

**North Central Texas  
Council of Governments**

**REGIONAL IDLING REDUCTION PROGRAM  
2012 Call for Projects**

June 2012  
North Central Texas Council of Governments  
Air Quality Policy and Program Development  
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[www.nctcog.org/aqfunding](http://www.nctcog.org/aqfunding)

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## INTRODUCTION

The Regional Idling Reduction Program (RIRP) was established to provide financial assistance for the purchase and installation of technologies that reduce emissions due to the unnecessary idling of on-road vehicles and non-road equipment in the Dallas-Fort Worth (DFW) ozone nonattainment area. Grants may be awarded for eligible on-board and on-site idle-reduction projects. Funds for this Call for Projects (CFP) are made available by the Regional Transportation Council (RTC) through the Congestion Mitigation and Air Quality (CMAQ) Program. The CFP is administered by the North Central Texas Council of Governments (NCTCOG) and is consistent with requirements set forth by the CMAQ program.

This document contains criteria for grants awarded through the RIRP 2012 CFP.

## PURPOSE

Currently, ten counties in the North Central Texas region, including Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties, are classified as nonattainment under the National Ambient Air Quality Standard for ozone. This means that ground-level ozone concentrations in these counties exceed the federal health-based limit as set forth by the Environmental Protection Agency (EPA). Ozone is formed when nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) react in the presence of sunlight and heat. The ten-county nonattainment area has been classified as “moderate nonattainment” as the region was unable to demonstrate compliance with the 2008 8-hour ozone standard. These circumstances underscore the continued need to invest in projects that reduce ozone-forming emissions in the DFW nonattainment area.

Numerous efforts are being implemented to reduce emissions that contribute to ozone formation. One strategy to address these emissions is to reduce or eliminate unnecessary idling of on-road vehicles and non-road equipment. The objectives of this CFP are to increase the use, availability, and awareness of technologies that eliminate the need for light- and heavy-duty engines to idle; improve air quality and address climate change by reducing emissions; and reduce petroleum consumption in the North Central Texas region. The initial expense of idle-reduction technologies can be cost-prohibitive. The RIRP CFP is intended to provide financial assistance to ease the capital burden required to implement on-board and on-site projects that demonstrate emissions reductions through the use of idle-reduction technologies.

EPA has verified many products to achieve emissions reductions by minimizing the need for idling of the primary engine; many can also provide necessary services such as cab heating or cooling and auxiliary power needs. Benefits of reduced engine idle time include not only lower emissions, but also reduced fuel and engine maintenance costs for the vehicle owner. The cost of unnecessary idling, as well as the return on investment for purchasing technological solutions can be estimated through various tools:

- Argonne National Laboratory Light-Duty Vehicle Worksheet:  
[www.transportation.anl.gov/pdfs/idling\\_worksheet\\_light-duty.pdf](http://www.transportation.anl.gov/pdfs/idling_worksheet_light-duty.pdf)
- Argonne National Laboratory Medium- and Heavy-Duty Vehicle Worksheet:  
[www.transportation.anl.gov/pdfs/TA/361.pdf](http://www.transportation.anl.gov/pdfs/TA/361.pdf)

- EPA SmartWay<sup>SM</sup> Transport Program Savings Calculator:  
[www.epa.gov/smartway/transport/calculators/index.htm](http://www.epa.gov/smartway/transport/calculators/index.htm).

Projects implemented through this funding opportunity will support efforts to reduce ozone concentrations by achieving cost-effective reductions in NO<sub>x</sub> emissions, and will further enhance air quality by also achieving reductions in particulate matter (PM<sub>2.5</sub>), carbon dioxide (CO<sub>2</sub>), and toxic diesel exhaust. Reductions in petroleum consumption are an additional benefit of the program.

## CONTACT INFORMATION

Please submit any questions or comments to NCTCOG Project Staff. Documents and CFP information, including the on-line application form, are available at [www.nctcog.org/dirp](http://www.nctcog.org/dirp).

### Project Lead

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## ELIGIBLE APPLICANTS

This funding opportunity is available to both public and private entities who wish to purchase eligible on-board technology for light- or heavy-duty on-road vehicles or non-road equipment, or install on-site idle reduction infrastructure. Businesses or other entities in which an NCTCOG employee, spouse, or family member has a direct or indirect interest, financial or otherwise, may be prohibited from receiving a grant, depending upon the nature of the interest. Any questions regarding the eligibility of an entity to apply for a grant should be referred to the NCTCOG staff early in the application process.

### **On-Board Idle-Reduction Projects**

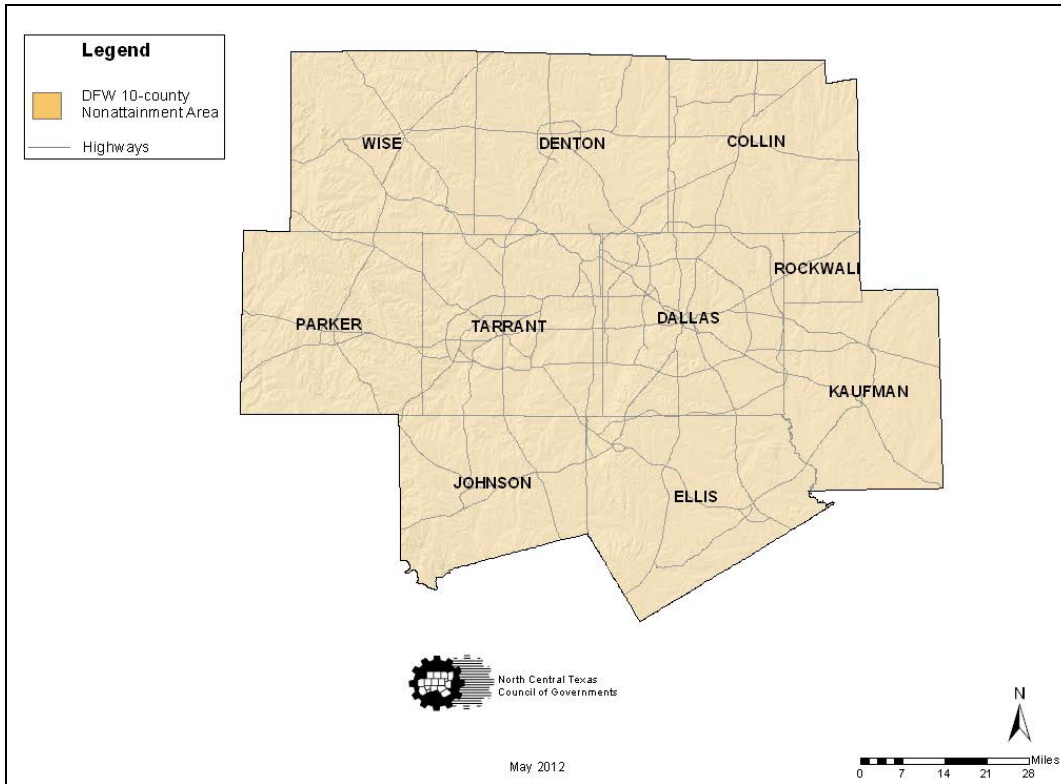
Applicants should be the end-user of the idle reduction technology requested and/or should own the vehicles on which the idle reduction technology is installed.

Public sector entities that wish to apply for funds to install on-board technology for idle-reduction projects must have adopted the Clean Fleet Vehicle Policy by the application deadline of August 31, 2012. This policy sets guidelines regarding best practices in vehicle acquisition, maintenance, and operations to help minimize emissions from public-sector fleets; it also includes restrictions on vehicle idling and requirements for driver training. Adoption must occur prior to the closing of this CFP and a signed copy of the policy must be submitted to NCTCOG. For more information on the Clean Fleet Vehicle Policy, or to check your organization's status, please visit [www.nctcog.org/fleetpolicy](http://www.nctcog.org/fleetpolicy). Private sector applicants are encouraged to consider a similar policy for their own fleets.

### **On-Site Idle-Reduction Projects**

Eligible applicants include entities that will either own or maintain on-site idle-reduction technology. To be eligible, the site must be located within the ten-county DFW ozone nonattainment area outlined in Map 1. Adoption of the Clean Fleet Vehicle Policy is not required for on-site idle reduction project applications. However, adoption of the policy may positively impact project evaluation.

## MAP 1: DFW OZONE NONATTAINMENT AREA



### ELIGIBLE PROJECTS AND COSTS

All eligible projects must reduce idling from on-road vehicles or non-road equipment directly. Technologies or systems that provide information to track idling behavior, such as geographic positioning systems (GPS) or telematics, are not eligible. Light- and heavy-duty vehicles and non-road equipment are defined as follows:

- Light-Duty Vehicles: Gross vehicle weight rating (GVWR) of 8,500 pounds or less
- Heavy-Duty Diesel Vehicles: Gross vehicle weight rating (GVWR) of at least 8,501 pounds
- Non-Road Equipment: Engine horsepower of 25 or greater

#### **On-Board Idle-Reduction Projects**

The device must reduce the need for operation of the primary engine during time that the vehicle must remain on but while it is stationary and/or is not actively performing work. The purchase of a vehicle with integrated idle-reduction technologies may also be considered an eligible project. In this type of application, the eligible expense is defined as the incremental cost of purchasing the vehicle with integrated idle-reduction systems versus the conventional version of that same type of vehicle.

- A majority of annual operation must be must be located within the ten-county DFW ozone nonattainment area outlined in Map 1
- Eligible projects include, but are not limited to:

- Purchase/installation of aftermarket technologies such as:
  - Automatic Shut-Down/Start-Up Systems
  - Auxiliary Power Systems
  - Auxiliary Power Units (APUs)
  - Battery Air Conditioning Systems (BAC)
  - Fuel Operated Heaters (FOH)
  - Thermal Storage Systems (TSS)
- Purchase of vehicles with integrated idle reduction technologies, such as:
  - Hybrid-Electric Vehicles (only if used in Power Take-Off (PTO) Applications)
- If the vehicle is leased rather than owned, additional conditions apply:
  - Lease term must exceed the Activity Life.
  - Applicant must include a statement from the owner of the vehicle (the lessor) indicating knowledge of and support for the proposed idle-reduction activity.
- Projects which reduce idling of vehicles used primarily for competition or recreation are not eligible.

### **Funding Level**

- Aftermarket Technologies: Up to 80 Percent of Purchase and Installation Costs
- Vehicles with Integrated Idle Reduction Technologies: Up to 80 Percent of the Incremental Cost of the Vehicle as Compared to a Comparable Conventional (Non-Hybrid) Vehicle

### **On-Site Idle-Reduction Projects**

An on-site idle-reduction infrastructure project may include the purchase and installation of systems designed to dispense electricity to heavy-duty vehicles or equipment. The electricity should replace the power normally supplied by the primary vehicle or equipment engine. Emphasis will be placed upon projects which serve heavy-duty diesel vehicles.

- Must be located within the DFW ozone nonattainment area illustrated in Map 1.
- If applicant is not the site owner, must have location identified and/or letter of support from site owner.
- Eligible projects include, but are not limited to, installation of:
  - Electrified Parking Spaces (EPS)
  - Shore Connection Systems for Locomotives
  - Truck Stop Electrification (TSE)
- Projects that supply power or electricity to vehicles or equipment used primarily for competition or recreation, or supply electricity used to recharge the battery of a vehicle or piece of equipment that operates solely on electricity rather than an internal combustion engine, are not eligible.

### **Funding Level**

- Up to 80 percent of purchase and installation cost

### **INELIGIBLE COSTS**

Ineligible Costs may include:

- Ongoing operations and maintenance costs for idle reduction technologies.
- Fees associated with Buy Boards and financing.
- Administrative costs and other internal costs of the grant recipient—including but not limited to personnel expenses, internal salaries, indirect costs, and travel.
- Fees for a third-party consultant or dealer hired by the grant recipient to coordinate the application or manage and administer the grant-funded activities, including coordination of the work and submission of reports and paperwork to NCTCOG for the grant recipient. This restriction is not intended to limit the ability of the equipment supplier or installer to include reasonable and necessary costs for managing the work to be performed in the price of the vehicle, equipment, or installation services. The costs for professional services, including engineering and technical work, required for completion of the activity may be included, subject to the restrictions pertaining to that type of project. Per the Uniform Grant Management Standards (UGMS), the cost plus a percentage of cost method of contracting for professional services shall not be used.

## REQUIREMENTS

Projects must comply with the following elements to be considered for funding.

- **Activity Life:** Applicant must continue to own and operate grant-funded technology in a manner consistent with the terms of the RIRP and grant Agreement for a minimum of the following project-specific Activity Life:
  - On-Board Idle-Reduction Projects:
    - 3 years for aftermarket idle reduction technologies
    - 5 years for integrated idle reduction technologies
  - On-Site Idle-Reduction Projects: 7 years
- **Buy America:** If projects include the purchase of vehicles with integrated idle reduction technologies, Buy America requirements may apply.
- **Buy American:** If projects include the purchase of iron, steel, and/or manufactured products, Buy American requirements may apply.
- **Clean Fleet Vehicle Policy:** Applicants must have adopted the Clean Fleet Vehicle Policy prior to the application deadline and be in compliance with annual reporting requirements (only applicable for public sector entities applying for on-board idle reduction projects).
  - Note: Adoption of the Clean Fleet Vehicle Policy is not a requirement for on-site infrastructure of private sector proposals. However, applications that demonstrate adoption of this policy, or adoption of a policy consistent with the principles in the Clean Fleet Vehicle Policy, will be evaluated favorably during project selection.
- **Emissions Credit:** Applicant must surrender emissions reductions to NCTCOG to meet air quality requirements and goals. The recipient may not utilize emissions reductions to satisfy other air quality commitments.

- **Financial Disclosure:** Applicant must notify NCTCOG of the value of any existing financial incentive that directly reduces the cost of the proposed activity, including tax credits or deductions, other grants, or any other public financial assistance, to allow for accurate calculation of incremental cost.
- **Local Match:** Applicant must identify source(s) of local match during the application process. RIRP funds cannot be combined with other federal funds or Texas Emissions Reduction Plan (TERP) funds. Matching funds must not already be tied to emission reduction commitments.
- **Notification:** Applicant must agree to notify the NCTCOG of any changes in the following during the Activity Life: termination of use; change in use, sale, transfer, or accidental or intentional destruction of grant-funded equipment or infrastructure.
- **Planning and Purchasing (on-site idle reduction infrastructure):** Subgrantee shall purchase facility components and materials in accordance with all federal, State, and local laws concerning purchase of goods and services. The subgrantee shall oversee the implementation plan and schedules including finalizing permits with building and safety, fire departments; site preparation with concrete, piping and electrical; installation; and facility start-up, training and operation.
- **Procurement:** Awarded applicants under this CFP will have to demonstrate an open, fair, and competitive procurement or purchasing process in compliance with State and federal law. NCTCOG has adopted [Third Party Procurement Procedures](#) to assist awarded applicants in complying with these requirements. . These procedures are attached in Appendix A. All awardees under this CFP must 1) maintain a written code or standards of conduct related to contract award and administration, 2) maintain a contract administration system to ensure vendors and contractors perform according to the terms, 3) conduct all procurement transactions in an open, fair, and competitive manner, and 4) maintain written procurement procedures. Appendix A provides guidance on the requirements for each type of procurement by dollar threshold. Appendix B.1 provides a checklist that NCTCOG will use to determine whether awardees have complied with the procurement requirements and Appendix B.2 details federal procurement requirements. Awardees are encouraged to review these procedures carefully. NCTCOG staff is available to assist awarded applicants with regard to questions they may have in meeting these requirements.

In general, projects for this opportunity will fall under one of the following procurement methods:

- Purchases under \$100,000: must obtain at least two competitive written quotes
- Purchases over \$100,000: must follow requirements for one of the following:
  - Publicly Advertised Sealed Bid Process
  - Publicly Advertised Competitive Proposal Process
- Public sector entities may make purchases through governmental cooperative purchasing programs

For purchases over \$100,000 total cost, NCTCOG must approve the recipient's planned procurement process prior to the recipient moving forward with purchases.



- **Project Dates:** Applicant must not incur grant-related expenses or proceed with grant activities prior to issuance of a Notice to Proceed by NCTCOG. All projects must be implemented, and final requests for reimbursement submitted, by July 1, 2013.
- **Project Type:** Applicant must propose to reduce idling of eligible on-road vehicles or non-road equipment through use of an idle-reduction technology that directly reduce idling.
- **Property Management:** At the end of the Activity Life, subgrantee must provide to NCTCOG a written certification of the disposition of grant-funded equipment. The certification shall describe the continued use and condition of the equipment, fair market value, remaining useful life, and any actual or anticipated improvements that may increase the value of the equipment.
- **Reporting Requirements:** Applicant must commit to completing the following reports:
  - Quarterly Progress Reports (Until Final Reimbursement is Issued)
  - Semi-Annual Usage Reporting Throughout Activity Life
- **Voluntary Reductions:** Projects must be voluntary in nature and not required by any State or federal law, rule, regulation, memorandum of agreement, or other legally binding document.

## SCHEDULE

Task	Estimated Timeframe
Call for Projects Opens	June 18, 2012
Call for Projects Deadline	Friday, August 31, 2012 – 5 p.m. Central Time
Finalize Staff Recommendations	October 2012
STTC Action	September 28, 2012
RTC Action	October 11, 2012
Mail Subgrantee Agreements/ Notice to Proceed	October/November 2012
Executive Board Action	October 25, 2012
Announce Awarded Projects	October 2012
Project Implementation Deadline/ Final Invoice Due	July 1, 2013

## SELECTION CRITERIA

Properly completed applications will be evaluated and ranked by NCTCOG staff based on the following criteria:

### **Quantitative Assessment**

NCTCOG will quantify potential emissions reductions associated with all idle-reduction projects submitted and will estimate cost per ton of various emissions reduced in the ten-

county ozone nonattainment area. Cost per ton is calculated based upon the amount of grant funds awarded. Therefore, it should be noted that applicants who offer more than the minimum required local match may achieve a more favorable cost per ton and rank higher in the quantitative assessment.

- Results achieved in the DFW ozone nonattainment area
  - Cost per Ton NO<sub>x</sub> Reduced
  - Cost per Ton PM Reduced
  - Cost per Ton CO<sub>2</sub> Reduced
  - Cost per Gallon Gasoline/Diesel Reduced

### **Qualitative Assessment**

NCTCOG will also conduct a qualitative assessment on all projects submitted. Evaluation criteria include:

- Partnership
  - Participation in the EPA SmartWay Transport Partnership or Blue Skyways Collaborative and/or participation in other air quality initiatives including previous NCTCOG-administered funding programs
  - Adoption of Clean Fleet Vehicle Policy
    - Public Sector Applicants: Required for On-Board Idle Reduction Projects
    - Private Sector Applicants: Encouraged for On-Board Idle Reduction Projects
    - All Applicants: May prioritize on-site idle reduction projects located within adopting jurisdiction (a current list of adopting entities is available at [www.nctcog.org/fleetpolicy](http://www.nctcog.org/fleetpolicy))
  - Adoption of Locally Enforced Idling Restrictions (LEIR)
    - Public Sector Applicants: encouraged for all applications
    - Private Sector Applicants: adoption of fleet anti-idling policy encouraged
    - May prioritize projects located within adopting jurisdiction (a current list of adopting entities is available at [www.nctcog.org/trans/air/programs/idling/engineoffnorthtexas/drivers.asp#Adoptees](http://www.nctcog.org/trans/air/programs/idling/engineoffnorthtexas/drivers.asp#Adoptees))
- Feasibility/Risk
  - Timely implementation schedule
  - Clearly identified project costs, implementation procedures, financial need, and source(s) of applicant match
  - On-Site Infrastructure proposals with location identified and/or agreements in place to secure property for installation
- RTC Strategic Program Goals
  - Environmental Justice
    - Located in a community of concern
      - Note: NCTCOG defines a community of concern as an area having a high density of the following protected populations: minority, age 65 and older, disabled, female head of household, and/or below poverty line
      - Applicant qualifies as a disadvantaged business enterprise (DBE), including both minority-owned and woman-owned business enterprises
  - On-site idle reduction projects located in an area without existing facilities

- Potential for strategically located emissions reductions

NCTCOG is not obligated to fund a proposal from an applicant that has demonstrated marginal or unsatisfactory performance on previous grants or contracts with NCTCOG and/or other State agencies. NCTCOG is not obligated to fund a proposal from an applicant based on a determination of the risks associated with the applicant, including the financial condition of the applicant and other risk factors as may be determined by NCTCOG.

Regardless of the scores and ranking assigned, NCTCOG may base funding decisions on other factors associated with best achieving the goals of the program, and NCTCOG is not obligated to select a project for funding. Additionally, NCTCOG may select parts of a proposal for funding and may offer to fund less than the dollar amount requested in a proposal.

## **APPLICATION PROCESS**

To apply for the RIRP 2012 CFP, go to [www.nctcog.org/dirp](http://www.nctcog.org/dirp) and follow the link to the online application. The steps below outline the procedure for filling out and submitting an application. Supporting documentation, such as cost estimates, must accompany the application and be uploaded with the application. Applicants are advised that online submissions are limited to four (4) megabytes in size.

Download the project detail spreadsheet(s) for specific activity information. Please download one spreadsheet per project type.

Follow instructions to complete the online application. To save answers and come back to the application another time, click "Submit". Please note that all questions must have a complete answer, or placeholder answer in them in order for the form to be saved successfully. Use your Federal Identification Number (FEI) to log back into the system.

- a. Sections I, II, III, IV, and V of the online application include entity and contact information, and Section VI provides an opportunity for applicants to give details about how receiving grant funds will help achieve the overall goals of the RIRP 2012 CFP. Answer the questions as completely as possible.
- b. Required project documents must be uploaded to the RIRP server. All items listed in the Checklist section of this document must be uploaded for the application to be deemed complete. Application submissions are limited to four (4) megabytes in size.

To finalize the application, check the checkbox and click 'Submit'. This action will send the completed application to NCTCOG. A confirmation email will then be sent to the Authorized Official and the Project Representative.

If online submittal is not feasible, submittal instructions will be provided to requesting applicants. Faxed copies of the application packet will not be accepted.

**All applications must be received "in-hand" by 5 pm Central Time on Friday, August 31, 2012.** Applications that are sent by this time but have not yet been received are not considered "in-hand" and will be deemed late. Applications and/or required information that are received after this time and date will be considered late and will not be accepted. Applicants are encouraged to submit applications far enough in advance of the submission deadline to allow NCTCOG staff to review for completeness.

## CONSULTANTS

Private consultants may be available to assist in completing and submitting an application. These consultants do not represent NCTCOG, and NCTCOG neither encourages nor discourages the use of a consultant to assist with the application process. NCTCOG has no agreement with any consultant and applications submitted by a particular consultant will not receive any more favorable treatment than other applications. Any fees charged by a consultant are the responsibility of the applicant and may not be charged to the grant, either directly or as an addition to the cost basis of the grant-funded equipment. Also, all purchase decisions must be based on procurement processes which comply with federal standards. It is generally considered acceptable for an applicant to allow assistance from a dealer or an agent of a dealer in preparing an application, as long as any decision by the applicant to purchase the grant-funded equipment from that dealer is made independently and meets federal procurement requirements in the grant contract. **Applicants are advised that NCTCOG staff is available to assist with any questions regarding the program or application.**

## GRANT ADMINISTRATION AND REIMBURSEMENT OF EXPENSES

Successful applicants will be notified of their selection and the amount of grant funding that may be awarded. Entities selected to receive grant funding will be required to execute an Agreement with the NCTCOG. All services or work carried out under an Agreement awarded as a result of this CFP must be completed within the specific Scope, time frames, and funding limitations. Upon signature and execution of the Agreement by NCTCOG, a copy of the executed Agreement will be returned to the applicant. NCTCOG will issue a Notice to Proceed indicating that the applicant may begin implementation of grant-funded activities.

Grant funds will be paid out on a reimbursement basis for eligible expenses incurred and paid by the grant recipient. A cost may not be considered incurred until the grant-funded technology has been received and accepted by the grant recipient. Requests for reimbursement shall include documentation to show that the technology has been received and installed, and those expenses have been incurred and paid by the grant recipient. Recipients will also have the option to assign their grant payments directly to a dealer or service provider. NCTCOG will supply [reimbursement request forms](#) for use by the recipient. ***Under no circumstances will reimbursement be made for costs incurred prior to the date of the Notice to Proceed.***

Upon completion of all grant-funded purchases, the grant recipient will need to submit a final request for reimbursement of all remaining unreimbursed expenses.

To further enhance partnership among all entities as well as market technology funded through this program, the grant recipient must also agree to place a label or sticker on the grant-funded vehicle/equipment/technology upon request by NCTCOG.

Applicants that are successfully awarded funding through this CFP will be obligated to fulfill the requirements of the Agreement for the duration of the Activity Life, including but not limited to achievement of annual usage requirements, surrender of emissions credits, and completion of reporting requirements to the NCTCOG. Failure to comply with these commitments and/or reporting requirements may result in the return of all or a pro rata share of the grant funds to the NCTCOG.

Grant recipients are responsible for complying with all U.S. Internal Revenue Service (IRS) laws and rules regarding the taxable status of grants. The grant payments are Form 1099 reportable.

## **REPORTING REQUIREMENTS**

Award recipients must commit to submitting reports regarding project status for the duration of the Activity Life. Failure to submit these reports pertaining to grant-funded activities may be grounds for termination of Agreement.

### ***Quarterly Progress Report***

All recipients must submit quarterly reports detailing progress toward project completion on a quarterly basis until final reimbursement is issued. A template will be provided by NCTCOG.

### ***Semi-Annual Usage Report***

A Semi-Annual Usage Report must be submitted by January 15 and July 15 for the duration of the approved Activity Life. Required reporting will include information similar to the following, for each activity:

- Hours Logged on the Idle Reduction Vehicle/Technology for the Six-Month Reporting Period
- Cumulative Hours Logged on the Idle Reduction Vehicle/Technology
- Percent of Time Operating in DFW Ozone Nonattainment Area for the Six-Month Reporting Period
- Operational Issues or Changes (if any, such as significant maintenance concerns, repair needs, etc.)

Usage reporting will be completed online through the NCTCOG website ([www.nctcog.org/trans/air/programs/reporting/index.asp](http://www.nctcog.org/trans/air/programs/reporting/index.asp)). A username and password will be provided prior to the end of the first reporting period.

### ***Property Management***

At the end of the Activity Life, or upon transfer of ownership, a written certification must be submitted documenting the continued use and condition of the vehicle/technology, fair market value, remaining useful life, and any actual or anticipated improvements that may increase the value of the vehicle/technology.

## **APPENDIX A: NCTCOG Third Party Procurement Procedures**

### **Overview**

These procedures establish standards and guidelines for the North Central Texas Council of Governments' (NCTCOG) subgrantees for procurement of goods and services through Third Party Contracts, in accordance with 49 CFR Part 18.36 and 40 CFR Part 31.36.<sup>1</sup> These procedures have been developed to ensure fair, open, and competitive opportunities for all parties involved in the procurement. In order to assist NCTCOG's subgrantees in complying with federal procurement requirements, NCTCOG will publish these procedures as part of calls for projects to make potential applicants aware of these requirements in advance of submitting applications to NCTCOG for funding consideration. In addition, NCTCOG will periodically hold workshops on procurement and other compliance requirements to assist subgrantees in meeting these objectives.

### **Compliance with Federal Regulations**

Subgrantees shall comply with applicable federal, State, and local laws and regulations, and conform to the standards set forth in 49 CFR Part 18.36 or applicable governing standards published by the awarding agency. These guidelines apply to purchases for contractual services, commodities, and equipment funded with federal and State funds.

### **Use of Lower-Tier Subgrantees**

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

### **Conflict of Interest**

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

### **Contract Administration System**

Subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders.

### **Open and Fair Competition**

All procurement transactions shall be conducted in a manner that provides maximum open and fair competition consistent with 49 CFR Part 18.36 or applicable federal law. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to, the following:

- Placing unreasonable requirements on firms/service providers/vendors/consultants in order for them to qualify to do business;

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<sup>1</sup> UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS; Subpart C, Post-Award Requirements; Changes, Property, and Subawards under the United States Department of Transportation regulations. These procedures are written to comply with grant management standards for all federal agencies (e.g. Environmental Protection Agency, Department of Energy, etc...) as well as subgrantees funded with State funds.

- Placing geographical preferences in the evaluation of bids or proposals;
- Noncompetitive practices between firms/service providers;
- Organization conflicts of interest;
- Requiring unnecessary experience and excessive bonding requirements; and,
- Any arbitrary action in the procurement process.

### **Written Procurement Policies**

The subgrantee shall have written procurement procedures and may adopt by reference procedural requirements of 49 CFR Part 18.36 or applicable federal law.

### **Procurement Guidelines**

NCTCOG, in reviewing subgrantee procurement procedures and policies, will determine consistency with 49 CFR Part 18.36 or the applicable federal law regulating procurement. Stated therein are the governing regulations and implementing guidelines for all procurement activity undertaken with grant funds. Some of those items, with particular applicability to NCTCOG grants, are:

### **Procurement Standards**

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

### **Method of Procurement<sup>2</sup>**

All procurement transactions shall be made by one of the following methods:

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

## 1. PROCUREMENT BY SMALL PURCHASE PROCEDURES

For procurement of services, supplies, or other property with an aggregate cost of least \$100,000<sup>3</sup>, written price or rate quotations shall be obtained from at least two qualified sources. The aggregate sum of all items being purchased is considered one purchase.

### **Purchases under \$3,000**

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

### **Purchases under \$100,000**

Purchases which involve the expenditure of at least \$3,000 but not more than \$100,000, exclusive of freight and shipping charges, may be made from the lowest and best vendor without publishing or posting advertisements for bids, provided at least two competitive written quotes have been obtained. The term "competitive written quotes" means a quote submitted on a quote form furnished by the subgrantee and signed by authorized personnel representing the vendor, or a quote submitted on a vendor's letterhead or quote form signed by authorized personnel representing the vendor. NCTCOG may request copies of quotes to ensure compliance with this provision as a condition of reimbursement.

## 2. PROCUREMENT BY SEALED BIDS

### **Purchases over \$100,000**

Public advertisement once each week for two consecutive weeks for competitive sealed bids is required for all purchases that exceed \$100,000. Bids may not be due less than seven working days following the date the last advertisement appears in the public forum.

Purchases that involve expenditure of more than \$100,000, exclusive of freight and shipping charges shall be made from the lowest and best bidder after publicly advertising for competitive sealed bids once each week for two consecutive weeks. The date, as published, for the bid opening, shall not be less than seven working days after the published notice has been completed. The notice shall state the time and place at which bids shall be received; types of supplies, and/or equipment to be purchased, and the contact person. If plans or specifications are not published, notice should state where copies may be obtained. Specifications shall be written so as not to exclude any supplier.

Procurements over \$100,000 by sealed bid must be submitted to NCTCOG for review and approval 30 days prior to initiating the procurement. NCTCOG reserves the right to deny reimbursement upon failure to comply with the approved procurement process or failure to adequately address NCTCOG's comments concerning the proposed procurement process.

## 3. PROCUREMENT BY COMPETITIVE PROPOSALS

### **Purchases over \$100,000**

Formally publicizing a request for proposals which normally results in conducting competitive negotiation with more than one source submitting an offer. This method is generally used when conditions are not appropriate for the use of sealed bids. All evaluation factors and their relative importance will be identified. There will be procedures for technical evaluations

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



of the proposal and selection of an awardee. Awards are made to the proposal most advantageous to the program, with price and other factors considered.

Procurements over \$100,000 competitive proposal must be submitted to NCTCOG for review and approval 30 days prior to initiating the procurement. NCTCOG reserves the right to deny reimbursement upon failure to comply with the approved procurement process or failure to adequately address NCTCOG's comments concerning the proposed procurement process.

#### 4. SOLE SOURCE PROCUREMENT

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

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

#### 5. PURCHASES UNDER GOVERNMENTAL COOPERATIVE PURCHASING PROGRAMS

Eligible entities that can purchase under State contracts or other governmental cooperative purchasing programs can do so without prior approval or obtaining written quotes. All other purchases must follow the guidelines outlined in the Contracting Procurement Procedures.

#### 6. EMERGENCY PROCUREMENT

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

#### **Subgrantee Files**

Each subgrantee must maintain adequate files to support any purchases made. A copy of the quotes that were obtained (purchases between \$3,000.00 and \$100,000.00) or a copy of the legal notice must also be on file to support the choice of lowest and/or best bid. The subgrantee must provide adequate justification if the purchase is not awarded to lowest and/or best bidder.

**APPENDIX B.1: Subgrantee Procurement Review Checklist**

Grant Name and Number: \_\_\_\_\_  
 Subgrantee: \_\_\_\_\_  
 Subgrantee Federal Award: \_\_\_\_\_  
 Total Project Cost: \_\_\_\_\_

Procurement Requirements	Yes	No
1. Does the subgrantee have a written code of conduct for procurement officials?		
2. Does the subgrantee have a contract administration system in place to ensure compliance with procurement procedures?		
3. Are the following documents included in the subgrantee's contract administration system?		
a. Written Procurement History (including rationale used for procurement method, selection process, methodology used to select vendor)		
b. Solicitation Documentation		
c. Purchase Order / Contract		
d. Invoice		
e. Proof of Payment		
f. NCTCOG Pre-approval (if applicable)		

Item(s) Procured	Purchase Price	Procurement Method Used*

List of Procurement Methods:

1. Purchases < \$3,000
2. Purchases > \$3,000 but < \$100,000
3. Purchases > \$100,000 – Sealed Bid (Publicly advertised, requires NCTCOG pre-approval)
4. Purchases > \$100,000 – Competitive Proposal (Publicly advertised, requires NCTCOG pre-approval)
5. Sole Source (Requires NCTCOG pre-approval)
6. Emergency Procurement (Requires NCTCOG pre-approval)
7. Governmental Cooperative Purchasing Program (e.g. State BuyBoard, H-GAC Buy, etc.)
8. Other – Please Explain

Notes:

## APPENDIX B.2: Procurement Requirements of 40 CFR 31.36

### 40 CFR 31.36 Procurement.

(see <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=40:1.0.1.2.29&idno=40#40:1.0.1.2.29.3.15.14>)

(a) *States*. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-federal funds. The State will ensure that every purchase order or other contract includes any clauses required by federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards*. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable federal law, the standards identified in this section, and if applicable, §31.38.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §31.36. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

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

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

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(5) Construction grants awarded under Title II of the Clean Water Act are subject to the following “Buy American” requirements in paragraphs (c)(5) (i)–(iii) of this section. Section 215 of the Clean Water Act requires that contractors give preference to the use of domestic material in the construction of EPA-funded treatment works.

(i) Contractors must use domestic construction materials in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The grantee will normally base the computations on prices and costs in effect on the date of opening bids or proposals.

(ii) The award official may waive the Buy American provision based on factors the award official considers relevant, including:

(A) Such use is not in the public interest;

(B) The cost is unreasonable;

(C) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(D) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(E) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(iii) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the following “Buy American” provision: In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 *et seq.* ) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction materials by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

(d) *Methods of procurement to be followed—* (1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Procurement by sealed bids (formal advertising).* Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in 31.36(d)(2)(i) apply.

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

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

(ii) If sealed bids are used, the following requirements apply:

- (A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
- (B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
- (C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- (ii) Proposals will be solicited from an adequate number of qualified sources;
- (iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- (iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be

used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) [Reserved]

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a 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. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.



(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §31.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures,

regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

(j) *Payment to consultants.* (1) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by grantees or by a grantee's contractors or subcontractors to the maximum daily rate for a GS–18. (Grantees may, however, pay consultants more than this amount). This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; grantees will pay these in accordance with their normal travel reimbursement practices. (Pub. L. 99–591).

(2) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

(k) *Use of the same architect or engineer during construction.* (1) If the grantee is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(i) The grantee received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(ii) The award official approves noncompetitive procurement under §31.36(d)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(iii) The grantee attests that:

(A) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(B) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(C) No employee, officer or agent of the grantee, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(D) None of the grantee's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subagreements.

(2) However, if the grantee uses the procedures in paragraph (k)(1) of this section to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the grantee must meet all of the other procurement provisions in §31.36.

[53 FR 8068 and 8087, Mar. 11, 1988, and amended at 53 FR 8075, Mar. 11, 1988; 60 FR 19639, 19644, Apr. 19, 1995; 66 FR 3794, Jan. 16, 2001; 73 FR 15913, Mar. 26, 2008]