



Procurement Policy and Procedure Manual

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INTRODUCTION

H-GAC is the regional organization through which local governments consider issues and cooperate in solving area wide problems. Through H-GAC, local governments also initiate efforts in anticipating and preventing problems, thus saving public funds. The 13-county H-GAC service region is growing, becoming more diverse, and constantly changing. In order to address the needs of citizens and businesses, local governments are providing leadership to guide regional development wisely and manage change constructively.

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

This policy is intended as a living document and is subject to periodic updates as state or federal laws or regulations may change, it will be interpreted that this policy will automatically incorporate those updates as they are implemented into law or regulation.

Overview of Purchasing Authority

Texas law provides that a COG may enter a contract for an expenditure of more than \$50,000 only if it complies with certain procurement procedures. The options include competitive sealed solicitations, Interlocal agreements, and other more specialized contracting vehicles. This manual covers those procurement methods in detail.

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

This manual also discusses guidelines for purchases under \$50,000 as well as those subject to competitive procurement exceptions, although Texas state law does not mandate a set process.

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

PREFACE

Procurement happens at varied levels within H-GAC and it is recognized that in order for the day to day business operations of the agency to flow continually, there are times when it may be necessary to decentralize the procurement process, single purchases of \$500 and under for certain approved items are allowed for purchase by the various departments within H-GAC as determined by the Procurement Committee. All personnel with delegated purchasing authority will be responsible for using that authority in conformance with the Houston-Galveston Area Council procurement policies and procedures.

All purchase requests must be submitted to the Procurement and Contracts Department via the electronic procurement request form in order to initiate the procurement process.

ARTICLE I

GENERAL PROVISIONS

ARTICLE I - GENERAL PROVISIONS

PART A: Purpose

The purpose of the H-GAC Procurement Manual is to provide a resource of procurement best practices for H-GAC.

PART B: Objectives, Construction and Application

Objective

The objective of the Procurement Policy is to provide the Houston Galveston Area Council herein after referred to as "H-GAC" with the requisite parameters for procuring goods and services under applicable state and federal guidelines. The policies and procedures outlined herein are intended to comply with the requirements of Chapter 252 of the Texas Local Government Code as well as the requirements of OMB Uniform Grant Guidance Super Circular 2 CFR 200, and the Texas Uniform Grant and Contract Management Standards. More specifically, the underlying purposes and policies of this Procurement Policy are:

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

Interpretation

This Procurement Policy will be construed and applied to promote its underlying purposes and policies. The guidelines herein are intended to comply with all applicable state, local, federal and grantor agency rules, regulations, policies and procedures. Detailed operating procedures, which incorporate this Procurement Policy, will be maintained by the Procurement and Contracts Department of H-GAC.

Grantor Agency Policies and Procedures

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

Standard Terms and Conditions

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

Gender Neutral

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

Singular-Plural

Words in the singular include the plural and vice versa.

Headings

The headings contained in this Procurement Policy are for reference purposes only and will not in any way affect the meaning or interpretation of this Policy.

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 will control.

Severability

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

Free and Open Competition

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

Supplementary General Principles of Law

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

Good Faith

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

Effective Date

The Procurement Policy applies only to contracts solicited or entered after the effective date of this Policy, February 16, 2016.

Adoption by H-GAC

The Procurement Policy is adopted in whole by H-GAC Board of Directors.

Public Access to Procurement Information

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

PART C: Definition of Terms

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

"Best Value Solicitation" a procurement method that emphasizes value over price. The best value might not be the lowest price; generally achieved through the Request for Proposal (RFP) method and can be formal or informal depending on the value of the solicitation.

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

"Bidder's List" the list of sources used in acquiring good and services.

"Bid Splitting" the intentional splitting of a single purchase into smaller purchases to avoid formal competition 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 competitive law requirement, for items that should be combined in a single purchase. The code defines three bid-splitting practices; see Component Purchases, Separate Purchases, and Sequential Purchases.

"Buyer" or "Procurement and Contracts Department" agency personnel designated responsible for all procurement activity within H-GAC.

"Change Order" means a written order authorized by the buyer or contract administrator, directing the contractor to make changes.

"Competitive Sealed Solicitation" the procurement method whereby H-GAC prepares a solicitation and sends notice to interested respondents and publishes an announcement in local periodicals. To be considered, responses must conform to the Solicitation. The award of a contract is not made at the time responses are opened; rather, after evaluation, the award is made to the respondent whose response is determined to be the most advantageous to H-GAC, considering the relative importance of price and the other evaluation factors set forth in the solicitation.

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

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

"Contract" (except as used in the definitions of "grant" and "subgrant") a legally binding agreement between H-GAC and a vendor or contractor; or a legally binding agreement between a contractor and a subcontractor. Contract types that H-GAC utilizes include, but not limited to, consultant or contractor agreement; cooperative agreement; goods/services agreement (also includes purchase orders); grant agreement/award; intergovernmental agreement.

“Contractor” any person, vendor, or entity having a contract with H-GAC. For purposes of The Workforce Solutions programs, the term includes service delivery area (SDA)/substate grantee (SSG), sub recipients, and/or administrative entities, their sub recipients and vendors and any other entity that receives The Workforce Solutions funds, either directly or indirectly.

“Contract Administrator” a buyer, program manager or titled employee responsible for the administration of a particular contract. For purposes of The Workforce Solutions, the term includes service delivery area (SDA)/sub state grantee (SSG), sub recipients, and/or administrative entities, their sub recipients, vendors and any other entity that receives Workforce Solutions Investment Act (WIC) funds either directly or indirectly.

“Cooperative Purchasing” procurement conducted by, or on behalf of, more than one public procurement entity including, but not limited to, any county, city, town and other corporate or political entity organized under state entities. Efforts may result in contracts that other entities with proper authorization may utilize to meet established procurement requirements without undertaking a separate procurement process.

“Councils of Government (COG)” the Houston-Galveston Area Council created under Chapter 391 of the Texas Local Government Code; a political subdivision of the State of Texas.

“Designated Authorizing Party” the H-GAC representative designated to authorize and approve purchases based upon dollar amount and internal organizational structure.

“Disadvantaged Business Enterprise” (“DBE”) a for-profit corporation in which at least 51% of all classes of the shares of stock is owned by one or more persons who are economically and socially disadvantaged because of their identification as members of certain groups, including but not limited to African Americans, Hispanic Americans and women, as determined and classified by the Small Business Administration (SBA) and/or State of Texas. The use of the term DBE is intended to align with the terms as it’s used in Federal Regulation 2 CFR 200 and as used, is understood to encompass all similar designations issued by a certifying agency.

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

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

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

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

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

“Micro-Purchase” a purchase of supplies or services using Federal Regulation 2 CFR 200 procurement methods, the aggregate amount of which does not exceed the micro-purchase threshold amount as currently established by Federal regulations in order to expedite the completion of its lowest-dollar small purchase transactions to minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 and can be periodically adjusted for inflation.

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

“Negotiated Procurement” a process like the competitive sealed bidding solicitation except that respondents and H-GAC discuss or negotiate aspects of the Response, such as price. Negotiations are held with all respondents in the competitive range, in the order of ranking, based upon the evaluation factors set out in the Solicitation. Can also include a Best and Final Offer process.

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

“Procurement” 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.

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

“Purchase Order” (P.O.) a type of procurement contract and is a legally binding agreement between H-GAC and a vendor.

“Request for Proposal” (RFP) the document used to solicit responses 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.

“Respondent” any person or firm that submits a response to a procurement solicitation.

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

“Responsive Bidder/Respondent” a bidder or respondent that has submitted a bid or response that fully conforms in all material respects in all requirements of the solicitation, including all form and substance.

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

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

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

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

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

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

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

“Supplies” all tangible personal property other than "equipment" as defined in this part.

“Vendor” an entity that is responsible for providing generally required supplies, equipment or services to be used by H-GAC in a program, either by the recipient, sub recipient or the participants.

ARTICLE II

PROCUREMENT ORGANIZATION

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

ARTICLE II – ORGANIZATION AND CONTRACT ADMINISTRATION

2.0 Board of Directors

Establishes H-GAC Procurement Policy

2.1 Executive Director

Will be responsible for compliance with and implementation of these policies

2.2 Procurement Committee

- Will consist of, at a minimum, the Executive Director, the Chief Financial Officer, and the Procurement and Contracts Department.
- Will be responsible for the administration of these policies and recommends policy changes to the Executive Director.
- Will be responsible for the compliance and implementation of these policies.
- Will review and approve certain procurement actions to avoid unnecessary or duplicative purchases.
- Will analyze lease and purchase alternatives to determine the most economical and practical procurement.

2.3 Procurement and Contracts Department

Will be responsible for:

- processing procurement requests;
- classification of purchases;
- determination of appropriate procurement methods;
- identification, solicitation and selection of vendors or contractors;
- maintaining and updating the Bidders' List;
- negotiating and executing purchase orders and contracts;
- monitoring the terms and conditions of the purchase orders and contracts;
- ensuring the complete and accurate documentation of all procurements;
- maintaining all procurement files and records; and
- all other responsibilities assigned by the Executive Director

2.4 Authorization of Purchases

The Procurement Instrument must contain the following approvals to correspond to the total cost:

Program Manager	\$0.01 - \$3,500.00
Assistant Director*	\$3,500.01 - \$8,000.00
Department Director	\$3,500.01 - \$10,000.00
Deputy Executive Director/Chief Financial Officer	\$10,000.01 - \$25,000.00
Executive Director	\$25,000.01 - \$50,000.00
Board of Directors	\$50,000.01 and over

*Applies only to those Departments with the position of Assistant Director

2.5 Pre-commitment Documents

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

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

2.6 Procurement Request

Requests for a procurement must be submitted via the electronic SharePoint request, and purchase orders are only entered and issued by the Procurement and Contracts Department and must be on an approved procurement instrument. Procurement instruments include purchase orders and contracts. Each procurement instrument must contain the appropriate approvals and Program Management will certify that the purchase request is consistent with applicable grant requirements or restrictions, that adequate funds have been authorized and that appropriate approval(s) have been granted. In the case of contracts, the executed contract will be the authorizing document.

2.7 Monitoring of Programs

Program Management and the Internal Auditor will have the responsibility to monitor grant, sub grant funded programs, and all procurements. The monitoring system must:

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

2.8 Restrictive Competition Practices Prohibited

Prohibited restrictive practices include but are not limited to:

- geographic preference (when using federal funds) except for any authorized domestic preference per 2 CFR 200.322;
- requiring unnecessary experience and excessive bonding;
- placing unreasonable requirements on firms in order to qualify to do business;
- organizational conflicts of interest;
- non-competitive pricing practices between firms;
- non-competitive awards to consultants that are on retainer contracts;
- "brand name" specifications;
- overly restrictive specifications; and
- arbitrary action in the procurement process.

ARTICLE III

METHODS OF PROCUREMENT

Non-Competitive and Competitive

Thresholds are established by law to ensure that sizeable purchases are subjected to fair competition among available, responsible contractors and vendors and that H-GAC obtains the best value possible. Even though certain purchases are exempt from the statutory requirements for competition, there must be adequate controls and competition. This article describes these varied categories of purchases. H-GAC reserves the right to apply competitive methods to procurements under the competitive limit as may be deemed in the best interest of H-GAC.

ARTICLE III – NON-COMPETITIVE AND COMPETITIVE PURCHASES

PART A: Methods of Procurement

3.0 A non-competitive purchase is defined as the procurement of supplies, equipment, services, or other property, that does not cost more than \$10,000 in the aggregate. A competitive purchase is required if the expenditure for a purchase is greater than \$10,000 but less than \$50,000 (“competitive limit”) and a formal sealed competitive process is required if the purchase exceeds \$50,000, H-GAC may proceed in one of three ways:

3.0.1 Micro-Purchase - If the price is less than \$10,000, the purchase may be made on a non-competitive basis, meaning that at least one (1) written price quotation is required for purchases over \$500, but less than \$10,000. The selection of the vendor can be made to the convenience of H-GAC without contacting additional vendors; however, purchases must be distributed evenly among qualified vendors. Purchases less than \$500 can be ordered via Department Card (please refer to the incorporated Department Card Policy-Article VII for restrictions).

3.0.2 Competitive Small Purchase - If the purchase is more than \$10,000, but less than \$50,000, price quotations should be solicited from an adequate number of qualified contractors/vendors to ensure the price is fair and in line with the current market. The quotation must be in writing and can be obtained via mail, fax, or e-mail. The Procurement and Contracts Department may negotiate the price as appropriate, or source for additional vendors, as required.

3.0.3 Competitive Formal Sealed Solicitation - If the amount of the purchase is nearly \$50,000, H-GAC has discretion to treat as a formal solicitation. This approach gives several advantages, for example, if later purchases cause the total purchase price to exceed the competitive limit, the competitive requirement is satisfied. Provisions allowing later purchases on the same terms might be written into the original contract. In addition, solicitations are more competitive with a sealed solicitation. And lastly, conflicts of interest between contractor or vendor and the procuring department are minimized.

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

3.1 Selecting the Vendor/Contractor and Making the Purchase for Micro-Purchase and Small Purchase

3.1.1 After price quotations are obtained for purchases below the competitive limit, the Procurement and Contracts Department selects a vendor/contractor and makes the purchase after cost reasonableness has been established. The vendor/contractor with the lowest and best offer meeting the price expectation, reliability, and quality of the product must be used as a basis for selection.

3.1.2 For purchases above the competitive limit, selection must be based on the criteria established in the solicitation document.

- 3.1.3** After the vendor/contractor has been selected, The Procurement and Contracts Department will determine the appropriate award method and will notify the successful vendor/contractor and instruct the department on next steps. The request and all associated documentation will then be submitted into the procurement or contracts system for a purchase order or contract and routed for proper electronic approvals.
- 3.2** Departments other than Procurement and Contracts do not have the authority to place an order or authorize work to begin with the contractor or contractor directly. In the case of purchase orders: Purchase Order is a type of procurement contract and is a legally binding agreement with between H-GAC and a vendor. The Purchase Order is the notice to proceed with the order and contains provisions that are enforceable under contract law. Items ordered without a proper purchase order will be returned upon receipt. Ordering or authorizing work without a purchase order may result in disciplinary action as determined by H-GAC management.

ARTICLE IV

ELEMENTS OF THE COMPETITIVE SEALED SOLICITATION PROCESS

The main elements contained in this section are required in every sealed solicitation issued by H-GAC, however, there are variances within each procurement method regarding the process of evaluation and award. Variance are captured in the individual articles related to the solicitation type.

ARTICLE IV – ELEMENTS OF THE COMPETITIVE SEALED SOLICITATION PROCESS

The Procurement and Contracts Department is responsible for the management of the solicitation process and utilizes an established solicitation template which incorporates the elements below; solicitations are further customized as needed.

4.1 Sections of the Solicitation

The Solicitation may consist of the many sections listed below. The main elements include:

- Event Timeline
- Instructions for Submittal
- Signature Page
- Contract Term
- Funding Information
- Study Area or Service Region Map
- Scope of Work or Specifications
- Minimum Requirements (if applicable)
- General Terms and Conditions
- Submittal Criteria
- Evaluation criteria
- Award Information
- Checklist of Required Forms

4.2 The Solicitation Process

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

- Department identifies the need and selects a point of contact who will work with the Procurement and Contracts Department;
- Department submits the approved procurement request via the electronic submission application and uploads the scope or specifications document;
- Solicitation document draft produced by the Procurement and Contracts Department, reviewed with the department lead, and approved as required;
- Public Advertisement;
- Pre-Response Conference;
- Submission;
- Evaluation;
- Selection of two or more responses rated most advantageous to H-GAC;
- Oral presentations from selected respondents (optional);
- Invitation to selected respondents to make Best and Final Offer (“BAFO”);
- Evaluation of BAFOs;
- Contract negotiations with one or more parties whose BAFOs are selected; and
- Staff recommendation of most advantageous response;
- Award.

4.3 Reasonable Response Time

To avoid restricting competition, or paying higher than necessary prices, requesting departments must establish advance planning mechanisms to ensure a reasonable response time. The Procurement and Contracts Department will work within best practice standards to determine the best timeline for the project to ensure all respondents are allowed proper response timing. Factors that are considered when developing the solicitation timeline include, but not limited to:

- Degree of urgency;
- Complexity;
- Extent of subcontracting;
- Advertising and publicizing the solicitation;
- Time zones of respondents;
- Internal processing times;

4.4 Certifications/Statements

H-GAC and various grant funding agencies may require that interested respondents comply with various certifications and assurances. The Procurement and Contracts Department will ensure that any required certifications or assurances listed in the solicitation are collected before contract award.

4.5 Final Review

Each Solicitation will be constructed and managed by the Procurement and Contracts Department and will review the scope/specification before issuance to detect and correct possible discrepancies or ambiguities that could limit competition or result in non-responsive responses. The Department Subject Matter Experts (SME's), the Procurement and Contracts Department, and the Procurement Committee (as needed) will work together to finalize the specification/scope of work. The Procurement and Contracts Department is responsible for finalizing the solicitation documents.

4.6 Advertising and Publicizing

Section 252.041 of the Texas Local Government Code sets the general rules for the solicitation of responses. A reasonable time for prospective respondents to prepare and submit responses will be allowed in all solicitations. A short summary of the solicitation must be published in the local newspaper or a newspaper of general circulation under Legal Notices. The notice must include a description of the solicitation and where the specifications may be obtained, the time and place for receiving and opening responses, name and address of person to receive responses.

Notice of the time and place at which the responses will be publicly opened must be published at least once a week for two consecutive weeks in the same publication. The date of the first publication must be before the 14th day from the date of public opening. The solicitation notification should be sent to all qualified persons on the Bidders' List **after the first newspaper publication**. Potential respondents may not be precluded from qualifying during the solicitation period. All solicitations are also posted on the H-GAC website.

4.7 Pre-Response Conference

A pre-response (pre-bid/pre-proposal) conference can be mandatory or optional and is a meeting of the department, end-user(s), and interested respondents and is generally used for reviewing the requirements of the solicitation with the interested respondents and end-users and to ensure that all interested respondents have a clear understanding of the requirements of H-GAC, as well as, promoting competition. Pre-response conferences often uncover the market conditions that end-users are not aware of and could drive the need for letters of clarification to be issued.

The pre-response conference should take place no earlier than ten (10) days after the release of the solicitation and not before the 2nd newspaper publication is released or responses have been opened to maximize attendance and ensure that all the interested respondents have had adequate time to thoroughly read the solicitation and prepare substantial questions. Discussions or answers during the conferences will not supersede written material. Any changes to the solicitation must be made in writing and posted as Letter(s) of Clarification to be incorporated into the solicitation

4.8 Letter(s) of Clarification

If it becomes necessary to make any material changes in quantity, specifications, delivery schedules, opening dates, or to correct a defective or ambiguous solicitation, the changes will be made in writing and posted to the H-GAC website via Letter(s) of Clarification. Before the issuance of any Letter(s) of Clarification, the period remaining before the opening will be considered to determine the need to extend the bid opening date, if necessary. H-GAC is not responsible for the receipt of any letter(s) of clarifications, it is the respondents' responsibility to periodically check the website for updates.

4.9 Cancellation (before opening)

Preparing a solicitation involves money, time, and effort for H-GAC and prospective respondents and should not be cancelled unless deemed in the best interest of the public, meaning that there is no longer a need for the supplies or services, or when there is a substantial amount of Letter(s) of Clarification, or where a new and comprehensive solicitation is the best solution. If a solicitation is cancelled it must be removed from the H-GAC website and notice sent to the Procurement Committee. The notice of cancellation will: (a) identify the solicitation number and title, (b) justification of the cancellation, and (c) indicate if there will be a re-solicitation or need in the future for the type of services or supplies involved.

4.10 Responsive

To be considered for an award, a response must be responsive - meaning that the response must comply with the material aspects of the solicitation.

4.11 Submission

Responses must be received in accordance with the instructions outlined in the solicitation and not later than the exact date and time set forth for the opening of the bids. H-GAC utilizes an electronic submission process in accordance with Texas Local Government Code Chapter 252.0145 which ensures the identification, security, and confidentiality of electronic responses and ensures that the integrity of the sealed process of electronic responses remains secure and unopened until the proper time.

4.12 Withdrawal

A response may not be withdrawn or canceled by the respondent, without the permission of H-GAC.

4.13 Modification

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

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

4.14 Opening

All responses (and any modifications) received before the time set for the opening will be kept in a secure area and will not be opened or viewed. If the solicitation has been cancelled the responses will be returned to the respondents.

Responses must be received by and opened on the date and time specified by the solicitation. The response opening is open to the public; and if no member of the public attends, a member of another office will act as a witness. **For ITB's, the bids will be opened and be made available for public inspection. The person who opens the RFP or Best Value RFP/ITB response should only read the name of the firms who have submitted a response, if requested by an interested party; no other information is revealed at that time, as the contents of the offers must remain confidential until the date of contract award.**

Late submissions will **not** be considered and will not be opened. Responses will be date/time stamped upon receipt. Incomplete responses may be considered non-responsive and may not be considered for award unless due to a non-material omission.

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

All responses must be sealed with the solicitation number marked outside the envelope or uploaded into the correct solicitation folder if accepted electronically. Only one response may be submitted per envelope or electronic folder. An unmarked submission may be opened to establish its contents and resealed; the unmarked response will not automatically be eliminated; however, it does violate the integrity of the process. Opened responses will be kept on file and available for inspection, except to the extent properly designated as proprietary or trade secret.

4.15 Minor Informalities or Irregularities

A minor informality or irregularity is one that is a matter of form, not substance, and pertains to some immaterial defect in a response or variation of a response from the exact requirements of the solicitation that can be corrected or waived and are not prejudicial to the other respondents. The defect or variation is immaterial when the effect on price, quantity, delivery, or other area is negligible when compared to the overall cost or requirements of the supplies or services being acquired. H-GAC may give the bidder respondent the opportunity, if deemed in the best interest of H-GAC, to cure any resulting deficiency. Example: Furnish all required forms (except signature page and price).

4.16 Communications with Respondents (after the Solicitation release)

Once a solicitation is advertised to the public, respondents and H-GAC employees are **not** allowed to communicate directly with one another. The respondent is required to follow the instructions in the solicitation and channel all communications through the Procurement and Contracts Department, and to no other person or member of H-GAC Board of Directors. Failure to observe this rule by the respondent or any H-GAC employee, may be justification for rejection of the response.

4.17 Pre-Response Site Visits

Some projects may necessitate a site visit by respondents, such as those with installation requirements. The site visit will be coordinated through the Procurement and Contracts Department. A general site orientation “walk through” may be discussed during the pre-response conference with a site visit scheduled that day or later.

4.18 Interviews/Oral Presentation

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

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

In the event the interview or oral presentation will be scored, the criteria for evaluation and points or weights must be indicated in the solicitation document. The interview process will be coordinated and managed by the Procurement and Contracts Department.

4.19 Best and Final Offers

After the interviews/oral presentations, if any, or after all original responses are evaluated, respondents judged by the committee to have made the most advantageous offers may be invited to submit a Best and Final Offer ("BAFO"). The Procurement and Contracts Department will notify the selected Respondents in writing that they are being invited to submit a BAFO and they can:

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

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

4.20 Evaluation

For ITB's - The Procurement and Contracts Department will tabulate and review the bids and award to the lowest responsive and responsible bidder meeting the specifications requested in the solicitation and will share the tabulation with the Department to agree on the award and next steps.

For RFP (and Best Value) - The Procurement and Contracts Department will work with the Department to establish a time period for evaluation. The period may vary with the complexity and number of responses involved. The evaluation should be completed in an expeditious manner. Evaluations are performed in an electronic evaluation application, each evaluator is given access and required to submit a Conflict of Interest/Non-Disclosure Form before being allowed into the system. The system captures the individual scores and comments on strengths and weaknesses of the responses. The system calculates the total and provides a summary score to the Procurement and Contracts Department, which then reviews the responses of the team and coordinates finalizing the scoring and allowing the committee to declare the successful Respondent(s).

4.21 Contract Negotiation

Negotiations (written/oral) will only be conducted with responsible and responsive offerors deemed by the procurement process to be in the competitive range, i.e., have a reasonable chance of being selected for award.

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

4.22 Debriefing

Requests for a debriefing must be made in writing to purchasing@h-gac.com within five (5) working days after notification of non-selection. H-GAC reserves the right to not conduct debriefings if requests are made after that time. This procedure is NOT available to respondents who did not participate in the Solicitation, to non-responsive or non-timely respondents/bidders, or when all responses are rejected.

4.23 Protest Procedures (See Article XI)

Protest procedures must contain:

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

4.24 Notification of Award

Once the Board has approved the recommendation the Procurement and Contracts Department will determine the appropriate award method and will notify the successful respondent who will be invited to execute a Contract. The unsuccessful respondents will also be notified.

4.25 Rejection of Responses

H-GAC has discretion to reject responses as determined to be in its best interest. Examples of cause for a rejection will be defined in the solicitation document and could include, but may not be limited to, the following scenarios:

- Unsigned or unauthorized signatures;
- Responses received after the date and time for opening;
- Responses where prices are conditional on award of another bid or are subject to unlimited escalation;
- A response that fails to conform to the essential requirements of the Solicitation.
- A response that fails to conform to the delivery schedule, or permissible alternates stated in the Solicitation
- Respondent makes exceptions or imposes conditions that would modify requirements of the solicitation or limit the respondent's liability to H-GAC, since allowing the respondent to impose such conditions would be prejudicial to other respondents.
- A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not concern the substance – as distinguished from the form – of the bid or work an injustice on other bidders. A condition concerns the substance of a bid where it affects price, quantity, quality, or delivery of the items offered. A bid may be rejected if the prices for any line items or sub-line items are materially unbalanced.
- Responses received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the response opening date.
- Low bids received from bidders determined to be not responsible. Or when a bid bond or guarantee is required, and a bidder fails to furnish the bond or guarantee in accordance with the requirements of the solicitation.

The originals of all rejected responses, and any written findings with respect to such rejections, will be preserved with the papers relating to the acquisition. After submitting a response, if all a respondent's assets or, those parts related to the response, are transferred during the period between the response opening and the award, the transferee may not be able to take over the response. Accordingly, H-GAC will reject the response unless the transfer is effected by merger or operation of law. H-GAC may refuse to award a contract to or enter a transaction with a respondent if that that respondent is indebted to H-GAC.

4.26 Record Keeping in Solicitation Files

For each Solicitation issued by H-GAC the following information will be maintained to show the distribution that was made: the date the solicitation was issued and the names and e-mail address of prospective respondents who have been alerted, a copy of the solicitation that was advertised, and a copy of the notice that was advertised in the local newspaper. All other items relevant to the solicitation will also be maintained as part of the file. The Procurement and Contracts Department is responsible for keeping solicitation documents, including, time-stamped documents that provide evidence of receipt until the procurement is finalized.

ARTICLE V

METHODS OF PROCUREMENT COMPETITIVE SEALED SOLICITATION

Type: Invitation to Bid

The use of formal sealed bids is a competitive method for contracting goods and non-professional services and awarded based on lowest responsive and responsible bidder that meets the defined specifications. H-GAC solicits formal sealed bids using an Invitation to Bid for contracts over \$50,000. This article explains procedures regarding the formal sealed bid process.

ARTICLE V – INVITATION TO BID (ITB) COMPETITIVE SEALED SOLICITATION

5.0 Utilizing the Invitation to Bid Solicitation (ITB)

All ITB's must clearly state the contract will be awarded to the lowest responsive and responsible bidder meeting the defined specifications.

5.1 Preparing the ITB

The solicitation must describe the requirements clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements is prohibited. Specifications cannot be written to favor any vendor. "Brand name or equal" descriptions may be used to define the performance or pertinent other requirements of the procurement. When used, the specific features of the name brand to be met by the bidder(s) must be clearly specified and can only be used to convey the minimum requirements of the requested specifications, however the bidder is allowed to provide an equal if it meets or exceeds the specifications requested. The specifications should consider at least the following:

- Estimated quantity
- Packaging and delivery requirements
- Define abbreviations or acronyms
- List all standards and codes
- Installation requirements
- Specify dimensions, class or type, color, size, material, quality level, make, model etc. including functional or performance characteristics
- Compatibility with existing equipment
- Warranty

5.2 Evaluating the ITB

The Procurement and Contracts Department will tabulate and review the bids and award to the lowest responsive and responsible bidder meeting the specifications requested in the solicitation and will share the tabulation with the Department to agree on the award and next steps.

5.3 Mistakes in Bids

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

5.4 Responsible Bidder

The Procurement and Contracts Department must determine that a prospective bidder is responsible and that the prices offered are reasonable before making an award recommendation. The price analysis techniques (see Article XII) can be used as guidelines in making this determination. If the price is deemed unreasonable after a thorough price analysis has been conducted, the Procurement and Contracts Department, could recommend rejecting all bids and re-issuing the solicitation.

5.5 Award of the ITB

After bids are opened and reviewed by the Procurement and Contracts Department for responsiveness and tabulation is completed, a recommendation for award to the lowest responsive and responsible bidder will be prepared for The H-GAC Board of Directors to approve and make the award to the recommended bidder or it may reject all bids. H-GAC reserves the right to award to one or multiple bidders.

Tie Bids: H-GAC may award a contract for tie bids by drawing lots or by awarding to multiple contractors. If time permits the bidders involved will be given an opportunity to attend the drawing. The drawing must be witnessed by at least three (3) persons and the contract file must contain the names and addresses of the witnesses and the person supervising the drawing. When an award is made by drawing by lot after receipt of equal low bids, the buyer must describe how the tie was broken by providing a written statement that the contract award was made in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot. This does not prohibit H-GAC from rejecting all bids.

ARTICLE VI

METHODS OF PROCUREMENT FORMAL SEALED SOLICITATION

Type: Best Value Solicitation (ITB/RFP)

A Best Value solicitation is a combination of competitive procedures designed to obtain the benefits of a sealed solicitation in combination with the establishment of additional evaluation selection criteria. Best value solicitations allow for the award decision to be determined by factors other than price. This type of solicitation can be used as an Invitation to Bid or a Request for Proposal and involves evaluation by a pre-selected evaluation committee, with a recommended minimum of three (3) members, using the criteria established in the solicitation.

ARTICLE VI – BEST VALUE (ITB/RFP) COMPETITIVE SEALED SOLICITATION

6.0 Utilizing the Best Value Solicitation (ITB/RFP)

The lowest cost is not always the best value. Strategic thinking is necessary when considering H-GAC's procurement needs and not make the mistake of obtaining enough just to meet the immediate need. The considerations must be "What is the desired outcome of the solicitation?" and "What is the best way to achieve the outcome?"

An example of a best value purchase might be the purchase of a heating and air conditioning unit. H-GAC must consider the total cost of ownership ("TCO") when purchasing these units. The average life span of the unit, electricity consumption, maintenance record of the unit, and parts availability are a few considerations when looking at the TCO. In addition, H-GAC must consider the qualifications and availability of the service technicians and the respondent's performance history.

Department Advance Planning for the Evaluation Process: departments must appoint evaluation committee members with a recommended minimum of 3 to 5 people with the expertise for the product or service required. There is no maximum number of evaluators, however the evaluation will become more complex and time consuming with larger numbers of people to coordinate. The evaluation committee should be comprised of members that bring as much knowledge as possible to ensure the best response is selected. It is recommended to include outside funding partners as part of the evaluation committee. The Executive Director may require cross-departmental members and has discretion to assign personnel to an evaluation committee.

6.1 Preparing the Solicitation ITB/RFP

The Department must submit a Specification or detailed Scope of Work to begin the procurement process. The Procurement and Contracts Department will work with the requesting department to review the specification or scope for restrictive language to ensure maximum competition and establish submittal criteria and evaluation criteria based on the specifications or scope of work submitted. The Scope of Work should answer the questions-what, when, where, and how. What is wanted? When is it needed? Where is it needed? How many or how much? And should specify the performance requirements of the deliverables being requested, not just describe them. The scope of work should include at least the following:

- a description of the services or products
- specified drawings/schematics, diagrams, if any
- pricing methods (unit price, time & materials, lump sum, etc.)
- deliverables
- contract term
- minimum level of experience
- Minimum qualifications

If including Specifications, it must describe the requirements clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements is prohibited. Specifications must not be written to favor any vendor. "Brand name or equal" descriptions may be used to define the performance or pertinent other requirements of the procurement.

When used, the specific features of the name brand to be met must be clearly specified and can only be used to convey the minimum requirements of the requested specifications, however the respondent

is allowed to provide an equal if it meets or exceeds the specifications requested. The specifications should consider at least the following:

- certifications or qualifications of the contractor
- experience of the contractor
- estimated quantity
- packaging and delivery requirements
- define abbreviations or acronyms
- list all standards and codes
- installation requirements
- specify dimensions, class or type, color, size, material, quality level, make, model etc. including functional or performance characteristics.
- compatibility with existing equipment
- warranty

6.2 Evaluating the Solicitation

Contracts awarded based on best value can be evaluated based on a combination the criteria below, including, but not limited to:

- the purchase price;
- life cycle cost;
- the reputation of the bidder;
- delivery terms
- the quality of the bidder's goods or services;
- respondent's financial resources;
- installation costs;
- the extent to which the goods or services meet H-GAC's needs;
- the bidder's past relationship with H-GAC;
- the total long-term cost to H-GAC

Criteria usually contain three or four factors important to the overall best value and are weighted in order of importance. Evaluations may be conducted using any rating method or combination thereof as designed by H-GAC and can include numerical weights and points (percent of), and ordinal methods of scale (0 to 5, etc.).

The evaluation team evaluate using the criteria specified in the solicitation and an evaluation matrix is developed to score the individual responses by each member of the evaluation committee. Criteria not included in the solicitation cannot be used in the scoring matrix and cannot be used to rank a response.

Evaluations are performed in an electronic evaluation application, each evaluator is given access and required to submit a Conflict of Interest/Non-Disclosure Form before being allowed to proceed into the system. The system captures the individual scores and comments on strengths and weaknesses of the responses. The system then calculates the total and provides a summary score to the Procurement and Contracts Department, which then reviews the responses of the team and coordinates finalizing the scoring and allowing the committee to declare the successful respondent that provides the overall best value.

The Procurement and Contracts Department will work with the Department to establish a time period for evaluation. The period may vary with the complexity and number of responses involved. The

evaluation should be completed in an expeditious manner.

6.3 Award for Best Value (ITB/RFP)

H-GAC personnel will make a recommendation for award or may also recommend award to multiple respondents at the discretion of H-GAC. The H-GAC Board of Directors may approve and make the award to the recommended respondent or it may reject all responses.

ARTICLE VII

METHODS OF PROCUREMENT FORMAL SEALED SOLICITATION

Type: Request for Proposal

A Request for Proposal (RFP) is a competitive process appropriate for procuring high technology goods and services and certain professional services that are not governed under the Professional Services Procurement Act, which has different rules for professional services such as architecture and engineering. This type of procurement method involves the submission of sealed responses which are then evaluated by a pre-selected evaluation committee, with a recommended minimum of three (3) members, using definitive criteria other than the lowest price.

ARTICLE VII – REQUEST FOR PROPOSAL (RFP) COMPETITIVE SEALED SOLICITATION

7.0 Utilizing the Request for Proposal (RFP)

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

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

Department Advance Planning for the Evaluation Process: departments must appoint evaluation committee members with a recommended minimum of 3 to 5 people with the expertise for the product or service required. There is no maximum number of evaluators, however the evaluation will become more complex and time consuming with larger numbers of people to coordinate. The evaluation committee should be comprised of members that bring as much knowledge as possible to ensure the best response is selected. It is recommended to include outside funding partners as part of the evaluation committee. The Executive Director may require cross-departmental members and has discretion to assign personnel to an evaluation committee.

7.1 Preparing the RFP

The Department must submit a Scope of Work to begin the procurement process. The Procurement and Contracts Department will work with the requesting department to review the scope for restrictive language to ensure maximum competition and establish submittal criteria and evaluation criteria based on the scope of work submitted. The Scope of Work should answer the questions-what, when, where, and how. What is wanted? When is it needed? Where is it needed? How many or how much? And should specify the performance requirements of the deliverables being requested, not just describe them. The scope of work should include at least the following:

- a description of the services or products
- specified drawings/schematics, diagrams, if any
- pricing methods (unit price, time & materials, lump sum, etc.)
- deliverables
- contract term
- minimum level of experience
- minimum qualifications

7.2 Evaluating the RFP

The evaluation team evaluate using the criteria specified in the solicitation and an evaluation matrix is developed to score the individual responses by each member of the evaluation committee. Criteria not included in the solicitation cannot be used in the scoring matrix and cannot be used to rank a response.

Criteria are assigned to all the factors that are important to the success of the project and are weighted in order of importance. The table below is an example of a simple matrix in which cost is the most critical factor:

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

Evaluations may be conducted using any rating method or combination thereof as designed by H-GAC and can include numerical weights and points (percent of), and ordinal methods of scale (0 to 5, etc.). Evaluations are performed in an electronic evaluation application, each evaluator is given access and required to submit a Conflict of Interest/Non-Disclosure Form before being allowed to proceed into the system. The system captures the individual scores and comments on strengths and weaknesses of the responses. The system calculates the total and provides a summary score to the Procurement and Contracts Department, which then reviews the responses of the team and coordinates finalizing the scoring and allowing the committee to declare the successful respondent(s).

The Procurement and Contracts Department will work with the Department to establish a time period for evaluation. The period may vary with the complexity and number of responses involved. The evaluation should be completed in an expeditious manner.

7.3 Award

A recommendation will be presented to the H-GAC Board of Directors for approval to negotiate, and execute, a contract with the ranked Firms in descending order. However, the Final approval and selection of award lies with the Board of Directors. H-GAC reserves the right to delay that date as needed and to reject any and all responses as deemed in its interest.

ARTICLE VIII

DEPARTMENT CARD PURCHASES

Department Cards are a convenient way for H-GAC departments to make incidental purchases of supplies and services in amounts that will not reach the competitive limit within the fiscal year.

Each Department will maintain a department card(s) with a single-transaction limit and a monthly transaction limit pre-determined by Finance. All cards have a maximum card amount determined by the user function.

ARTICLE VIII - DEPARTMENT CARD PURCHASES

8.0 Using a Department Card

The need to use a department card is established when the purchase of goods or services is for official H-GAC business. Once issued, the card holder will ensure that the use of the card does not violate established H-GAC spending limits.

Certain purchases under \$500 can be charged to the department card with exceptions (see 8.4). Beginning in March 2016 each department will have a minimum of two department cards issued to them for purchases. One will be in the Director's name for purchases over \$500. The second will be in the administrative aide's (AA) name for purchases under \$500. There may be multiple cards issued depending on the number of administrative aide's that require a card for purchases.

8.1 Procedure (AA Card): Purchases Under \$500

- The AA is responsible for all purchases and for obtaining required pre-approvals.
- Administrative card(s) can be used for all approved purchases under \$500. AA cards will have a single limit transaction of \$500 and a monthly transaction limit of \$3,000.
- The Finance Department will open a new check request at the beginning of each billing cycle and will notify the AA of the check request number. The AA will then log and maintain all purchases to the "running" check request in Microix for all monthly purchase transactions. As each purchase is made a line with all pertinent purchase details will be added to the check request.
- Accounts Payable will provide AA's with their monthly credit card statements to reconcile purchases.
- The AA will scan all purchase backup documentation and the credit card statement into Microix as one (1) .pdf file to the check request at the end of the month.
- AAs will compare their check request with their credit card statements to ensure they have entered all transactions for the month.
- Once reconciled AA's will submit their check request, with all supporting backup documentation and credit card statement attached, by the date established by the Finance Department.

*** In the event of any planned extended absence, the AA will be required to surrender their Department Card to the Procurement and Contracts Department who will manage any Department requests if the Director card is unavailable until the AA has returned.**

8.2 Procedure: Purchases Over \$500

- The Department Director's credit card must be used for all single purchases over \$500 and up to \$3,500.
- When a purchase is made, a purchase requisition must be immediately entered into Microix for review/approval.
- Backup documentation is needed for each transaction (purchase receipt, purchase confirmation) confirming the purchase.
- Accounts Payable will provide AA's with their Department Director's monthly credit card statement to reconcile purchases at the end of the month to the purchase requisition in Microix.

8.3 Purchases that may be made with a Department Card

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

8.4 Purchases that may NOT be made with a Department Card

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

- cash advances;
- personal expenditures;
- Texas sales tax;
- restocking inventory;
- office supplies;
- technology/software
- online gaming/betting/gambling;
- escort services;
- jewelry;

The following is a list of technology items that must be approved by Data Services and the Procurement and Contracts Department prior to purchase. This list is not all inclusive and can be modified as required.

- Printer
- Scanner
- Monitor
- Storage media (i.e. large capacity external hard disk drives)
- Software
- Networking equipment (wireless router, wireless access point, network switch & hub)
- A/V equipment
- UPS
- Smartphone, tablet, wireless hotspot
- All cloud-based technology services: any software as a service (SaaS), web hosting, cloud storage, domain name registration, Go-To meetings, etc.

8.5 Individual Responsibility

Card holders are responsible for the security of their cards; the cards should be treated with the same level of care as with their own personal credit or debit cards. Unsolicited requests for account information must be verified before any credit card information is released. In addition to securing the card, card holders **MUST** retain all receipts for all purchases. If a receipt is lost, the card holder must obtain a copy from the bank or vendor. Faxed or computer-generated invoices are acceptable. The first eight digits of the card number must be blocked from a receipt showing the entire 16-digit card number.

8.6 Declined Transactions

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

8.7 Returns of item(s) purchased with the Department Card

Upon the return of any merchandise purchased with a department card to a vendor, the card holder is responsible for obtaining a credit memo from the vendor. The credited amount is then re-applied to the card, or the vendor can refund the amount to H-GAC via a reimbursement check. **Cash refunds are prohibited.**

8.8 Lost or Stolen Cards

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

8.9 Unauthorized Use of a Department Card

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

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

Any employee having knowledge of violations of this procedure or policy governing the use of the department card must immediately report violations to Finance. Cardholders suspected or accused of misuse, fraud, or theft will have their card suspended or terminated. Further disciplinary actions, if necessary, will be administered in accordance with H-GAC policies and procedures.

8.10 Disputed Department Card Purchases

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

8.11 Revocation of Department Card

The use of a department card will be revoked when:

- A Department Manager or Finance Department staff issues a request to the Chief Financial Officer.
- A cardholder violates the approved policies and procedures
- A cardholder is no longer employed by H-GAC. Finance will recover issued cards based upon the signed credit card authorization form that is documented in the employee file in Human Resources.

ARTICLE IX

SPECIAL CASES AND EXCEPTIONS

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

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

ARTICLE IX - SPECIAL CASES AND EXCEPTIONS

H-GAC may, but is not obligated to, use any competitive method it deems desirable for the procurements listed below, unless the use of competitive method is otherwise restricted. Unless otherwise specified by law or program requirements, all contracts and/or purchase orders must be awarded by competitive sealed solicitation process pursuant to applicable federal and state laws, rules and regulations.

9.0 Emergency Procurements

Emergency procurements should be made as competitively as possible under the circumstances. Emergency purchases are those purchases necessary because; 1) public calamity that requires the immediate appropriation of money; 2) unforeseen damage to public machinery, equipment or property. The Procurement and Contracts Department is responsible for any emergency purchases. Documentation of these purchases must include a written determination of the basis for the emergency and for the selection of a contractor or vendor. As soon as practicable, a record of each emergency procurement must be made and must include the contractor's name, the amount and type of the contract, and a listing of the items procured under the contract. Funding agencies may have varied definitions of what constitutes an emergency under this scenario.

9.1 Public Health and Safety

Procurement necessary to preserve or protect public health or safety is not required to be competitively procured. Purchases to protect health and public safety do not need to be made in connection with a public calamity in order to be exempt in most cases, however funding agencies may have varied definitions of what constitutes an emergency under this scenario. This exemption includes contracts for solid waste disposal. The Procurement and Contracts Departments is responsible for any health and safety purchases. Documentation of these purchases must include a written determination of the basis for the public health and safety provision and for the selection of a contractor or vendor will be required prior to justify the purchase under the provision. All documentation must then be submitted to the Deputy Executive Director for approval.

9.2 Sole Source Procurement

Sole Source procurements are procurements of goods or services that are available from just one vendor. **A sole source purchase cannot be used to avoid competition.** Sole source purchases above \$50,000 must be approved by the H-GAC Board of Directors. Sole source procurement is limited to the following:

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

Items that are only available from one source “single source” are not automatically considered a sole source item. Often, the manufacturer may have distributors that resell their products as “authorized distributors”. It should be verified that the manufacturer does not have authorized distributors, if it is determined that distributors exist, competition must be sought from each distributor. If after soliciting an adequate number of sources, competition is deemed inadequate H-GAC must have demonstrated a "good faith effort" that it has solicited qualified providers through the appropriate competitive processes and is authorized by the grantor agency, if applicable. All documentation is completed by the Procurement and Contracts Department who will make the determination of whether a request qualifies as a Sole Source. Requirements for Sole Source documentation include:

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

Approval of Grantor Agency (if applicable)

H-GAC must receive prior written concurrence from grantor agency for any sole source procurement expected to exceed \$50,000. Except for The Workforce Solutions procurements made in cases of public exigency, where competition is deemed inadequate, cooperative alliances and awards to public education institutions. H-GAC must document the circumstances of the procurement and notify the Texas Workforce Solutions Commission within 30 days. 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.

9.3 Cooperative and Interlocal Agreements

Under Texas Law, H-GAC may participate in a cooperative purchasing program with another local government or a local cooperative organization (as defined by Texas Local Government Code Chapter 271), to include state and federal contracts, provided that H-GAC purchases the goods and services in accordance with the cooperative purchasing requirements, then H-GAC is deemed to have satisfied state bid laws for the purchase of the goods or services. Examples of Cooperative Agreements H-GAC can utilize include, but not limited to:

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

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

H-GAC may also make certain purchases by taking advantage of the U.S. General Services Administration contracts with vendors. GSA is the purchasing agent for the Federal Government and offers a cooperative purchasing program for local governments and eligible entities to make purchases.

Procedures for Cooperative Agreements follow the same procedures for micro purchases and require at least one written quote. Any amount over \$50,000 requires H-GAC Board of Directors approval. H-GAC must determine that the cooperative agreement program being used to procure the goods or services satisfies the competitive requirements of the Texas Local Government Code Chapter 252. H-GAC operates and administers its own cooperative purchasing program which can be utilized at its discretion.

9.4 Professional Services

Chapter 2254, Texas Government Code, requires that a contract/purchase order for professional services be awarded based on demonstrated competence and qualifications to perform the services for a fair and reasonable price. In procuring services, H-GAC is also subject to State and Federal procurement requirements contained in 2 CFR 200 and must procure the services using the Request for Qualifications.

Professional services under Chapter 2254 include: accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, and professional nursing and also for the employment of a person who is licensed or registered as: a CPA, an architect, a landscape architect, a land surveyor, a physician, an optometrist, a professional engineer, a real estate appraiser or a registered nurse. The solicitation must contain a statement of qualifications and the type of work to be performed and must be publicly advertised.

In the case of architectural, engineering or land surveying services, Chapter 2254 requires that H-GAC first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications and then attempt to negotiate with that provider a contract at a fair and reasonable price. If a satisfactory agreement cannot be negotiated with the most highly qualified provider, H-GAC must end negotiations with that provider and select the next most highly qualified provider to negotiate a contract at a fair and reasonable price. Selection of other professional services may be made (at H-GAC option) by RFQ, RFP.

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

9.5 Planning Services

Planning services are those services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan or regional councils. H-GAC will use the Request for Proposal (RFP) process for the procurement of planning services.

9.6 Personal Services

Personal services involve a contract in which the contractor himself is required to perform the service. H-GAC will use the Request for Proposal (RFP) process for procurement of personal services.

9.7 Selection Methods for Planning and Personal Services

Selection of personal or planning services will be made using a Request for Proposal (RFP). Contract must be awarded to the offeror whose response is determined to be the most advantageous to H-GAC, considering the relative importance of price and the other evaluation factors set forth in the request for proposals. Selection of personal or planning services may (at H-GAC's option) be made based on competitive solicitation to the lowest responsible bidder or to the respondent providing best value to H-GAC. A Request for Qualifications (RFQ) or other selection method may also be used in compliance under Texas state law.

9.8 Pass-Through Services

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

9.9 Other exemptions

H-GAC can use any competitive procurement process it deems desirable i.e. ITB, RFP or RFQ for the procurements listed below if any apply, unless the use of competitive procurement is otherwise prohibited.

- Contracts for work that is performed and paid for by the day as the work is in progress.
- Contracts for paving, drainage, street widening and other public improvements if at least 1/3 of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements.
- Purchase of land or a right-of-way.
- A public improvement project already in progress authorized by the voters of a municipality for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by voters.
- Payment under a contract in which the developer participates in the construction of a public improvement as provided by the Texas Local Government Code chapter pertaining to municipal regulation of subdivisions and property development.
- The purchase of electricity.
- Services performed by the blind or severely disabled.
- Goods purchased for subsequent resale.
- The purchase of personal property sold at an auction by a state licensed auctioneer at a going out of business sale meeting certain requirements, by a political subdivision, state entity or an entity of the federal government, or under an interlocal contract for cooperative purchasing administered by a regional planning commission.

9.10 Unsolicited Offers or Proposals

An unsolicited offer/proposal is any offer/proposal other than one submitted in response to a Solicitation. To be considered by the buyer, the unsolicited offer/proposal must:

- not be for an item required by law to be competitively bid or proposed;
- be in writing; and
- evaluated by the buyer to determine any utility and benefit to H-GAC;
- H-GAC has the right to refuse any unsolicited offer or proposal.

9.11 Lease/Purchase Agreements

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

9.12 Federal Excess or Surplus Property

H-GAC 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 X

CONSTRUCTION RELATED CONTRACTS

ARTICLE X - CONSTRUCTION RELATED CONTRACTS

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

10.0 Facility Construction

When entering a contract for the construction of a facility, H-GAC may use any of the following types that provide the best value under Chapter 271 of the Texas Local Government Code. H-GAC must determine the contract method prior to advertising and award a competitively solicited contract for construction services to the respondent offering the best value based on the criteria set forth below. The contract is not required to be awarded strictly to the lowest responsible bidder. H-GAC must document the basis for its decision regarding the contract award.

- Competitive Sealed Bidding;
- Competitive Negotiation;
- a design-build contract;
- a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager; or
- a job order contract for the minor repair, rehabilitation, or alteration of a facility.

A “facility” includes buildings the design and construction of which are governed by accepted building codes. A facility does not include: highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

H-GAC must publish in the solicitation all the criteria that will be used to evaluate the respondents and the relative weights given to the criteria. In awarding a contract, H-GAC may consider the following:

- purchase price;
- reputation and past relationship of the respondent and their goods or services;
- extent to which the goods or services meet H-GAC's needs;
- impact on the ability of H-GAC to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- total long-term cost to H-GAC to acquire the goods or services; and
- other relevant criteria specifically listed in the Solicitation

ARTICLE XI

PROTEST AND DEBRIEFING

A response to a Solicitation requires an entity expend a significant amount of time and effort. H-GAC must try to respond to all of those who submit responses and to inform them of the outcome of the solicitation. This article covers the process in the event of a protest or a request for debriefing by a respondent.

ARTICLE XI - PROTEST AND DEBRIEFING

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

11.0 Requests for Debriefing

Requests for a debriefing must be made within five (5) business days of notification of non-selection. H-GAC reserves the right to not conduct debriefings if requests are made after that time. This procedure is NOT available to respondents who did not participate in the Solicitation, to non-responsive or non-timely respondents, or when all responses are rejected.

11.1 Procedures for Debriefing

A respondent must submit a written request per the instructions of the Solicitation, for a debrief and furnished the basis for the selection decision and contract award. Debriefings of successful and unsuccessful respondents will be done orally. The Procurement and Contracts Department is responsible for performing all debriefs and notes of the evaluation committee regarding strengths and weaknesses of the respondent will be shared with the requesting respondent.

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

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

11.2 Resolution of Protested Solicitations and Awards

The following language is included in all H-GAC solicitations:

Any Respondent who is aggrieved in connection with a purchase transaction may file a grievance. The grievance may be filed at any phase of the procurement, and up to five (5) days after the H-GAC Board of Directors public agenda is posted for action regarding the questioned item. Grievances filed more than five (5) working days after action by the H-GAC Board of Directors will not be deemed timely and will not be considered. In order for a Respondent to enter the grievance process, a written complaint must be sent to the Deputy Assistant Director of H-GAC by certified mail and sent to 3555 Timmons Lane, Houston, Texas 77027, which includes the following:

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

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

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

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

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

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

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

ARTICLE XII

COST/PRICE ANALYSIS

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

ARTICLE XII - COST/PRICE ANALYSIS

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

- the respondent must submit the elements of estimated cost (for professional, consulting and architectural/engineering services contracts); and
- when adequate price competition is lacking, such as sole source procurements, change orders or contract modifications.
- in excess of the Federal Simplified Acquisition Threshold per 2 CFR 200.323 or as otherwise required by Federal Regulations.

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

12.0 Purpose

The purpose of the cost reasonableness review is to

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

12.1 Procedure

12.1.0 Obtain an independent cost or price analysis from:

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

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

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

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

12.2 Elements of the Cost Analysis

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

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

12.3 Record Keeping of the Cost Analysis

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

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

12.4 Cost and/or Pricing Documentation

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

ARTICLE XIII

CONTRACT ADMINISTRATION

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

ARTICLE XIII - CONTRACT ADMINISTRATION

13.0 Contract Types

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

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

13.1 Payment

- Lump Sum upon completion of contract; or
- Unit Price; or
- Percent of completion (construction and implementation type contracts)

13.2 Contract Execution and Approval Procedures

A contract is a legal agreement and commitment from H-GAC, which under terms and conditions, requires a contractor or vendor to carry-out specific tasks or provide specific goods and services. All contract administration actions, i.e. contract authorization, contract approval, contract amendment, and contract closure must be accompanied with and transmitted by a Contract Action Notice. The procedures as follows, describe contract administration requirements for all H-GAC contracts:

- | | |
|------------|---|
| Department | <ol style="list-style-type: none">1. Receives authorization from a funding agency in the form of grant award or contract document or action by H-GAC Board of Directors to incur costs against project or program.2. Prepares the proposed work program and budget.3. Recommends contractor or vendor to provide tasks, goods, and services in accordance with terms and conditions of the approved grant or program and Source Selection and Contract Formulation.4. Negotiates and prepares contract agreement utilizing the appropriate General Contract Provisions.5. Prepares and approves Contract Action Notice.6. Notifies the accounting department to establish the contract in H-GAC's accounts and to accept charges incurred as of the contract effective date.7. Obtains required approval authorizations in accordance with Article II of the Procurement Policy. This process is documented on the Contract Action Notice.8. A contract record is then created in the H-GAC contract management system for approval and execution via electronic signature. The H-GAC contract management system will be the official records file for all contract related documents. |
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13.3 Contract Amendment Procedures – See Article XIV.

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|------------|----|---|
| Department | 1. | Initiates a contract amendment whenever expenditures and/or scope of work vary from approved budget amounts and contract terms. |
| | 2. | Prepares description of Amendment and Contract Action Notice. |
| Finance | 3. | Assists Department with program/project budget worksheets. Approves Contract Action Notice. |
| Department | 4. | Obtains approval on Contract Action Notice in accordance with established approval authorities' requirements. See Article II. |

13.4 Contract Closure Procedures

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

- | | | |
|------------|----|--|
| Department | 1. | Not later than 80 days after contract end, submit a Contract closeout |
| | 2. | Include closeout documents, final billings, etc. as appropriate |
| | 3. | Approves Contract Action Notice |
| Finance | 4. | Finance Department will not accept or make any additional charges to the contract upon receipt of this notice. Finance will then designate the contract inactive and remove it from the active accounts. |

13.5 Contract Administration

H-GAC utilizes a contract management system. The H-GAC contract management system is the official records file for all contract related documents. A separate and more detailed contract policy and procedure is under development as of this revision and will be incorporated in 2021.

ARTICLE XIV

MODIFICATION AND TERMINATION OF CONTRACTS

ARTICLE XIV - MODIFICATION AND TERMINATION OF CONTRACTS

14.0 Modifications

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

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

14.1 Requirements to Re-compete

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

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

14.2 Improper Justifications for Modification

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

14.3 Termination of Contracts

Termination for Convenience: General

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

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

Process

- 14.3.2 H-GAC may terminate a contract, in whole or in part, for the convenience of H-GAC 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.
- 14.3.3 The contractor shall cancel, withdraw or otherwise terminate any outstanding orders or subcontractors related to the performance of the contract, or the part of the contract to be terminated, and shall cease to incur costs hereunder. H-GAC 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.
- 14.3.4 A grant contract may only be terminated for convenience as follows:
- By the grantor agency with the consent of H-GAC in which case the parties shall agree upon the termination conditions, including:
 - the effective date; and
 - in case of a partial termination, the portion to be terminated.
 - By H-GAC upon written notification to the grantor agency, stating:
 - the reasons for such termination;
 - the effective date; and
 - for partial terminations, the portion to be terminated. In the event of a partial termination, if the grantor agency determines that the remaining portion will not accomplish the purposes for which the award was made, the grantor agency may terminate the award in its entirety.
- 14.3.5 The Contract Administrator may require the contractor to transfer title and deliver to H-GAC in the manner and to the extent directed by the buyer:
- any completed materials and/or supplies/equipment; and
 - such partially completed supplies/equipment and/or construction materials, including but not limited to supplies, materials, tools, parts, drawings, plans, information and contract rights as the contractor has specifically produced or specifically acquired for the performance of the terminated part of this contract.
 - The contractor shall protect and preserve the property in the possession of the contractor in which H-GAC has an interest. If H-GAC does not exercise this right, the contractor shall use its best efforts to sell such materials, supplies and/or equipment in accordance with the pertinent standards of the Uniform Commercial Code. *The exercise of the Termination for Convenience clause in no way implies that H-GAC has breached the contract.*

14.4 Compensation

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

- 14.4.1 The Contract Administrator and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost and pricing data and that the settlement does not exceed the total contract price plus settlement costs reduced by amounts previously paid by H-GAC and less any lawful offsets or credits due, including but not limited to the proceeds of any sales of construction materials, supplies and/or equipment and the contract price of the work not terminated.
- 14.4.2 Absent complete agreement under subparagraph above, the buyer shall pay the contractor the following amounts, not to exceed the total contract price plus the reasonable settlement costs reduced by any lawful offsets or credits:
- o 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;
 - o costs of settling and paying claims arising out of the termination of subcontracts or orders; and
 - o reasonable settlement costs of the contractor reasonably necessary for the preparation of settlement claims and supporting data.

14.5 Termination for Default

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

- 14.5.0 H-GAC may terminate a contract in whole or in part when it has determined that a contractor, subcontractor, or sub-grantee has violated specific provisions of the grantor agency regulations and directed corrective action has not been taken. Grounds for default include, but are not limited to:
- failure to perform pursuant to the terms and conditions of the contract; and
 - violations of grantor agency rules or regulations.
- 14.5.1 Termination for Default Clause must be included in all grant contracts in excess of \$25,000.
- 14.5.2 Notwithstanding the termination of the contract and subject to the buyer's directions, the contractor shall take timely, reasonable and necessary action to protect and preserve property, equipment and/or supplies in possession of the contractor in which H-GAC has an interest.
- 14.5.3 Payment for completed supplies, equipment or services delivered and accepted by H-GAC 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. H-GAC may withhold from amounts due to the contract amounts deemed necessary by the Contract Administrator to protect H-GAC against loss because of outstanding liens or claims of former lien holders and to reimburse H-GAC for the excess costs incurred in procuring similar supplies, equipment and services.
- 14.5.4 The rights and remedies provided are in addition to any other rights and remedies provided by law, under H-GAC procurement policy or under this grant or contract.

14.6 Resolution of contract disputes

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

14.7 Solicitations or Awards in Violation of the Law

Contracts awarded in violation of the competitive process or otherwise in violation of the law are voidable by H-GAC.

ARTICLE XV

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

ARTICLE XV - DISADVANTAGED BUSINESS ENTERPRISE (DBE)

15.0 Policy Statement

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

15.1 Respondent Statement

It is a mandatory provision of every solicitation that a respondent includes a statement that respondent will comply with this policy.

15.2 Approach

To ensure that small, MBEs, DBEs, women-owned businesses, and HUBs are utilized, the following affirmative steps must be taken, and include the contractor and subcontractor:

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

15.3 Buyer Responsibility

For such affirmative steps to be meaningful, H-GAC has included a provision in every solicitation listing the affirmative steps to ensure the contractor is aware of the need to comply. 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, that the award is given to a contractor with such a subcontractor, that such business is retained during the entire performance of the contract.

15.4 Prime Contractor Effort

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

15.5 Expenditure Amount Required to Solicit DBE Participation

In making expenditures of more than \$3,000 and less than \$50,000, H-GAC must contact at least 2 HUBs on a rotating basis, based on information provided by the Texas General Services Commission. If the list fails to identify a historically underutilized business in the area, then H-GAC is exempt from this section.

15.6 The Workforce Solutions Requirements

Contractors must be able to document that they have made a good faith effort to award at least thirty percent (30%) of the total value of all subcontracts and vendor contracts to HUBs. HUBs which are locally based and considered disadvantaged will be considered in the procurement process. Treatment of such subcontractors will occur by choosing the HUB in the event of tie bids and setting up conditions under which such awards will be made.

15.7 Texas Department of Transportation (TxDOT) Requirements

Contractors must be able to document that they have made a good faith effort to award the target percentage of the total value of all subcontracts and vendor contracts to DBE's, as consistent with the Advance Funding Agreement (AFA) established and approved between the Texas Department of Transportation (TxDOT) and H-GAC as the region Metropolitan Planning Organization (MPO).

ARTICLE XVI

ETHICS

ARTICLE XVI - ETHICS

PART A: Standard of Conduct

16.0 Elected Officials and Chief Executive Officers

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

Conflict Disclosure Filing

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

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

Vendor and Contractor Disclosure

All vendors or contractors contracting or seeking to contract with H-GAC for the sale or purchase of property, goods, or services exceeding \$50,000 must file a conflict of interest questionnaire with H-GAC within seven (7) days of submitting (a) response or other document relating to a potential agreement with H-GAC or (b) entering into contract negotiations with H-GAC.

16.1 Conflict of Interest Questionnaire

16.1.0 Specification required language

Texas House Bill 914, codified as Chapter 176 of the Local Government Code, requires vendors and contractors contracting or seeking to do business with H-GAC to file a conflict of interest questionnaire (CIQ). The required questionnaire is located at the Texas Ethics Commission website. The CIQ must be completed and filed with the response if applicable.

16.1.1 Penalties and Defense to Prosecution

Knowing violation of this law is subject to prosecution as allowable by law. Filing of the required disclosure no later than the seventh day after receiving notice of violation is a defense to prosecution.

16.2 Employee and Agents

No employee or agent of H-GAC will participate in the negotiation, evaluation, selection, discussion, award or administration of a contract or procurement supported by public funds if a conflict of interest, either real or apparent, would be involved. An employee or agent of H-GAC must avoid the appearance of impropriety.

- A conflict arises when an H-GAC employee or agent, 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.
 - "Immediate family" refers to any person related within the second degree of affinity (marriage) or within the third degree of consanguinity (blood) to the party involved.
 - "Substantial interest" for purposes of this section, means the person
 - owns 10% or more of the voting stock or shares of the entity; or
 - 10% or more or \$5,000 or more of the fair market value of the entity; or
 - received funds from the entity in excess of 10% of the person's gross income for the previous year; or
 - is related to an employee or agent in the first degree of consanguinity or affinity.

No employee or agent of H-GAC will demand, agree, accept or solicit gratuities, favors or anything of monetary value from contractors, potential contractors, bidders, respondents or parties to sub-agreements. No contractor, bidder, respondent or party to a sub-agreement will offer or tender anything of monetary value to any employee or agent of H-GAC.

16.3 Course of Conduct in the Event of a Conflict

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

- 16.3.0 Sign a declaration of a possible conflict of interest. A declaration must also be made on the record where:
- the agent, employee or immediate family member is a board member of a Respondent;
 - the agent or employee is voting on an indirect affirmation of a contract relationship, such as on the job training plan; or
 - the agent or employee is voting on a rival response, though there is no direct competition.
- 16.3.1 If applicable, abstain from voting on any procurement action:
- where the employee or agent directly represents an organization, or may receive a direct financial benefit; or
 - where the employee or agent is in direct competition with a solicitation which would provide a direct financial benefit.
- 16.3.2 Abstain from participating in the procurement process, which includes but is not limited to discussions, lobbying, rating, scoring, recommending, explaining or assisting in the design or approval of the procurement process:
- on contracts with the organization he/she represents or from which he/she receives a direct financial benefit; or
 - on contracts with organizations in which a family member might realize a direct financial benefit.

16.4 Violations and Remedies

Violations of the provisions of this Article constitute misconduct, subjecting the violator to any and all penalties prescribed by law. Penalties, sanctions or other disciplinary actions, to the extent permitted by state or local law, rules or regulations, will be imposed for violations of the code of conduct/conflict of interest standards, by H-GAC employees or agents or by persons, contractors or their agents, when the procurement involves state or federal programs and/or funds. Violations of state or federal law will be referred to the proper authority having jurisdiction over same.

ARTICLE XVII

RECORDS RETENTION

ARTICLE XVII - RECORDS RETENTION

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

17.0 Policy

All procurement-related records must be maintained by H-GAC for a period of six (6) years after the procurement. H-GAC uses a records retention schedule approved by the Texas State Library and Archives Commission. This schedule establishes mandatory minimum retention periods for records that are usually found in local governments, regardless of type. To obtain a copy or for questions on the retention period of a record, please contact H-GAC's Custodian of Records at 713-993-4598 or rick.guerrero@h-gac.com.

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

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

17.1 Records Retention for Sealed Negotiated Procurements

Records or files for purchases in amounts in excess of \$50,000 must reflect, at a minimum:

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

17.2 Records Retention for Competitive Solicitations

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

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

ARTICLE XVIII - SUPPLEMENTS

Supplement A: Guide to the Request for Qualifications (RFQ)

Supplement B: Guide to the Request for Information (RFI)

Supplement C: The Response Evaluators Handbook

Supplement D: Check Request Policy

Supplement E: Wireless Device Policy and Procedure

*Supplements are only intended for reference and can be added or removed as appropriate

Supplement A: Guide to the Request for Qualifications (RFQ)

1.0 When to use a Request for Qualifications

A Known Opportunity: When there is the potential for significant interest in a specific contract opportunity, the RFQ process can be used to pre-qualify respondents who will then compete on the opportunity at the solicitation stage. This can make the solicitation process more efficient as there will be fewer responses and all of them will be qualified.

An Unknown Opportunity: An RFQ process can also be used to create a pre-qualified list for a future opportunity. This pre-qualification list can add value when similar services will be required for multiple contracting opportunities and allows for the quick selection of a qualified respondent when the next opportunity arises.

As a Selection Process for a Task or Special Service: An RFQ can be used as the sole selection process for a specialist contractor where the task is very specific and requires a very specific skill set (i.e. engineering services)

2.0 Procedure

All RFQ solicitations are drafted by the Procurement and Contracts Department.

Define the Objective:

Preparation is the key to a successful procurement process. It is important to prepare the RFQ document so that it solicits the precise information needed to decide. In order to do so, first define exactly what is required. Providing detailed information in the RFQ document will not only solicit better and more accurate responses from interested respondents, but it will make it easier for the selection committee to make an informed decision regarding which respondents should be short-listed.

Draft the RFQ Document:

Once the requirements are fully defined, the RFQ document is drafted and the evaluation criteria is determined. RFQs generally follow the same set-up as RFPs. The RFQ must provide enough information to allow respondents to understand the nature of the opportunity, as well as the information and qualifications that you are looking for. The RFQ should also explain important submission information and deadlines, the pre-qualification process, including key terms and conditions, the anticipated schedule for the pre-qualification process, as well as the evaluation criteria. Make sure that the criteria are relevant to the needs. For example, if certain skills are critical to the success of the project, rate those required skills as a strong priority. Also, clearly define the evaluation criteria in the RFQ and to stick to the specified criteria when evaluating the responses.

Issue the RFQ:

The RFQ will be posted to the H-GAC website and can also be issued through any department distribution or contact lists. For specialist services (engineers, building contractors, architects, business consultants, etc.) the RFQ may also be issued through partnering agencies or other associations announcement boards to increase the ability to circulate the RFQ document to a broad range of potential respondents. The RFQ must include a deadline like an RFP.

Evaluate and Select:

Once the responses are received, the Procurement and Contracts Department, presents the responses to the evaluation committee for assessment. Evaluate the responses based upon the evaluation criteria defined in the RFQ. Responses should then be classified as either qualified, or not qualified.

If the RFQ is being utilized for selection purposes, candidates should be invited to interview. The interview will be helpful for the evaluation committee and will follow the same process as the RFP interview or oral presentations.

If the RFQ is being utilized for pre-qualification purposes, once the successful candidates have been selected, a record is kept of their information and those respondents are informed they have been added to the shortlist for possible future use.

Supplement B: Guide to the Request for Information (RFI)

1.0 When to use an RFI

Use an RFI when there are a lot of potential vendors and/or more information is needed about them. The RFI generally includes elements of an RFQ, but also contains questions for the potential respondent to answer. This allows for a formal reply from potential vendors.

2.0 Procedure

All RFI solicitations are drafted by the Procurement and Contracts Department.

Define the Objective and the Questions:

The RFI must contain a description on why the information is requested and a specification to what information that is requested. The number of vendors or contractors that are available could be huge, and the RFI creates a structured process to narrowing down the long list of vendors or contractors to a smaller number. The questions developed should ask how the vendor or contractor might design or choose the component or create the service.

Draft the RFI Document:

Once the objective and questions are fully defined, the RFI document may be drafted. RFIs generally follow the same set-up as RFPs. Be sure that the RFI provides enough information to allow respondents to understand the nature of the opportunity, as well as the information that you are looking for. The RFI should also explain important submission information and deadlines, including key terms and conditions, and the anticipated schedule for the process. The next section provides some suggestions in what should be included in the RFI document.

What to include in the RFI:

- Introduction and purpose
- Background
- Statement of Need
- Scope of the Project
- Context of Use
- Requirements
- Qualifications
- Questions or Information Requested
- How to deliver the answer
- Evaluation Criteria
- Timelines
- Contacts for Questions
- Conditions (terms for future RFPs or RFQs)

Issue the RFI:

The RFI is posted to the H-GAC website and issued through any department distribution or contact lists. For specialist services (engineers, building contractors, architects, business consultants, etc.) the RFI may also be issued through partnering agencies or associations opportunity boards to increase the ability to circulate the RFI document to a broad range of potential respondents. The RFI must include a deadline like an RFP.

Evaluate:

Once the responses are received, the Procurement and Contracts Department, presents the responses to the evaluation committee for assessment. Evaluate the responses based upon the information received and the criteria outlined in the RFI and develop a short list of potential vendors or contractors.

Considerations for Evaluation:

- Understanding of the requirements
- Company Ownership
- Company details of operations
- Vendor/Contractor experience
- Submission of creative approach/ideas
- Financial Information
- Acceptance of Terms and Conditions

Once the successful candidates have been short listed, a record is kept of their information and those respondents are informed that they have been added to the shortlist for possible future opportunity.

Supplement C: The Response Evaluators Handbook

1.0 Introduction

You have been chosen to serve as an evaluator on an evaluation committee for the H-GAC procurement process because of your expertise and understanding of the community values, diversity, neighborhood concerns or impact of the project on the community; your service is critical to the selection process. As a member of the committee, you will participate in awarding points and ranking responses so that H-GAC can receive the best value in its procurements in a fair and competitive public process.

Your attendance is required at all Evaluation Committee Meetings. Please review the specific response evaluation process established by the solicitation. Typically, there is an orientation meeting or email to outline and clarify the expectations of the response evaluation process

Please read this handbook carefully and fully. It outlines your responsibilities as an evaluator for H-GAC and provides general information regarding H-GAC's evaluation process for responses. Should you have any questions, please contact the Procurement and Contracts Department

2.0 General Information

2.0.1 General Communication Regarding the Solicitation

Once you have agreed to be an evaluator for a solicitation, you should not have any communication with anyone (except the Procurement and Contracts Department) regarding the solicitation until the evaluation process is complete. All inquiries regarding the solicitation should be referred to the Procurement and Contracts Department,

2.0.2 Procurement Rules

H-GAC conducts all procurements of goods and services in accordance with State Law and other established policies and procedures. The Procurement and Contracts Department will be your guide throughout the process and is responsible for seeing that procurement rules and the corresponding procedures are followed precisely.

2.0.3 Evaluation Committee Member Commitment

It is important to understand the commitment and complete the evaluation as a participating member of the committee, including attending all scheduled meetings in a timely manner. If unable to attend to complete your assignment on the evaluation committee, an important procurement may be delayed, potentially canceled, or challenged. If a member determines that he/she is unable to complete the evaluation process due to time constraints or scheduling commitments, it is best to replace that member at the onset. It is essential that all stages of the evaluation process be completed by all of the committee members. Committee operations are short-term, highly focused, and often tightly scheduled. If any member misses a single meeting, the evaluation work of the entire committee may be rendered invalid, and it is possible that the evaluation process will have to be repeated. After reading this handbook, please carefully consider your availability and let the Procurement and Contracts Department know if you have concerns before you start.

2.0.4 Confidentiality

During the evaluation period, committee members must maintain the utmost confidentiality to protect the integrity of the procurement process. All responses are considered confidential until the Contract Action Notice has been issued.

2.0.5 Conflict of Interest and Other Ethical Concerns

You have been entrusted with an essential part of an important public decision. As this is a public process, conflicts of interest and other ethical concerns must be identified and addressed as soon as they arise. All committee members are required to sign the Evaluation Committee Member Confidentiality & Conflict of Interest Disclosure Statement before being allowed entry into the electronic evaluation application. The electronically statements are retained in the procurement file and become public information. If you become aware of a real or potential conflict of interest or ethical concern at any point in the evaluation process, it is critical that you notify the Procurement and Contracts Department immediately.

An evaluator has a conflict of interest whenever an evaluator or a member of an evaluator's immediate family 1) has been, or is currently, an employee of or on the board of directors of a firm or 2) has a financial interest in a respondent or the award of the contract. An evaluator has a potential conflict of interest when an evaluator or a member of an evaluator's immediate family has, or has had, an association with a respondent or a key employee of the proposed that a disinterested observer could reasonably expect would result in bias or prejudice either for or against the respondent. Respondent includes any person or entity who will participate in performance of the contract if it is awarded. An H-GAC employee does not have a conflict of interest simply by reason of having worked with a respondent as part of the employee's job duties.

If you have a conflict of interest or believe you have a potential conflict of interest, you must disclose this on the Conflict of Interest Disclosure Statement. You must disclose conflicts and potential conflicts at the earliest possible time. A conflict of interest will disqualify you from serving as an evaluator. A potential conflict of interest may disqualify you depending on the circumstances. It is H-GAC's intention to avoid the appearance of impropriety as well as actual conflicts so that the process is and appears to be fair and objective to all competitors. For this reason, you may be asked not to serve as an evaluator even if you believe you could be fair and impartial. An undisclosed conflict of interest could result in the procurement process being disrupted, costing valuable time and resources and possibly delaying the delivery of vital services. If at any time you are in doubt as to whether you have an actual or potential conflict of interest, you should immediately notify the Procurement and Contracts Department.

2.0.6 Independent Judgment

H-GAC's evaluation process requires individual, independent judgment in scoring responses based on the criteria in the solicitation. Each committee member is expected to exercise independent judgment as they review and evaluate each response. You may seek to increase your knowledge before awarding points by asking questions or seeking to understand pertinent information. However, the main requirement is that you exercise your judgment in a manner that is not dependent on anyone else's judgment, wishes, or demands.

The exercise of independent judgment applies not only to possible influences from outside the evaluation committee, but also to influences from within the committee. It is normal and acceptable that there may be discussion within the evaluation committee about how well a response meets the established evaluation criteria.

As an independent evaluator you may be swayed by the discussion in making your judgment about how many points you wish to award. However, evaluators should not act in a concerted way to either favor or disfavor a response or group of responses.

Attempts by anyone, including colleagues, subordinates, or superiors, to influence you to improperly favor or disfavor a particular respondent, such as awarding or withholding points in a manner that might affect the outcome of the evaluation, must be reported to the Procurement and Contracts Department immediately.

2.0.7 Communications with Respondents

Any communication between the respondents and the evaluation committee must be arranged by the Procurement and Contracts Department and it must be communicated to the entire evaluation committee so that all members can benefit from this communication at the same time. During the evaluation process, it is not appropriate for you to have any communication with any respondent outside the formal in-session communications. Any attempt by any respondent to have direct or indirect communication with you outside of a committee meeting should be avoided and reported to the Procurement and Contracts Department. Any unauthorized communications between H-GAC employees and respondents can result in a rejection of the response.

3.0 The Scoring Process

3.0.1 Solicitation Review

Please read the entire solicitation issued and pay careful attention to the requirements, goals and project specifications. You should have a clear understanding of objectives related to this procurement before you begin the individual evaluations. If you have questions or need clarifications, please contact the Procurement and Contracts Department.

3.0.2 Response Review

It is the Evaluator's responsibility to read and evaluate all responses. Evaluation of complex or technical responses can be an intense, time-consuming, and difficult task, often within a short period of time. Evaluating the responses includes reviewing the information provided in the response in direct relation to the evaluation criteria and information requested by the solicitation. You must carefully measure the merits of the response and its shortcomings against the requirements and criteria stated in the RFP.

3.0.3 The Evaluation Scoring

Scores and directly relevant comments must be recorded in the electronic system and must relate directly to evaluation criteria and scoring methodology established by the solicitation. Evaluators must provide brief written explanations regarding strengths and weaknesses of the individual scores as appropriate. These brief comments can provide insight as to why an Evaluator awarded or withheld points based on the established solicitation evaluation criteria.

In the event of a debrief or protests, Respondents viewing these comments may find the information helpful for future submissions. Comments must be professional and specific in nature. Keep in mind that all scores and comments become a part of the solicitation file, and following the execution of a contract, will be considered public information. Evaluators must always have a reasonable, rational, and consistent basis for their scores and comments.

Do not compare responses; each response must be evaluated and scored using the criteria set forth in the RFP. Each Evaluator should evaluate individual responses independent of the other committee members as well as other responses.

3.0.4 Clarification of Responses

During the evaluation process, clarification of certain points within a response may be necessary. The evaluation committee member(s) will notify the Procurement and Contracts Department regarding the matter in question. Then the Procurement and Contracts Department will contact the respondent for clarification. This will minimize confusion and ensure that all clarification statements are posed in the same manner to maintain a fair and equitable process for all respondents. The Procurement and Contracts Department is the only party authorized to communicate with the respondents.

All questions posed, as well as responses received, from this clarification process will be documented and provided to all evaluation committee members. While clarification is being requested, no other changes, modifications or substitutions will be allowed to the responses. All records become public information following an executed contract and are subject to public review.

The Procurement and Contracts Department will establish the guidelines and monitor all evaluation committee meetings as well as any meetings with the respondents. In some instances, they may also facilitate the meetings. The Procurement and Contracts Department is present at all meetings to ensure that Evaluators (and in some instances, respondents) follow the procedures, evaluation criteria, ranking and weighting considerations identified in the solicitation.

3.0.5 Scoring Meeting

To assist in preventing a comparison of responses, scores are entered into an electronic scoring application viewable only to the Procurement and Contracts Department once the committee members have finished scoring the responses. Scores are reviewed by the Procurement and Contracts Department to identify any areas that may identify unanswered questions or large variances in scores. The Department will receive a score summary and will indicate whether there is agreement on the selected response to move forward with contractor selection.

3.0.6 Protests and Appeals

Following the executed contract, the public may view the responses, and all evaluation committee scores and comments. At this time, unsuccessful respondents may seek additional clarification or debriefing, request time to review the selection procedures or discuss the scoring methods utilized by the evaluation committee. The individual evaluation committee members will normally not be involved in this process but may be contacted for clarification. (Refer to Article XI for information regarding Protest and Debriefing).

While it is important to know respondents do have this right, it is also important to know that respondents may appeal only deviation from laws, rules, regulations or procedures; **disagreement with the scoring by evaluators may not be appealed.**

4.0 How to Evaluate

4.0.1 Evaluating in General

Evaluation is the fundamental and most visible effort to grant the community a fair and open process to Respondents seeking funding and work. Errors in the evaluation process undermine the community's faith and confidence in a fair and open process and must be minimized.

For formal solicitations, the Procurement and Contracts Department will oversee the actual evaluation process to ensure that the rules and processes that have been developed are observed and maintained throughout the process.

The outcome of an evaluation process can and often does have significant impacts on the Respondents and their employees – a failed response non-selection may have ramifications that can, at its most extreme, cause the failure of the Respondents organization, reduction of employees, or withdrawal from a specific service segment. The evaluators must always conduct themselves in a manner that is ethical and can withstand public scrutiny.

Evaluators must base their scoring on the extensive criteria identified in the solicitation. Consistency with your approach is important but it may be necessary, at times, to tailor your evaluation approach to the specific attributes of a solicitation. As with all aspects of the evaluation process, evaluators must not compare responses against each other.

If you have questions about how to evaluate or score, contact the Procurement and Contracts Department.

4.0.2 Evaluating Cost

The area of evaluation that introduces the most confusion is cost. This area can be complex, and some evaluators do not have in depth expertise with costing models and related topics. Relatively few solicitations employ a specified cost evaluation model or cost equation to be used to determine cost points. For solicitations with no cost evaluation model or cost equation to be used to determine cost points (mostly complex acquisitions) the committee is required to have financial professional review the cost areas and provide guidance/feedback to the evaluators prior to scoring. Some solicitations offered by H-GAC express the total amount of available funding up front and ask respondents to cost out their offered solutions, while not exceeding the specified cost limits. In these cases, Evaluators can provide a value-added service by:

- Making sure the total proposed costs do not exceed the specified amount available
- Confirming Budgets, if requested, are provided
- Reviewing the budget elements to make sure a key element has not been left out or does not match what the response offered. Examples would include talking about driving to clients' residences but not including transportation/fuel costs in the budget or offering to provide six full time counselors in the response but only budgeting for two FTE in the budget. These types of errors can lead to question the overall creditability of the proposed budget; and
- Ensuring the respondent did not include items in the budget that do not appear to be related to the proposed solution. For example, listing the cost for a new van for a service that will be conducted at the Contractor's location and does not involve travel.

4.0.3 Oral Interviews

If it is in the best interest of H-GAC and provided for in the solicitation, oral interviews may be scheduled. Oral interviews typically involve the highest scoring respondents being invited to meet with H-GAC to answer clarifying questions about their responses or give answers to specific oral interview questions provided in the solicitation.

Clarifying questions are frequently developed by evaluators after the written evaluation with guidance from Procurement and Contracts Department. The Procurement and Contracts Department will send the clarifying questions to the respondents prior to the interviews.

However, at any time including during the oral interviews, **no additions, deletions or substitutions may be made to the response that cannot be viewed as clarification. Respondents are not allowed to hand out any new material to the Evaluation committee.** Each respondent will be allowed an equal amount of time for their interviews. All evaluation committee members must participate in and evaluate all interviews. The same score sheets for the written responses will be used for evaluating the oral interviews, usually with the same evaluation criteria and weighting as previously identified within the Solicitation. Again, each evaluator should evaluate the oral interviews independently. Oral score sheets will be turned in after each interview and scoring is done for that interview.

4.0.4 Product Demonstrations

Product demonstrations are frequently used in software procurements but can apply to any purchase where seeing the proposed solution “in action” is useful for determining the most advantageous solution. Demos are a good tool for validating a respondent’s claims about the proposed solution in their written response.

If a demo is being used, the solicitation will specify whether it is remote or on-site (i.e. conducted over the internet without the respondent being present or conducted at H-GAC with the respondent giving the presentation).

During the demo, evaluators and technical advisors will have an opportunity to observe the solution in action and ask any clarifying questions they may have along the way. Clarifying questions are limited to only those areas covered in the demo.

As an Evaluator attending a demo, it is important to attend the demo in its entirety. Breaks can be scheduled into the agenda for longer demos and if for some reason you need to leave the demo, it’s important to let the Procurement and Contracts Department know that you are leaving and give an idea of how long you will be absent. They can then determine if they need to stop the demo until all evaluators are present.

During the demo, the Procurement and Contracts Department will introduce the respondents and explain the expectations for the demo for the respondents, evaluators and technical advisors. It is also important to refrain from discussing the response, the demo and/or the procurement process with the respondents during breaks and to keep your interactions with them brief and professional. Refer them to the Procurement and Contracts Department if they have questions.

This may seem unnecessarily strict but with good reason. Demos open a wider door for risk to the procurement process because of the interaction between respondents and non-purchasing staff. Our procurement rules and policies are complex. Something said innocently to a respondent may create a risk to the solicitation that could lead to H-GAC being protested, sued or needing to cancel the solicitation and start over. After the demo, you will have an opportunity to finalize your scores prior to completing final scores.

4.0.5 Site Visits

Site visits involve evaluators, technical advisors and the Procurement and Contracts Department traveling to a location where the respondent’s solution is being used. This could be anything from implemented software at another agency to a tour of a data center.

When used, the solicitation will spell out what the site visit will entail and what topics will be discussed with the respondent and/or its customers or clients. Because site visits involve travel, they are only recommended when necessary to identify the most advantageous solution. Evaluators must take the same kind of care they would take in a demo, conducting themselves professionally and avoiding inappropriate conversations with the respondents.

As with all other steps in a procurement, you will have an opportunity to consider the visit before finalizing your scores and turning in your score sheets.

4.0.6 Best and Final Offer (BAFO)

The BAFO process allows H-GAC to solicit revised responses from respondents within competitive range. H-GAC may not use BAFO often, but it is an important tool especially when what is learned during the process of a procurement has impacted H-GAC's understanding of the scope of work and concept of what the most advantageous solution would look like.

In BAFO, the originating Department – in partnership with the Procurement and Contracts Department, and the evaluators – identifies any changes that are desirable in the solicitation scope of services and any changes desirable in the responses still under consideration. A list of changes is combined with a list of items specific to each response that H-GAC wants revised.

These lists are included in a letter sent to the respondent. After respondents have had an opportunity to discuss their lists in person or by teleconference in an optional meeting, the Purchasing representative releases a Request for Best and Final Offer, usually giving the respondents two weeks to submit their revised responses. The BAFO request will include the new due date, any re-weighting of the score categories, and the list of items for revision and other helpful instructions for respondents.

Once all responses have been received and the due date has passed, evaluators will independently evaluate each revised response against the revised criteria identified in the BAFO. When evaluating a BAFO, evaluators are encouraged to use everything they have learned in the procurement process so far – including all steps – and they will also have access to their past scores. However, evaluators are not required to score any category in the same manner as it was previously scored, even if it is a portion of the response that has not been revised. When the evaluators have finished scoring the revised responses independently, they will then finalize their scores in the electronic scoring application.

5.0 Conclusion

Serving on an H-GAC procurement evaluation committee is a very important role. Your commitment of time, along with the respondents' and H-GAC's commitment of time and resources, is sizable. At the end of this process, H-GAC can fulfill its mission as a steward of the public trust to purchase the needed goods or services in a fair and equitable way. H-GAC could not do this work without evaluators like you. Thank you for participating in this process and if you have any questions or feedback, please contact the Procurement and Contracts Department.

Supplement D: Check Request Policy

A check request should be reserved for limited situations and should be the exception. Most purchases in H-GAC are handled by generating a purchase order.

The following are the instances when a Check Request should be generated:

- Vendor cannot accept a purchase order
- Internal tracking/approval of department card purchases
- Reimbursement

Please direct inquiry to the Finance Department or Procurement and Contracts Department to determine the appropriate method.

Supplement E: Wireless Device Policy and Procedure

This document establishes the policy and procedure for issuing new wireless device to H-GAC employees conducting official H-GAC business and provides the process of requesting changes for existing devices.

Individual employees/departments are expressly prohibited from establishing new services under an H-GAC account with any wireless service provider. Accounts established in violation of this policy could result in disciplinary action as determined by H-GAC management.

PART A: Definition

“Wireless Device” Under this policy wireless devices include, but are not limited to, cell phones, smartphones, tablets, SIM cards, hotspots, etc.

PART B: Applicability

This policy applies to all H-GAC employees. Department Directors are responsible for monitoring employee usage of H-GAC issued devices and ensuring compliance with any other H-GAC policy regarding any wireless devices usage whether personal or H-GAC issued.

PART C: Determination of Need

The following table defines the type of device and criteria to be used when determining the need for an H-GAC issued device.

Type of Device Requested	Determination of Need
Smartphone	-More than 60% of work is conducted away from the employees’ workstation and the employee is required to be contacted on a regular basis, or -Employee is on-call outside of normal work hours; or -Employee monitors and administers mission critical information systems during non-business hours; or -Employee must be immediately accessible to receive and/or make frequent business calls outside of working hours.
Hotspot	-Employee requires service/data access in an area of travel that cannot be achieved via smartphone.
Tablet	-Employee requires access to an application that is only accessible on a tablet device (Tablets may be issued on a case by case basis. Additional justification may be required.)

The employee must meet a least one of the defined criteria in order for a request to be submitted and considered for approval.

Issuance Criteria	Description
Frequent Mobility	Employee is off-site at least 60% of the time (travel, meetings, conference calls, etc.) and use of a wireless device is required in order to effectively maintain operations while out of the office.
On-Call /After Hours Availability	Employee is required to be on-call a majority of the time to be contacted in the event of an emergency or to be immediately accessible to receive and/or make frequent business call outside of normal working hours.

PART D: Device Standardization

Data Services is responsible for providing standardization of wireless devices. All requests for new devices will be submitted to Data Services for a recommendation of the preferred device for the agency before a new device is issued.

PART E: Procedure

To request a new device, a New Wireless Device Request Form, must be completed and approved by the Department Director and sent to the Procurement and Contracts Department for review with final approval required by the Deputy Executive Director. If approved, the Procurement and Contracts Department will coordinate with Data Services on the type of device to be issued. A new device and service plan will be ordered from the agency approved service provider.

For changes to existing devices, please contact the Procurement and Contracts Department.

PART F: Billing/Payment

Finance is responsible for issuing one monthly payment for all devices on each approved service provider account. Bill copies will no longer be sent to the department each month and individual check requests will no longer be generated by each department. The department may request a copy of the billing from Finance.

Finance has final discretion on the process of payment to service providers with limited numbers of devices.

Each department is responsible for ensuring Finance has the most current charge code for the payment of the devices.

PART G: Periodic Review/Audit

The Procurement and Contracts Department will periodically conduct reviews of the agency devices, charge codes, and service plans and has discretion to change service providers/plans/devices as necessary to take advantage of better pricing options as they become available. Devices are subject to audit of usage by H-GAC.