*** means:

"(A) 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;

(B) 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);

(C) 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 in Paragraph (A). Those persons must have proportionate interest in the control, operation, and management of the partnership affairs;

(D) a joint venture in which each entity in the joint venture is a historically underutilized business under this subdivision; or

(E) a supplier contract between a historically underutilized business under this subdivision 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 the supplies."

1-224 ***"Inter-local Contract/Agreement"*** *an agreement between CBCOG and an eligible participating government under the Inter-local Cooperation Act, Vernon's Texas Statutes and Codes Annotated, Government Code Chapter 791, by which the parties agree to jointly perform procurement functions.*

1-225 ***"Invitation for Bid" ("IFB")*** means all documents, whether attached or incorporated by reference, utilized in soliciting competitive bids.

1-226 ***"Micro Purchases"*** means 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 transaction to minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulations, 48 CFR Subpart 2.1, and can be periodically adjusted for inflation.

1-227 ***"Minority Business Enterprise" ("MBE")*** means a small business concern wherein at least 51 percent 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."

1-228 ***"Negotiated Procurement"*** (a.k.a. competitive proposal procurements) means a process similar to the competitive sealed bidding procurements except that offerors and the Coastal Bend Council of Governments discuss or negotiate aspects of the proposal, such as price. Negotiations are held with all offerors in the competitive range based upon the evaluation factors set out in the RFP.

1-229 ***"Offeror"*** means a person that submits a proposal in response to a Request for Proposal.

1-230 "**Person**" means any business, individual, group of individuals, union, committee, club, organization, vendor, contractor, or entity.

1-231 "**Procurement**" means the buying, purchasing, renting, leasing, 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.

1-232 "**Procurement Instrument**" the document(s) used to create a legal, binding purchases commitment/contract between CBCOG and a vendor or contractor. This document may be a purchase order or a contract depending on the procurement method.

1-233 "**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.

1-234 "**Purchase Requisition**" an internal document created by an employee requesting the authorization of a purchasing transaction and will include a detailed description of the services and goods and other information that is relative to the transaction.

1-235 "**Responsible Bidder/Offeror**" means that the bidder or offeror has the capability to meet all of the requirements of the solicitation and 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.

1-236 "**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 IFB and RFP, including all form and substance.

1-237 "**Services**" means 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.

1-238 "**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.

1-239 "**Separate Purchases**" purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

1-240 "**Sequential Purchases**" purchases made over a period of time that in normal purchasing practices would be purchased in one purchase.

1-241 "***Small Business Enterprise***" means 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.

1-242 "***Specifications***" a precise description of the physical or functional characteristics, or the nature of the 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.

1-243 "***Subgrant***" means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

1-244 "***Subrecipient***" means a non-federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

1-245 "***Supplies***" means all tangible personal property other than "equipment" as defined in this part.

1-2465 "***Women-Owned Business***" means a small business concerned 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

PART A: ORGANIZATION AND CONTRACT ADMINISTRATION

2-101 ***Board of Directors***

1. All purchases exceeding \$50,000.00 must be approved by the Board of Directors if the purchase is not approved in the Coastal Bend Council of Governments adopted budget.

2-102 ***Executive Director and Director of Finance***

1. Shall be responsible for compliance with an implementation of these policies;
2. Shall review and approve proposed procurement actions to avoid unnecessary or duplicative purchases;
3. Shall analyze lease and purchase alternatives to determine the most economical and practical procurement.

2-103 ***Purchasing Agents with oversight from the Finance & Administration Department***

1. Shall be responsible for:
 - a. processing procurement requests;
 - b. classification of purchases;
 - c. identification, solicitation and selection of vendors or contractors;
 - d. maintaining and updating the Bidders' List;
 - e. negotiating and executing purchase orders and contracts;
 - f. monitoring the terms and conditions of the purchase orders and contracts;
 - g. ensuring the complete and accurate documentation of all procurements;
 - h. submitting all procurement files and records to the Finance Department; and
 - i. any and all other responsibilities assigned by the Executive Director or Director of Finance.

2-104 ***Authorization of Purchases***

1. ***Purchase Requisitions:*** An approved form used to identify and request the supply, equipment or service.
 - a. Purchase requisition forms are used to inform the department heads of the needs of a particular department and to correctly identify the supplies, equipment or services requested. This procedure provides a system of authorization and safeguards so that improper, illegal, unnecessary and/or duplicative purchasing is difficult to initiate and conceal.
 - b. The form is also used to inform the purchasing agents of the logistics of the procurement: what to buy, when it is required and the delivery

destination. The requisition should contain the following information [see Appendix B]:

- (1) date of requisition;
- (2) department, including contact person;
- (3) date required;
- (4) quantity;
- (5) description of item, including technical requirements;
- (6) purpose of purchase;
- (7) authorized signature of the department head
- (8) estimated cost;
- (9) source of funds; and
- (10) delivery destination.

c. The request must be made as early as possible to account for delivery time and allow for competitive bidding, if required.

2. Procurement Instrument: Procurement instruments include purchase orders, Interlocal agreements, and contracts. Each procurement instrument must contain the approval of the Program Director and or the Executive Director, depending upon the purchase amount, which will certify that the purchase satisfies the appropriate bid procedures, applicable grant requirements or restrictions, that adequate funds have been authorized and that appropriate approval(s) have been granted. Requests for a Purchase Order are obtained via the purchase requisition, and Purchase Orders are only issued by the Finance Department. Purchases over \$1,000 require the issuance of a purchase order.

3. Each purchase instrument such as purchase orders and contracts must contain the signature of the Executive Director which will certify that the purchase satisfies the appropriate bid procedures, applicable grant requirements or restrictions and that adequate funds have been authorized for the purchase.

4. *Payment*

a. Vendor invoices should be compared to the related purchase order or contracts and payment issued only upon verification of accuracy.

2-105 **Monitoring of Programs**

Program Directors and support staff shall have the responsibility to monitor grant, sub grant funded programs, and all procurements purchased with grant funds. The monitoring shall:

1. ensure compliance with applicable Federal requirements and that performance measures are being meet.
2. to provide onsite monitoring to ensure that grant agreements or contract objectives and obligations are being meet;
3. to provide technical assistance on an ongoing basis to subrecipients and contractors;
4. require annual single audits for subrecipients spending \$750,000 or more in federal awards;
5. require prompt corrective action upon evidence of any violations; and
6. identify in writing all findings and corrective actions necessary to comply.

2-106 **Restrictive Competition Practices Prohibited**

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

1. Prohibited restrictive practices include but are not limited to:
 - a. requiring unnecessary experience and excessive bonding;
 - b. placing unreasonable requirements on firms in order to qualify to do business;
 - c. organizational conflicts of interests;
 - d. non-competitive pricing practices between firms or between affiliated companies
 - e. non-competitive awards to consultants that are on retainer contracts;
 - f. specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement and specifications;
 - g. overly restrictive specifications; and
 - h. arbitrary action in the procurement process.

The procurement must be conducted in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or

proposals except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

PART B: RECORD RETENTION

2-201 Record Retention Policy

1. All procurement-related records must be maintained by the Coastal Bend Council of Governments for a period of seven years after the closing of the grant program in which the procurement was incurred for.
2. If there is litigation, 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.
3. At a minimum, records retained shall include but are not limited to:
 - a. correspondence, notes and memoranda relating to the procurement, including RFPs, IFBs, bids and proposals received and any other procurement form and notes on verbal transactions and telephone or facsimile quotations;
 - b. notes comparing quotations and relating to the basis for the award, including all negotiations;
 - c. notes and correspondence relating to the acceptance or rejections of bids, proposals or quotations;
 - d. 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;
 - e. any and all documentation reflecting the basis for sole source procurements, citing the authority and the basis for selection of the particular vendor;
 - f. a copy of public media advertisements;
 - g. 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;
 - h. copies of required insurance policies;

- i. monitoring/audit reports and any other required reports and financial reconciliations; and
- j. all contract closeout documents and records.

2-202 *Contract Provision*

1. *Access to Contractor Records*

Coastal Bend Council of Governments, the federal or state grantor agency, or their assigned designee, shall have access to and the right to examine, monitor and audit all records, documents, conditions and activities related to programs funded by grants and contracts issued by the Coastal Bend Council of Governments.

2. *Maintenance of Records*

It shall be the responsibility of subrecipients and contractors to maintain records associated with this procurement for a period of seven (7) years after the grant program is closed or in the event of litigation, a claim or audit, the records shall be retained until the resolution of such litigation, claim or audit.

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 CBCOG obtains the best value possible. This article describes these varied categories of purchases.

PART A: Non-Competitive and Competitive Purchases

3-101 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”), CBCOG may proceed in one of three ways:

- 1. Non-Competitive Micro Purchase** - If the price is less than \$3,500 the purchase may be made on a non-competitive basis, meaning that only one (1) written price quotation is required for purchases \$1,000 or greater but less than \$3,500. 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. **All purchases \$1,000 and over require the issuance of a purchase requisition for approval by the Program Director and a purchase**

order approved and signed by the Executive Director.

- 2. Competitive Small Purchase** – If the price is more than \$3,500, but less than \$50,000, 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 quotations must be in writing and can be obtained via website, mail, fax, or email. The Program Director may negotiate the price as appropriate or request that additional suppliers be obtained.
- 3. Competitive Formal Sealed Bid** – If the amount of the purchase is nearly \$50,000, CBCOG may solicit 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 with a sealed bid. Lastly, conflicts of interest between contractor or supplier and the CBCOG are minimized.
- 4. Competitive Proposals-RfP**- It is generally used when conditions are not appropriate for the use of sealed bids. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified resources. The Coastal Bend Council of Governments must have a written method for conducting technical evaluations of the proposals received and for selecting recipients. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. The Coastal Bend Council of Governments may use competitive proposal procedures for qualifications-based procurement of architectural /engineering (A/E) professional services whereby competitor's qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable competition. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services.
- 5. Noncompetitive Proposals- Sole Source**-The item is available only from a single source. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Coastal Bend Council of Governments. After solicitation of a number of sources, competition is determined inadequate.
- 6. Time and Materials Type Contracts** – To be used only when no other contract type is suitable where a ceiling price is stated and oversight exercised to assure contractor efficiency and cost control. This type of contract is used for legal services.

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

3-102 Selecting the Supplier/Contractor and Making the Purchase

After price quotations are obtained for purchases below the bid limit, the procuring

department selects a supplier/contractor and makes the purchases after the issuance of a purchase order has been signed by the Executive Director. 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.

After the supplier/contractor has been selected, the purchase requisition, the three informal written quotes, RFP, if formal competitive bids were obtained, and all associated documentation shall be submitted to the Finance department for review to determine compliance with the Council purchasing policies and procedures. If compliance is met, the finance department will issue a purchase order which is signed by the Executive Director.

ARTICLE IV

PURCHASES OF Over \$50,000 FORMAL SEALED BID

Invitation for Bid

Procurement by sealed bids (formal advertising) are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material items and conditions of the invitation for bids is the lowest in price.

The use of formal sealed bids is a method for contracting goods and non-professional services that includes competitive bids and awards. CBCOG solicits formal sealed bids using an Invitation for 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.

Part A: Invitation for Bid

4-101 Elements of an Invitation for Bid (IFB)

Formal sealed bidding is to be used when the conditions in Chapter 252 of the Texas Local Government Code are applicable and when CBCOG will award a contract to the lowest responsive and responsible bidder whose bid meets the terms and conditions of the Invitation for Bid. All IFB's 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.

In order for sealed bidding to be feasible, the following conditions should be present:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to complete effectively for the business; and
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- Bids must be solicited from an adequate number of known suppliers, providing them sufficient responses time prior to the date set for opening the bids. The invitation for bids must be publicly advertised.
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
- All bids will be opened at the time and place prescribed in the invitation for bids and opened publicly.

PART B: CONTRACT FORMATION

4-201 Competitive Sealed Bidding

1. General

- a. For procurements utilizing written specifications for supplies, equipment and services to be procured which exceed \$50,000.00
- b. All IFBs must clearly set forth all requirements to be met by the bidder.
- c. Requires formal advertising, adequate purchase descriptions, sealed bids and public openings.
- d. Award must be to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the Coastal Bend Council of Governments, price and other enumerated factors considered, such as transportation costs, discount costs.
- e. IFBs shall clearly set forth all factors to be used in evaluating bids.
- f. Coastal Bend Council of Governments may reject any and all bids if there is a sound documented reason.

4-202 Procurement by Competitive Proposals

1. General

- a. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. If this method is used, the following requirements apply:
- (1) Request for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical.
 - (2) Proposals must be solicited from an adequate number of qualified sources.
 - (3) The department heads soliciting RFPs for the purchase of goods and or services must have a written method for conducting technical evaluations of the proposals received and for selecting recipients.
 - (4) The Coastal Bend Council of Governments must perform a cost and price analysis for purchases in excess of \$50,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. Independent estimates must be made before receiving bids or proposals.
 - (5) The Coastal Bend Council of Governments must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. Consideration must be given to the complexity of the work to be performed, the risk borne by the contractor and the quality of its record of past performance.
 - (6) Costs and prices based upon estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable under Subpart E-Cost Principles.
 - (7) The cost plus a percentage of cost and percentage of construction cost methods must not be used.
 - (8) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
 - (9) The Coastal Bend Council of Governments may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services.
 - (10) The Coastal Bend Council of Governments may enter into noncompetitive procurement proposals due to the following:

- The public exigency or emergency for the requirement will not permit the delay incident to advertising;
- the supply, equipment or service to be procured is available from only one person for firm ("sole source");
- no acceptable bids have been received after formal advertising under competitive sealed bidding procedures; or
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Coastal Bend Council of Governments.
- The Coastal Bend Council of Governments must make available upon request of the Federal awarding agency or pass-through entity technical specifications on proposed procurements when there is a belief by the Federal awarding agency such review is needed to ensure the item or service specified is the one being proposed for acquisition.

b. Competitive Negotiation is to be used if:

- (1) the nature of the item/service precludes the development of a useful specification or purchase description;
- (2) price and other factors will be considered in making the award; and
- (3) three or more responsible bidders are willing and able to compete for award.

c. Negotiation is otherwise authorized by federal, state or local laws, rules or regulations.

- (1) Negotiated procurements may only be used for the procurements of high-technology products or services, as well as insurance.

d. Competition shall be obtained to the maximum extent practicable.

e. The proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations.

f. *Negotiations:*

- (1) Always document the results of negotiation, especially the reasons for the elimination of a proposal after negotiations.
- (2) Award must be based upon the weighted evaluation factors set forth on the RFP.

4-203 *Competitive Procedures*

1. Invitation for Bids/Requests for Proposals

- a. Shall be based upon clear and accurate descriptions of the technical requirements for the material, good, product, supply, equipment or service to be procured.
 - (1) The description may contain a statement of the qualitative nature of the material, good, product, supply, equipment or service; and
 - (2) set forth minimum essential characteristics and standards to which the material, good, product, supply, equipment or service must conform in order to satisfy its intended use.
- b. The description will not contain features which unduly restrict completion. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of procurement. When so used, the specific features of the named brand which must be met by bidders/offerors should be clearly specified.
- c. Offers shall be solicited by sending IFBs/RFPs to an adequate number of qualified sources as indicated by the Bidder's List to ensure competition, as well as through publication of the solicitation and responding to requests for the solicitation to the maximum extent practicable.
- d. The solicitation package should include the following:
 - (1) IFB/RFP Form, including:
 - (a) purpose, goals and/or objectives, including performance standards;
 - (b) proposal outline with format and sequence for submitting responses;
 - (c) bidder's conference information;

- (d) available funds and source of funds;
- (e) proposed grant period;
- (f) Solicitation instructions, including requirement for information regarding the bidder's/offeror's:
 - i) background and experience;
 - ii) accounting system;
 - iii) audit/monitoring results;
 - iv) program proposal;
 - v) detailed budget; and
 - vi) participant schedule/performance
- (g) identification number (for vendor reference and tracing purposes);
- (h) type of contract: cost reimbursement, fixed price or fixed unit price performance;
- (i) brief description of the supply, equipment or service;
- (j) requisition number;
- (k) closing date and hour for receiving bids/proposals, including designated time source, front desk wall clock;
- (l) address and office of where bids/proposals should be sent;
- (m) information on when and where specification may be reviewed or obtained if not included in the package;
- (n) contact person;
- (o) instructions to bidders/offerors;
- (p) Grantor agency or Coastal Bend Council of Governments policies and procedures, assurances, certification and contract boilerplate language;

- (q) definition of terms;
 - (r) standard contract terms and conditions; and
 - (s) evaluation factors and weight.
- (2) Protest procedures must contain:
- (a) contact person;
 - (b) time period for submission of protests;
 - (c) trigger events for submission, responses and replies to protests; and
 - (d) statements regarding right to reject any and all bids/proposals, right to recall all or portions of the IFB/RFP and right to terminate contract for convenience.
- (3) (RFPs only) Negotiation rights and requirements with respect to clarifying, explaining and verifying any aspect of a proposal submitted in response to an RFP.
- (4) Standard Terms and Conditions: those conditions for doing business with Coastal Bend Council of Governments which remain constant for all contracts and purchases, unless specifically deleted.
- (a) Uniform Commercial Code Standard Terms and Conditions may also be utilized.
- (5) Special Terms and Conditions: those terms and conditions not always required but that are required for the particular contract or purchase;
- (6) Cost and Pricing Data
- (a) lump-sum or unit price method; and
 - (b) the solicitation's and/or grant program's fiscal requirements such as, cost categories, allowable costs and specific cost limitations.
- (7) Specifications

- (a) Statement of Work
 - i) Service Plan/Program Design/Management Plan states the proposed program with a synopsis of key features, whether they are mandatory, optional or supplemental, program results and type of contract.
 - ii) scope and intent of procurement; and
 - iii) definitions and contract documents.
 - (b) Requirements
 - i) Performance Requirements and Characteristics
 - ii) Design Features
 - (c) Quality Assurance Standards
 - i) Samples
 - ii) Test Requirements
 - (d) Delivery Terms
 - (e) Method of Payment
- (8) Evaluation
- (a) identify reviewing staff;
 - (b) specify how proposals will be reviewed;
 - (c) ranking or rating criteria, including the manner in which points will be assigned; and
 - (d) any and all considerations relating to competition, reasonableness of cost/price, organizational issues and scope of work.

2. Public Notice

- a. A short summary of the IFB/RFP shall be published in the local newspaper or a newspaper of general circulation under Legal Notice

or in the Texas Register and the Coastal Bend Council of Governments' website, if applicable.

- (1) 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.
- b. 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 before the date of public opening.
- c. The solicitation package should be sent to all qualified persons on the Bidder's List. The Bidder's List must be kept current and include enough qualified sources to ensure open and free competition. Potential bidders may not be precluded from qualifying during the solicitation period.

3. Opening

- a. Bids and proposals must be received by and opened on the date and time specified by the IFB/RFP.
 - (1) Bid opening is open to the public; and
 - (2) If no member of the public attends, a member of another office shall act as a witness.
- b. Late submissions will not be considered for award.
 - (1) Bids/proposals shall be date/time stamped upon receipt.
- c. Incomplete bids/proposals must be considered non-responsive, and may not be considered for award unless due to a non-material omission.
 - (1) If the incomplete proposal is due to a non-material omission the Coastal Bend Council of Governments Board Chairman may seek the additional information or waive or correct the non-material omission.
 - (a) 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/offerors, i.e., the effect on price, quality, quantity, delivery or other contractual conditions is negligible.

- d. All bids and proposals must be sealed with the identification number marked outside the envelope. Only one bid/proposal may be submitted per envelope.
 - (1) An unmarked envelope may be opened to establish it contains a bid, then resealed; and
 - (2) The unmarked bid will not automatically be eliminated; however, it does violate the integrity of the process.
- e. Opened bids shall be kept on file and available for inspection, except to the extent properly designated as proprietary or trade secret.

4. Acceptance and Evaluation

- a. IFB/RFPs must clearly set forth all requirements to be met by the bidder/offeror for evaluation and the weight attached to each factor. *Evaluation factors may include, but are not limited to:*
 - (1) price;
 - (2) ability to respond in a timely manner (service capacity and response time);
 - (3) past recommendations and performance;
 - (4) safety record;
 - (5) financial stability and resources; including fiscal management capabilities and project budget;
 - (6) any other factors considered by Coastal Bend Council of Governments as necessary for the procurement.
- b. Summary of Evaluation and Proposal Processing
 - (1) Review proposal/offer for completeness, including but not limited to:
 - (a) verifying all calculations and sums;
 - (b) extending unit price to a total price for the requested quantity;

- (c) verifying authorized signatures;
 - (d) verifying responsiveness to solicitation specifications; any failures to meet the requirements should be noted, as well as whether such failures disqualify the bid/proposal;
 - (e) verifying that all samples or testing requirements were satisfied;
 - (f) evaluating the bid/proposal against the independent cost estimate or desired, ideal system;
 - (g) evaluating the proposal against the weights assigned in the RFP;
 - (h) reviewing the history of the bidder's/offeror's responsibility and demonstrated performance; and
 - (i) making recommendations and/or noting areas to be negotiated.
- (2) The RFP process must:
- (a) require a line item budget (an outline of the budget summary to be completed with sufficient detail of costs to enable a cost/price reasonableness analysis);
 - (b) avoid and protect against giving inappropriate signals regarding an acceptable price;
 - (c) including a rating method containing:
 - i) a value for price reasonableness;
 - ii) criteria for judging price reasonableness; and
 - iii) past performance as a quantifiable and criteria-referenced element;
 - (d) aggregate individual scores; final awards shall be consistent with dollar value, numerical ratings and category in accordance with the RFPs stated intentions;
 - (e) separately rate proposals (staff or the authorizing

party's designated representative);

- (f) document any and all inconsistencies; rating sheets shall be completed, signed and dated by the reviewing parties and shall be maintained as part of the procurement record;
- (g) contain minimum standards (such as administrative and organizational qualifications, fiscal system standards, performance and outcome expectations, adherence to time frames, etc.) for considering a response and components which would constitute disqualification, including failure to meet minimum threshold requirements; and
- (h) contain signed statements certifying that the individual signing on behalf of an organization has the authority to submit the proposal and carry out the proposed services.

5. (RFPs Only) Negotiations with Responsible Offerors:

- a. Negotiations (written/oral) shall be conducted with all responsible, responsive offerors deemed to be in the competitive range, i.e., have a reasonableness chance of being selected for award.
 - (1) The competitive range is determined by a technical evaluation of proposals received based upon the evaluation factors;
 - (2) The review and rating of proposals must be consistently applied to assure equal treatment and arms-length transaction;
 - (3) Data collected in the cost reasonableness review should be used to outline strengths and weaknesses of the proposed budget; and
 - (4) All changes resulting from negotiations should be documented.
- b. Types of contracts: cost reimbursement, fixed-unit price and fixed-unit price/performance based contracts.
- c. Award the contract to the responsible offeror whose proposal will be the most advantageous to the contractor, price and other factors considered.
- d. Notify all unsuccessful offerors of the award in writing.

6. Correction or Withdrawal of Bids

- a. Correction of Bids/Offers
 - (1) Bids may not be altered or amended after the submission deadline.
 - (a) A non-material omission or error may be waived by the Coastal Bend Council of Governments Board Chairman if the omission or error:
 - i) relates to a matter of form, not substance;
 - ii) has merely a negligible affect on price, quality, quantity, delivery or other contractual conditions; and
 - iii) does not otherwise prejudice the other bidders/offerors.
 - (2) Any alteration or change made to a bid or offer prior to opening must be initialed by the authorized signatory guaranteeing authenticity.

b. Withdrawal of Bids/Offers

- (1) A bid/offer may not be withdrawn or cancelled by the bidder/offeror, without the permission of the Coastal Bend Council of Governments, for a period of 90 days following the date of designated for receipt of bids. The bidder/offeror so agrees upon submittal of the bid/offer.
- (2) A bid bond may be required on a public works project or for bids/offers exceeding \$100,000.00 to ensure that if a bidder/offeror withdraws the bid/offer after acceptance, the Coastal Bend Council of Governments will not suffer a loss.
 - (a) The bid specifications or RFP's may require the bidder to furnish a good and sufficient bid bond in the amount of 5% of the total contract price.

7. Cancellation of IFBs or RFPs

- a. Any or all bids may be rejected.
- b. If no bid/offer is accepted, the entire solicitation process must be repeated.

8. Disqualification of Bids

- a. The following occurrences require disqualification of the bid:
- (1) Unsigned or unauthorized signatures on bids/proposals;
 - (2) Bids/proposals received after the date and time for opening;
and
 - (3) Bids/proposals where prices are conditional on award of another bid or are subject to unlimited escalation.

9. Award

- a. The award shall be made to:
- (1) **Bids: the lowest responsible, responsive bidder.**
 - (a) If two responsible bidders submit the lowest and best bid, cost and quality of the supplies, equipment or services being equal, the contract may be awarded by application of one or more preferences set forth in 1 TAC 113.8.
 - (b) In case of tie bids which cannot be resolved by the application of one or more preferences, an award shall be made by drawing lots.
 - (2) **Proposals:** to the responsible offeror whose proposal is the most advantageous to the Coastal Bend Council of Governments considering the relative importance of price and other evaluation factors and who possesses the ability to perform successfully under the terms and conditions of the proposed procurement.
 - (3) Only one bid/offer may be accepted.
- b. In order to award the contract to one other than the lowest dollar bid meeting the specifications, before the award, each lower bidder must be given notice of the proposed award and an opportunity to appear and present evidence of responsibility.
- c. To determine responsibility, consideration may be given to bidder/offeror integrity, compliance with public policy, past performance record, financial and technical resources or accessibility to other necessary resources.

10. Certifications

- a. Executive Orders 12549 and 12689, Debarment and Suspension, 2 CFR Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities.
 - (1) The Coastal Bend Council of Governments will include term and conditions in regards to Suspension and Debarment and during the preaward process the Coastal Bend Council of Governments will confirm if a contractor or subrecipient is suspended and debarred via sam.gov.
- b. Prohibition against Lobbying with Appropriate Funds, 31 U.S.C. § 1352 (West Supp. 1994)
 - (1) 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 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.
 - (2) Certify that they have not made a prohibited payment:
 - (a) upon submission of any request for consideration for award of federal contract, grant, loan or cooperative agreement;
 - (b) upon receipt of such federal monies unless such a certification was previously filed; and
 - (c) 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.
 - (3) Any person receiving a subgrant must make such a certification.
- c. Certification Regarding Drug-Free Workplace Requirements

11. Contract Provisions- Contracts over \$50,000

- a. Maintenance of Records [see Article II, § 2-202 (2), infra.]
- b. Access to Contractor Records [see Article II, § 2-202 (1), infra.]
 - (1) The contract must include a clause permitting access to books and records for audit purposes by the Coastal Bend Council of Governments, its designated representative and/or the grantor agency.
- c. Remedies
 - (1) Termination for Convenience [see Article V, § 5-102 (1), infra];
 - (2) Termination for Default [see Article V, § 5-102 (2), infra];
 - (3) Termination Procedures [see Article V, § 5-102, infra]; and
 - (4) Equitable Adjustments or Price Adjustment Clause.
- d. Venue:

This agreement shall be governed and construed in accordance with the laws of the State of Texas with venue in the City of Corpus Christi, Nueces County, Texas.

e. Equal Employment Opportunity –Except as otherwise provided under 4 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60 –1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b) in accordance with Executive Order 11246, Equal Employment Opportunity” (30 FR 12319,12935, 3 CFR Part, 1964 – 1965 Comp.,p.339 as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity Department of Labor.”

f. David-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Finance and Assisted Construction”). In accordance with the statute, contractors must

be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

g. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 - 3708) all contracts in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S. C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

h. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental developmental, or research work under that funding agreement, “the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

i. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act.

J. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2CFR 180 that implement Executive Orders 12549 3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235 Debarment and Suspension.

k. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not

used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U. S. C. 1352.

4-204 Sole Source Procurement

1. Sole source procurement may be used when the award is not feasible under small purchase, competitive bidding or negotiated procurement procedures.
2. Sole source procurement is limited to the following:
 - a. public exigency or emergency;
 - b. where the item is available from only a single source;
 - c. if, after soliciting a number of sources, competition is deemed inadequate;
 - (1) The Coastal Bend Council of Governments must have demonstrated a "good faith effort" that it has solicited qualified providers through the small purchase, sealed bids or competitive proposal processes.
 - d. is authorized by the grantor agency, if applicable.
3. Procedures
 - a. The process may be initiated with a Request for Quotation (RFQ), RFP or telephone solicitation.
 - b. The sole source should be required to submit a relatively complete proposal, including a description of the work to be accomplished and a proposed contract price.
 - c. Negotiations should be conducted with the sole source to obtain the best possible price.
 - d. The negotiations should be documented and retained in the procurement file along with the sole source justification.
4. Approval of Grantor Agency
 - a. The Coastal Bend Council of Governments must receive prior written concurrence from grantor agency for any sole source procurement expected to exceed \$50,000.00.
 - b. If specifications and conditions of a solicitation have been drawn to

describe a product which is proprietary to one vendor, without language which permits an equivalent product to be supplied, written justification of the requested specifications or conditions must be submitted.

4-205 Emergency Procurements

1. A procurement qualifies as an emergency if:
 - a. a public calamity requires the prompt purchase of items to provide for public needs or preserve property;
 - b. the item is necessary to preserve or protect the public health or safety of residents; or
 - c. the item is made necessary by unforeseen damage to public property.
2. Procedures
 - a. Procedures set forth in either § 3-204, infra, regarding small purchases or § 3-205, infra, for sole source procurements, should be followed to the extent possible.
 - b. All documents relating to the emergency procurement and its justification must be retained in the procurement files.
3. May be made without competitive bidding.

4-206 State Contract or Cooperative Purchases

1. The Coastal Bend Council of Governments shall consider the possibility of entering into intergovernmental agreements for procurement or use of common supplies, equipment or services.
2. The Coastal Bend Council of Governments should consider, when appropriate, to procuring supplies, equipment and services through an approved program of cooperative purchasing which has been certified as having met all applicable laws and regulations such as the Texas General Services Commission, the Goodbuy Purchasing Cooperative, or the Houston-Galveston Area Council Programs.
3. A local government that purchases supplies, equipment or services under the Interlocal Cooperation Act satisfies the competitive bidding requirement.

4-207 Professional and Consulting Services Procurements

1. General

- a. Definitions:
 - (1) **"Professional Services"** are those performed within the scope of practice (or provided in connection with the employment of a licensed person in the areas of practice) of accounting, architecture, land survey, medicine, optometry or professional engineering.
 - (2) **"Consulting Service"** means that the service of studying or advising a state agency under a non-employee/employer type contract.

- b. Professional Services
 - (1) Selection of professional services on the basis of competitive bids is prohibited.
 - (2) If based upon a competitive bid, the contract is contrary to public policy and void.
 - (3) Requires selection and award based upon demonstrated competence and qualifications to perform the services for a fair and reasonable price.
 - (4) Contracts should be based or selected through the use of a Request for Proposal (RFP) or Request for Quotations (RFQ).
 - (a) The solicitation should track the RFP process including
 - i) a statement of qualifications;
 - ii) public notice; and
 - iii) that the RFP or RFQ describes the services required and outlines in detail the information and data required of each offeror.

 - (b) Award shall be made to the offeror determined, in writing, to be best qualified based upon the enumerated evaluation factors and compensation determined to be fair and reasonable.

- c. Consulting Services do not require or prohibit the use of competitive bidding procedures.

- (1) A consulting services contract which exceeds \$10,000.00 is considered to be a "major consulting services contract."
- (2) Requires selection based on the demonstrated competence, knowledge, qualifications and reasonableness of the proposed fee.
- (3) An invitation to provide offers for consulting services must be published in the Texas Register (upon filing with the Secretary of State) not later than the 30th day before the date the Coastal Bend Council of Governments enters into a major consulting services contract providing:
 - (a) the name of the contact person;
 - (b) the closing date for receipt of offers;
 - (c) the procedure by which award will be made; and
 - (d) disclose whether such consulting services have been previously provided by a private consultant and/or the intent to award the contract to a previous private consultant unless a better offer is received.
4. Not later than 10 days after entering into a major consulting services contract, the Coastal Bend Council of Governments shall file with the Secretary of State for publication in the Texas Register.
 - (a) a description of the private consultant activities;
 - (b) the private consultant's name and address;
 - (c) contract performance period and value of contract; and
 - (d) all due dates for reports, documents, films or recordings.

2. Two-tiered Selection Process

- a. The Coastal Bend Council of Governments shall select a person capable of performing the service, on the basis of demonstrated competence and qualifications.

- b. The Coastal Bend Council of Governments shall enter into negotiation on a contract at a fair and reasonable price.

4-208 Unsolicited Offers or Proposals

1. An unsolicited offer/proposal is any offer/proposal other than one submitted in response to an IFB or RFP.
2. To be considered by the Executive Director, the unsolicited offer/proposal must:
 - a. not be for an item required by law to be competitively bid or proposed;
 - b. be in writing; and
 - c. meet the sole source procurement standards.
3. An unsolicited offer must meet the standards of subsection (2) above and shall be evaluated by the Executive Director and Finance Director to determine its utility and benefit to the Coastal Bend Council of Governments.
4. Sole source procedures must be followed.

4-209 Lease/Purchase Agreements

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

4-210 Federal Excess or Surplus Property

Coastal Bend Council of Governments 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 V

MODIFICATION AND TERMINATION OF CONTRACTS

5-101 Modification and Change Orders

1. Definitions

- a. *"Change Order"* means a written order signed by the Coastal Bend Council of Governments Board Chairman, directing the contractor to make changes authorized by the changes clause of the contract.
 - b. *"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 manual action of the parties to the contract.
2. All modifications or changes to the contract must be in writing.
- a. For an increase or decrease of \$15,000.00 or less, the Coastal Bend Council of Governments Board Chairman may approve the change order.
 - b. The original contract price may not be increased by more than 25% unless the change order is necessary to comply with a federal or state statute, rule, regulation or judicial decision enacted, adopted or rendered after the contract was made.
 - c. The original contract price may not be decreased by more than 25% without the contractor's consent.
 - d. Total contract price may not be increased unless the cost of the change can be paid from available funds.
3. If a modification requires a new solicitation, the contract should be terminated for convenience and a new solicitation issued.
4. Requirements to Re-compete
- a. Coastal Bend Council of Governments must re-compete where the modification results in the procurement of supplies, equipment or services that:
 - (1) are materially different from that for which competition was held;
 - (2) result in a change in the terms or conditions of a contract that interferes with or defeats the purpose of competitive procurements; or
 - (3) is tantamount to an unjustified sole source procurement.

- b. To determine whether the modification is outside the scope of the RFP/IFB, the Executive Director or his designee must review:
 - (1) the language of RFP/IFB;
 - 2) the instructions to offerors/bidders;
 - 3) the content and weighting of evaluating factors;
 - (4) the preliminary efforts required before the contractor can begin work;
 - (5) whether the Statement of Work must be amended to include the modification;
 - (6) the cost or value of the modification in relation to the original contract price;
 - (7) whether a substantial extension of time is required; and
 - (8) whether the modification was in connection with the work contemplated or specified by the contract.

c. Improper Justifications for Modification:

- (1) on-site contractor, familiar with existing conditions, provides greater assurance of satisfying the agency's needs; or
- (2) making an award with the intent to change contract specifications by a subsequent modification, i.e., Coastal Bend Council of Governments may not make an award when

the Executive Director knows or should know it is not based on the conditions under which the performance will occur and will thus require a modification.

5-102 Termination for Contracts

1. Termination for Convenience

a. General

- (1) Grant Programs. For contracts in excess of \$10,000.00, a contract may be terminated because of circumstances beyond the contractor's control, for cause and for convenience.

- (2) The termination for convenience clause must include the termination procedures and the basis for settlement.

b. Process

- (1) The Coastal Bend Council of Governments may terminate a contract, in whole or in part, for the convenience of the Coastal Bend Council of Governments 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.

- (2) 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 cost thereunder. The Coastal Bend Council of Governments 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.

- (3) A grant contract may only be terminated for convenience as follows:

- (a) By the grantor agency with the consent of the Coastal

Bend Council of Governments in which case the parties shall agree upon the termination condition, including:

- i) the effective date; and
- ii) in case of a partial termination, the portion to be termination.

- (b) By the Coastal Bend Council of Governments upon written notification to the grantor agency, stating:

- i) the reasons for such termination;
- ii) the effective date; and

- iii) 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.
- (4) The Executive Director may require the contractor to transfer title and deliver to the Coastal Bend Council of Governments in the manner and to the extent directed by the Executive Director.
 - (a) any completed [construction, materials and/or supplies/equipment]; and
 - (b) 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 the Coastal Bend Council of Governments has an interest. If the Executive Director does not exercise this right, the contractor shall use its best efforts to sell such [construction materials, supplies and/or equipment] in accordance with the pertinent standards of the Uniform Commercial Code. The exercise of the Termination of Convenience clause in no way implies that the Coastal Bend Council of Governments has breached the contract.

- (5) Compensation
 - (a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with any cost or price 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 Executive Director may pay the contractor, if at all, an amount set in accordance with subparagraph (c) below.

- (b) The Executive Director and the contractor may agree to a settlement provided the contractor has filed termination claim supported by cost and pricing data and that the settlement does not exceed the total contract price plus settlement costs reduced by amounts previously paid by the Coastal Bend Council of Governments and less any lawful offsets or credits due, including but not limited to the proceeds to any sales of construction materials, supplies and/or equipment and the contract price of the work not terminated.
- (c) Absent complete agreement under subparagraph (b) above, the Executive Director 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:
 - i) 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;
 - ii) costs of settling and paying claims arising out of the termination of subcontracts or orders; and
 - iii) reasonable settlement costs of the contractor reasonably necessary for the preparation of settlement claims and supporting data.

2. Termination for Default

- a. Coastal Bend Council of Governments may terminate a contract, in whole or in part, when it has determined that the contractor has substantially violated any provision of this contract.
- b. Coastal Bend Council of Governments may terminate a contract in

whole or in part when it has determined that a contractor, subcontractor or subgrantee has violated specific provisions of the grantor agency regulations and directed corrective action has not been taken.

- c. Grounds for default include, but are not limited to:
 - (1) failure to perform pursuant to the terms and conditions of the contract; and
 - (2) violations of grantor agency rules or regulations.
- d. Termination for Default Clause must be included in all grant contracts in excess of \$10,000.00.
- e. Notwithstanding the termination of the contract and subject to the Executive Director 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 the Coastal Bend Council of Governments has an interest.
- f. Payment for completed supplies, equipment or services delivered and accepted by the Coastal Bend Council of Governments 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. The Coastal Bend Council of Governments may withhold from amounts due to the contract amounts deemed necessary by the Executive Director to protect the Coastal Bend Council of Governments against loss because of outstanding liens or claims of former lien holders and to reimburse the Coastal Bend Council of Governments for the excess costs incurred in procuring similar supplies, equipment and services.
- g. The rights and remedies provided are in addition to any other rights and remedies provided by law, under the Coastal Bend Council of Governments procurement policy or under this grant or contract.

ARTICLE VI

LEGAL AND CONTRACTUAL REMEDIES

PART A: RESOLUTION OF CONTROVERSIES

6-101 Resolution of protested solicitations and awards

- 1. Procedure

- a. A protest must be submitted to the Coastal Bend Council of Governments' designated official within seven (7) calendar days of the time the basis of the protest became known or should have become known.
- b. The protest must be submitted in writing and identify the protester, the solicitation being protested and specifically identify the basis for protest, providing all pertinent information regarding the solicitation, contract and/or actions of the Coastal Bend Council of Governments.
- c. A grievance hearing may be held at the request of the protester. All interested parties must be given
 - (1) written notice of the date, time and place of the hearing;
 - (2) an opportunity to present evidence;
 - (3) a written decision within 60 days after the hearing; and
 - (4) notice of appeal rights.

2. Appeals

- a. Appeals from the Coastal Bend Council of Governments decisions to the grantor agency are limited to:
 - (1) violations of federal law or regulations and the standards of Section __.36 of the Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments; and
 - (2) violations of the Coastal Bend Council of Governments' protest procedures for failure to review a complaint or protest.
- b. Protests received by the grantor agency, other than specified in subsection (a) above, are to be referred to the Coastal Bend Council of Governments.
- c. Such appeal may be made only after exhausting all administrative remedies through the Coastal Bend Council of Governments.

6-102 Disclosure

- 1. Coastal Bend Council of Governments shall disclose all information regarding protest to the grantor agency.

6-103 Resolution of contract disputes

1. Upon breach or default, the Coastal Bend Council of Governments shall give the contractor written notice of default. If the default is not remedied to the satisfaction and approval of the Coastal Bend Council of Governments within thirty (30) working days of receipt of such notice, default will be declared.
2. Upon breach of contract or default, the Coastal Bend Council of Governments may exercise any and all rights afforded by law, including but not limited to:
 - a. taking possession of the assigned premises and any fees accrued or becoming due to date; or
 - b. taking possession of all goods, fixtures and materials and may foreclose its lien against any personal property, applying the proceeds towards any deficiencies, fees due or becoming due under the agreement.

6-103 Remedies for noncompliance

- a. The Coastal Bend Council of Governments will temporarily withhold cash payments pending correction of the deficiency by the Coastal Bend Council of Governments or more severe enforcement action by the Federal awarding agency or pass-through entity.
- b. The Coastal Bend Council of Governments will disallow (that is, deny both of use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- c. The Coastal Bend Council of Governments will wholly or partly suspend or terminate the Federal Award
- d. The Coastal Bend Council of Governments will initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal Awarding Agency).
- e. The Coastal Bend Council of Governments will withhold further Federal awards for the project or program.

PART B: SOLICITATIONS OR AWARDS IN VIOLATION OF THE LAW

- 6-201 Contracts awarded in violation of the competitive process or otherwise in violation of the law are void.

ARTICLE VII
SMALL, DISADVANTAGED, MINORITY, WOMEN-OWNED AND
HISTORICALLY UNDERUTILIZED BUSINESSES:
FEDERAL ASSISTANCE OR CONTRACT PROCUREMENT
REQUIREMENTS

PART A: POLICIES

7-101 Policy Statement:

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

7-102 Bidder/Offeror Statement:

1. 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.

7-103 To ensure that the Coastal Bend Council of Governments' policy requires 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:

1. 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;
2. Assure that small MBEs, DBEs, women-owned businesses, and HUBs are solicited whenever they may be potential sources. In this regard, the purchasing agents should investigate new sources and advertise when feasible in minority publications;

3. When economically feasible, and where not in contravention of competitive bidding requirements, the purchasing agents should divide the total requirements into smaller tasks or quantities so as to permit maximum small, MBE, DBE, women-owned businesses and HUB participation;
4. 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;
5. Require that prime contractors take affirmative and meaningful steps towards retaining small, MBE, DBE, women-owned businesses and HUB subcontractors;
6. Procure goods and services from labor surplus areas;
7. If the requirement permits, establish delivery schedules that encourage small, MBEs, DBEs, women-owned businesses, and HUBs to participate; and
8. 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.

7-104 For such affirmative steps to be meaningful, the Executive Director or Finance Director 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 the award is given to a contractor with such a subcontractor, that such business is retained during the entire performance of the contract.

7-105 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.

7-106 In making expenditures of more than \$3,500.00 and less than \$50,000.00, the purchasing agents shall contact at least two HUBs on a rotating basis. A city is exempt if the list provided by the Office of Small Business Assistance of the Texas Department of Commerce fails to identify such a HUB.

ARTICLE VIII

ETHICS

PART A: STANDARD OF CONDUCT

8-101 No officer, employee or agent of the Coastal Bend Council of Governments shall participate in the negotiation, 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 officer, employee or agent of the Coastal Bend Council of Governments shall at all times avoid the appearances of impropriety.

1. A conflict arises when a Coastal Bend Council of Governments' employee, officer or any member of his/her immediate family, 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.
 - a. "Immediate family" means to refer to any person related within the second degree of affinity (marriage) or within the third degree of consanguinity (blood) to the party involved.
 - b. "Substantial interest" for purposes of this section, means the person
 - (1) owns 10% or more of the voting stock or shares of the entity; or
 - (2) 10% or more or \$5,000.00 or more of the fair market value of the entity; or
 - (3) received funds from the entity in excess of 10% of the person's gross income for the previous year; or
 - (4) is related to an official in the first degree of consanguinity or affinity.

8-102 No officer, employee or agent of the Coastal Bend Council of Governments 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 officer, employee or agent of the Coastal Bend Council of Governments.

PART B: COURSE OF CONDUCT IN THE EVENT OF A CONFLICT

8-201 In the event of a real or apparent conflict of interest, as set forth in subpart A, the affected officer, employee or agent must adhere to the following procedures:

1. Sign a declaration of a possible conflict of interest.
 - a. Affidavit form [see Appendix A]
2. If applicable, abstain from voting on any procurement action:
 - a. where the officer, employee or agent directly represents an organization or may receive a direct financial benefit; or
 - b. where the officer, employee or agent is in direct competition with a proposal or bid which would provide a direct financial benefit.
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:
 - a. on contracts with the organization he/she represents or from which he/she receives a direct financial benefit; or
 - b. on contracts with organizations in which a family member might realize a direct financial benefit.

PART C: VIOLATIONS AND REMEDIES

8-301 Violations of the provisions of this Article constitute misconduct, subjecting the violator to any and all penalties prescribed by law.

8-302 Penalties, sanctions or other disciplinary actions, to the extent permitted by state or local law, rules or regulations, shall be imposed for violations of the code of conduct/conflict of interest standards, by the Coastal Bend Council of Governments officers, employees or agents or by persons, contractors or their agents, when the procurement involves state or federal programs and/or funds.

8-303 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.

DECLARATION OF CONFLICT OF INTEREST

AFFIDAVIT OF INTEREST

STATE OF TEXAS §
COUNTY OF §

I, _____, as an [employee, officer or agent, or any member of his/her family, a partner or a person or an organization which employs or may employ in the near future any of these individuals] of the Coastal Bend Council of Governments, make this affidavit and state that I have financial or other substantial interest in [name of entity] which may be considered for the award of [specify contract or procurement].

My interest is as follows:

Upon the filing of this affidavit with the Coastal Bend Council of Governments, I affirm that I will abstain from any further participation in this [contract or procurement] whatsoever.

EXECUTED this _____ day of _____, 20__.

Signature of employee, officer or agent

Title

SWORN TO AND SUBSCRIBED before me by
on the _____ day of _____, 20__.

Notary Public, State of Texas