



**North Central Texas
Council of Governments**

Transportation Department

Third Party Procurement Procedures



1. BACKGROUND

The purpose of the 3rd Party Procurement Review procedure is to establish standards and guidelines for the North Central Texas Council of Governments' (NCTCOG) to evaluate the potential risks and oversight responsibilities for our subgrantees who will procure goods and services through Third Party Contracts, in accordance with 2 CFR Part 200.317-326.¹

The implementation of the procedure outlined below should act to:

- Demonstrate compliance with grant requirements;
- Minimize NCTCOG's exposure to legal and compliance issues, including subsequent financial loss;
- Identify the various levels of procurement scrutiny by our federal partners associated with different partners, agencies, and firms;
- Identify the level of review needed to ensure compliance with regulations;
- Ensure fair, open, competitive opportunities for all parties involved in procurements.

2. PROCEDURE

Compliance with Federal Regulations

Subgrantees shall comply with applicable federal, State and local laws and regulations, and conform to the standards set forth in 2 CFR Part 200 or applicable governing standards published by the awarding agency. These guidelines apply to purchases for contractual services, commodities, and equipment funded with federal and State funds.

Use of Lower-Tier Subgrantees

If the provisions of a NCTCOG agreement allow a lower-tier subgrantee to manage and administer NCTCOG supported projects, the lower-tier subgrantee must also comply with applicable federal, State, and local laws, and all guidelines established by the applicable funding agency.

Conflict of Interest

There can be no conflict of interest, real or apparent, in the award or administration of a contract supported by federal funds. The subgrantee shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees, or agents engaged in the award and administration of contracts supported by federal funds.

Open and Fair Competition

All procurement transactions shall be conducted in a manner that provides maximum open and fair competition consistent with 2 CFR Part 200 or applicable federal law.

¹ Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 Code of Federal Regulations 200

Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to, the following:

- Placing unreasonable requirements on firms/service providers/vendors/consultants in order for them to qualify to do business;
- Placing geographical preferences in the evaluation of bids or proposals;
- Noncompetitive practices between firms/service providers;
- Organization conflicts of interest;
- Requiring unnecessary experience and excessive bonding requirements; and,
- Any arbitrary action in the procurement process.

Written Procurement Policies

The subgrantee shall have written procurement procedures and may adopt by reference procedural requirements of 2 CFR Part 200 or applicable federal law.

Procurement Guidelines

NCTCOG, in reviewing subgrantee procurement procedures and policies, will determine consistency with 2 CFR Part 200 or the applicable federal law regulating procurement. Stated therein are the governing regulations and implementing guidelines for all procurement activity undertaken with grant funds. Some of those items, with particular applicability to NCTCOG grants, are:

1. Subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
2. Procedures will allow for analysis of the most economical approach in purchasing, including lease versus purchase alternatives. Each proposed procurement must be reviewed to avoid the purchase of unnecessary or duplicative items.
3. Subgrantees will make awards 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.
4. Subgrantees will maintain records sufficient to detail the significant history of procurement.
5. These standards do not relieve the subgrantee of any contractual responsibilities under its NCTCOG contracts. The subgrantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual administrative issues arising out of any procurement entered in support of a NCTCOG grant. These include, but are not limited to, source evaluation, protests, disputes, and claims.

Subgrantee Files

Each subgrantee must maintain adequate files to support any purchases made. A copy

of the quotes that were obtained (purchases between \$3,000.00 and \$150,000.00) or a copy of the legal notice must also be on file to support the choice of lowest and/or best bid. The subgrantee must provide adequate justification if the purchase is not awarded to lowest and/or best bidder.

Method of Procurement²

All procurement transactions shall be made by one of the following methods. NCTCOG reserves the right to request any and all documentation, either in advance or upon completion of procurement activities, as deemed necessary.

1. PROCUREMENT BY SMALL PURCHASE PROCEDURES

For procurement of services, supplies, or other property with an aggregate cost under \$150,000³, written price or rate quotations shall be obtained from at least two qualified sources. The aggregate sum of all items being purchased is considered one purchase.

Purchases equal to or under \$3,000- Purchases which do not involve the expenditure of more than \$3,000, exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive quotes; provided, however, that nothing contained in this paragraph shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive quotes on purchases under \$3,000.

Purchases equal to or under \$150,000- Purchases which involve the expenditure of at least \$3,000 but not more than \$150,000, exclusive of freight and shipping charges, may be made from the lowest and best contractor without publishing or posting advertisements for bids, provided at least two competitive written quotes have been obtained. The term "competitive written quotes" means a quote submitted on a quote form furnished by the subgrantee and signed by authorized personnel representing the contractor, or a quote submitted on a contractor's letterhead or quote form signed by authorized personnel representing the contractor.

2. PROCUREMENT BY SEALED BIDS

Purchases over \$150,000- Public advertisement once each week for two consecutive weeks for competitive sealed bids is required for all purchases which

²Explicit federal and State regulations apply to each procurement method. Subgrantees may proceed with procurement activities only after careful study of the regulations reveals all requirements have been met.

³ This purchase threshold is to be utilized for subgrantee procurements with federal funds. Separate thresholds may be permitted or required under state law for state funded grants.

exceed \$150,000. Bids may not be due less than seven working days following the date the last advertisement appears in the public forum.

Purchases which involve expenditure of more than \$150,000, exclusive of freight and shipping charges shall be made from the lowest and best bidder after publicly advertising for competitive sealed bids once each week for two consecutive weeks. The date, as published, for the bid opening, shall not be less than seven working days after the published notice has been completed. The notice shall state the time and place at which bids shall be received; types of supplies, and/or equipment to be purchased, and the contact person. If plans or specifications are not published, notice should state where copies may be obtained. Specifications shall be written so as not to exclude any supplier.

3. PROCUREMENT BY COMPETITIVE PROPOSALS

Purchases over \$150,000- Formally publicizing a Request for Proposals which normally results in conducting competitive negotiation with more than one source submitting an offer. This method is generally used when conditions are not appropriate for the use of sealed bids. All evaluation factors and their relative importance will be identified. There will be procedures for technical evaluations of the proposal and selection of an awardee. Awards are made to the proposal most advantageous to the program, with price and other factors considered.

4. SOLE SOURCE PROCUREMENT

Noncompetitive items are those available from one source only. In connection with the purchase of noncompetitive items only available from one source, a certification of the conditions and circumstances requiring the purchase shall be filed by the subgrantee with the appropriate NCTCOG project manager. Upon receipt by the NCTCOG project manager, the certification will be forwarded to the appropriate NCTCOG personnel for approval of the request.

Only after receiving authorization from NCTCOG will the purchase be deemed a sole source procurement. All authorizations must be received prior to any procurement transactions. The appropriate NCTCOG personnel may authorize a sole source procurement under the conditions defined in state law, provided that the sole source procurement shall be made according to the established purchasing rules and regulations and shall not be made so as to circumvent the competitive purchasing requirements.

5. PURCHASES UNDER GOVERNMENTAL COOPERATIVE PURCHASING PROGRAMS

Public entities that can purchase under State contracts or other governmental cooperative purchasing programs can do so without prior approval or obtaining written quotes. Not all State contracts or governmental cooperative purchasing programs follow 2 CFR 200 guidelines when procuring and/or issuing contracts for their cooperative purchasing programs. As such, it is highly recommended that entities are confirming the specific solicitation and contract is compliant with 2 CFR 200 guidelines prior to issuance of a purchase order. NCTCOG staff are available to assist entities in reviewing and ensuring compliance with necessary regulations in advance of issuing a purchase order and/or proceeding with a purchase.

All other purchases must follow the guidelines outlined in the Contracting Procurement Procedures.

6. EMERGENCY PROCUREMENT

NCTCOG may approve an emergency procurement under the conditions defined in federal and State law, provided such emergency procurement shall be made with such competition as is practicable under the circumstances.

7. ADVERTISING PROCUREMENTS

Procurements to solicit various advertising activities are exempt from a competitive procurement requirement. Generally, the procurement of these items are done through competitive written quotes to ensure a fair and reasonable price is received for those services.