



MEMO

Date: September 4, 2016

To: Executive Committee

From: Bonnie Waninger, Executive Director

Re: Procurement Procedures

Staff has prepared updates to CVRPC Procurement Procedures in accordance with changes to State and Federal requirements. **I am requesting Executive Committee adoption of the Procurement Procedures as soon as possible.**

Background

Major changes to the Code of Federal Regulations Title 2, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, took effect on December 26, 2014. The changes incorporated various circulars and guidance issued by the Office of Management and Budget and some federal agencies into a single resource. The changes focus on performance, standardize federal requirements, and incorporate changes in technology. The changes require stronger oversight and internal controls to insure charges are accurate and to prevent conflicts of interest. CVRPC was required to incorporate these changes into its policies and practices in FY2015.

The State of Vermont incorporated these federal provisions and made other changes to Vermont Agency of Administration Administrative Bulletin 3.5 - Procurement and Contracting Procedures. The new Bulletin 3.5 took effect July 1, 2016. CVRPC was required to incorporate applicable provisions of these changes into its policies and procedures when the Bulletin took effect.

Draft Procurement Policies versus Existing Policies

The attached draft Procurement Procedure is a required modification of CVRPC's previous procedure. The new federal regulations require stronger oversight. Part of oversight is a requirement to document procedures and to document that the procedures are being followed (oversight). For that reason, the draft procedure is lengthier than the current procedure

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Staff have not reviewed or provided input to the draft procedure beyond the Transportation Planner who drafted the initial update. However, the information incorporated includes only *required* information mirroring State and Federal requirements. Staff training about the new procedures' content and the changes in regulations will be required once the procedures are adopted.

Further Work to Be Done

The procedures will be complete with these changes.

Related work to be completed includes developing:

- standard templates to document the procurement process (nearly complete),
- a CVRPC standard contract template that permits accommodation of required variances to the procedures (nearly complete),
- contractor oversight and monitoring procedures (begun)
- contract administration procedures, and
- equipment disposal and sales procedures,

Staff will continue working on policy and procedure development as the fiscal year progresses.

**Central Vermont Regional Planning Commission
Procurement Procedures
Adopted December 1, 2003**

1.0 Purpose and Authority:

This document describes the process through which the Central Vermont Regional Planning Commission will procure consultant services and equipment, and is intended to satisfy the requirements to self-certify CVRPC's procurement procedures as being in compliance with applicable federal regulations (pursuant to 49 CFR 18.36(g)3.)

These policies and procedures have been developed in accordance with the following state and federal statutes and regulations:

24 VSA Chapter 117 - Vermont Municipal and Regional Planning and Development Act.

Vermont Agency of Administration Administrative Bulletin 3.5 - Contracting Procedures for Services.

Title 49 Code of Federal Regulations (CFR) Part 18 - Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

U.S. Office of Management and Budget (OMB) Circulars as follows:

- OMB A-87 - costs Principles for State and Local Government.
- OMB A-102 - Administrative Requirements for Grants-in-Aid for States and Local Governments.
- OMB A-133 - Audits of States, Local Governments, and Non-Profit Organizations

2.0 Definitions:

Agency - Vermont Agency of Transportation.

Contractor - Any third party providing services or materials to CVRPC for the purpose of accomplishing the Work Plan.

Equipment - Tangible, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

Federal Agency - Federal Highway Administration, U.S. Dept. of Transportation.

FHWA - Federal Highway Administration, U.S. Dept. of Transportation.

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CVRPC – Central Vermont Regional Planning Commission.

Planning Coordinator - VTrans Policy and Planning Division staff responsible for the coordination of work accomplished under the Planning Initiative.

VTrans - Vermont Agency of Transportation.

Work Plan - The schedule of work elements for which financial support is requested under the Transportation Planning Initiative.

3.0 General Procurement:

- a. CVRPC will maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.
- b. CVRPC will maintain a written code of standards of conduct as part of CVRPC's Personnel Policies governing the performance of its employees engaged in the award and administration of contracts under this program. In addition, no employee, officer or agent of CVRPC shall participate in the selection, award or administration of a contract supported by State or 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 or,
 - ii. Any member of his immediate family or,
 - iii. His or her partner, or
 - iv. Any organization that employs, or is about to employ, any of the above has a financial or other interest in the firm being selected for award.

CVRPC officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. CVRPC 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 of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by CVRPC officers, employees or agents, by consultants or their agents.

- c. CVRPC will review proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis should be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

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- d. In order to foster greater economy and efficiency, CVRPC will endeavor to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
- e. CVRPC will endeavor to use Federal and State excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- f. CVRPC will maintain records sufficient to detail the significant history of procurement. These records will include, but not be limited to, the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- g. CVRPC will use time and material-type contracts only:
 - a. after a determination that no other contract is suitable, and
 - b. if the contract includes a ceiling price that the contractor exceeds at its own risk.
- h. CVRPC 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, protest, disputes, and claims. These standards do not relieve CVRPC of any contractual responsibilities under its contracts.
- i. CVRPC will have protest procedures to handle and resolve disputes as part of all contracts awarded, and shall, in all instances of such occurrences, disclose information regarding the protest to the Agency. A protestor must exhaust all State and local potential remedies before pursuing a protest with the Federal Agency. Review by the Federal agency will be limited to alleged violations of federal laws or regulations, or CVRPC's protest procedures.
- j. All procurement transactions will be conducted in a manner providing full and open competition. CVRPC will be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Awards will be made to the contractor whose offer is most responsive to the solicitation and is most advantageous to CVRPC.
- k. Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurement, contain features that unduly restrict competition. Brand name or equal description may be used as a means to define the performance of other salient requirements of a

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- l. Positive efforts shall be made by CVRPC to utilize Vermont's small businesses and minority-owned businesses as sources of supplies and services. Such efforts will allow these sources the maximum feasible opportunity to compete for contracts.
- m. Some form of price or cost analysis shall be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indications together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, accurate allocation and allowability. CVRPC must make independent estimates before receiving bids or proposals.
- n. All bids must be binding. Increases may be granted only in cases in which CVRPC and VTrans (for contracts funded through VTrans) agree in writing that there is work required beyond that in the scope of the original bid specifications.
- o. Small purchases (below \$10,000 in aggregate) may be procured using a process that solicits price or rate quotations from at least three qualified sources, and for contracts funded through VTrans, receives approval from the Planning Coordinator. Small purchases (below \$250 aggregate) of consumable supplies shall be exempt from this requirement.
- p. For those purchases above \$10,000, CVRPC shall use either a sealed bid or a competitive proposal process. In either case, provision shall be made to publicly advertise the solicitation and secure an adequate number of bid/proposals. CVRPC will develop and use technical evaluation and review criteria, and choose the contractor's proposal that best responds to the bid/proposal specifications.
- q. Procurement by non-competitive proposals may be used with the written approval of VTrans (for contracts funded through VTrans) only if it is determined that either the small purchase, sealed bid or competitive proposal process is not feasible, AND one of the following circumstances applies:
 1. The item is available only from a single source;
 2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 3. After solicitation from a number of sources, competition is determined inadequate.

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The following requirements shall apply in a competitive negotiation situation:

1. Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. All qualified sources may submit a proposal. The request for proposals shall be publicized.
 2. The request for proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.
 3. Provision shall be made for technical evaluation of the proposals received, determination of responsible bidders for the purpose of written or oral discussions, and selection for contract award.
 4. Award may be made to the responsible bidder whose proposal will be most advantageous, price and other factors considered.
- r. All solicitations for engineering and design-related services shall follow the procurement process outlined in 23 CFR, Part 172 for contracts funded through VTrans.
- s. CVRPC will comply with 19 VSA 10a for procurement of Architectural Engineering (A/E) and related professional services for contracts funded through VTrans. Only Agency pre-qualified firms for A/E may be used as approved by program engineer.
- t. For contracts funded through VTrans, CVRPC's procurement file must contain the Planning Coordinator's written or e-mailed approval of:
1. The technical specifications for all proposed procurement (purchases or personal services contracts).
 2. The list of firms to be notified about a procurement request. Full and open competition is required.
 3. The final draft contract or agreement or purchase order including submission of cost estimates, a description of the cost on price analysis performed by CVRPC, and the technical evaluation of all proposals.
- u. A procurement selection committee shall be established. For contracts funded through VTrans, the Planning Coordinator shall be appointed as a non-voting member.

- v. For contracts funded through VTrans, CVRPC shall use pro-forma contracts and agreements for contractual compliance with State and Federal requirements as provided by VTrans.
- w. CVRPC shall prepare a technical evaluation for the proposals received.
- x. For contracts funded through VTrans, the Agency will be billed direct, eligible costs associated with the work program at actual cost or less.

4.0 Purchase of Equipment:

For contracts funded through VTrans, all equipment must be approved as part of the approval of the overall annual work plan and title to the equipment shall be jointly held by VTrans and CVRPC. The purchased equipment must be directly related to the implementation of the work plan and is to be used only for the originally authorized purpose. If the equipment is no longer needed, CVRPC will notify VTrans of this for possible use on other projects or programs supported by VTrans or FHWA. However, when acquiring replacement equipment approved by VTrans, CVRPC may use the equipment to be replaced as a trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment.

CVRPC will not use equipment acquired with Federal or State grant funds to provide services for a fee in order to compete unfairly with private firms that provide equivalent services.

CVRPC will be responsible for the management of the equipment while its in use in such a manner that, at a minimum, the following requirements are met:

- a. Property records must be maintained that include a description of the property, a serial number or other identification number, the source of the property, who holds title, the acquisition date, the cost of the property, the location and use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- b. A physical inventory of the property must be taken and the results reconciled with the property records at least every two years.
- c. A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft of the property. Any loss, damage, or theft shall be investigated.
- d. Adequate maintenance procedures must be developed to keep the property in good condition.

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- e. Proper sales procedures designed to ensure the highest possible return must be developed and implemented if CVRPC is authorized to sell the property.

When original or replacement equipment acquired under an agreement is no longer needed for the original project or program, disposition of the equipment will be made as follows:

- a. Items of equipment with a current per-unit market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation.
- b. Items of equipment with a current per-unit market value in excess of \$5,000 may be retained or sold and VTrans shall have the right to an amount calculated by multiplying the current market value or proceeds from sale by VTrans' share of the equipment.

In cases where CVRPC fails to take appropriate disposition actions, VTrans may direct CVRPC to take excess property and disposition actions. The Federal Government may reserve the right to transfer title to the Federal government or a third party when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

- a. The property shall be identified in the agreement or otherwise made known to CVRPC in writing.
- b. The Federal awarding agency (FHWA) shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal government fails to issue disposition instructions within the time frame, CVRPC will follow the instructions as described above. When title is transferred, CVRPC will be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value.

5.0 Purchase of Supplies:

Title to supplies acquired under an agreement will vest upon acquisition to CVRPC. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the agreement, and if the supplies are not needed for any other Federally sponsored programs or projects, CVRPC shall compensate VTrans for its share.

Adopted by the Central Vermont Regional Planning Commission Executive Committee,

DATE December 1, 2003

CENTRAL VERMONT REGIONAL PLANNING COMMISSION

Procurement Procedures

Adopted: _____

1.0 PURPOSE AND AUTHORITY

This document describes the process through which the Central Vermont Regional Planning Commission will procure contractor services and equipment for the accomplishment of assignments provided by State and/or Federal agencies that are beyond the ability of the Commission staff either due to workload or available in-house expertise.

This document also is intended to satisfy the requirements to self-certify CVRPC’s procurement procedures in compliance with applicable Federal regulations 2 CFR §§200.317-326. Specific Federal agency or Vermont requirements also apply and are in addition to those outlined in Title 2. Staff shall verify whether additional requirements apply prior to making procurements and shall document the determination and any alternate requirements used in the procurement summary.

Comment [BW1]: New language to alert staff to check federal and state exceptions.

These policies and procedures have been developed in accordance with the following State and Federal statutes and regulations:

24 VSA Chapter 117 - Vermont Municipal and Regional Planning and Development Act.

Vermont Agency of Administration Administrative Bulletin 3.5 - Procurement and Contracting Procedures.

Code of Federal Regulations (CFR) Title 2, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

- 2 CFR §§200.317-326, Procurement Standards
- 2 CFR §200.112, Conflict of Interest
- 2 CFR §200.113, Mandatory Disclosures

Comment [BW2]: Updated citations.

2.0 DEFINITIONS

Comment [BW3]: Fully revised to reflect new requirements and language.

Contract – Any legally enforceable agreement by which CVRPC purchases products or services needed to carry out a project or program. The term contract includes all such agreements, whether or not characterized as a “contract”, “agreement”, “purchase order”, “procurement”, “license agreement”, “maintenance agreement”, “support agreement”, or other similar term

1 (Vermont Bulletin 3.5). A contract is for the purpose of obtaining goods and services for
2 CVRPC’s own use and creates a procurement relationship (2 CFR §200.300).

3
4 Contractor - Any party with which CVRPC has signed a contract. Characteristics indicative of a
5 procurement relationship between CVRPC and a contractor are when the contractor provides
6 goods and services within normal business operations, provides similar goods or services to
7 many different purchasers, normally operates in a competitive environment, provides goods or
8 services that are ancillary to the operation of the Federal program, and is not subject to
9 compliance requirements of the Federal program as a result of the agreement, though similar
10 requirements may apply for other reasons (2 CFR §200.300).

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12 Equipment - Tangible, personal property, including information technology systems, having a
13 useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

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15 Pass-through Entity – A non-Federal entity that provides a subaward to a subrecipient to carry
16 out part of a Federal program.

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18 Subaward – An award provided by a pass-through entity to a subrecipient for the subrecipient to
19 carry out part of a Federal award received by the pass-through entity.

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21 Subrecipient – A non-Federal entity that receives a subaward from a pass-through entity to carry
22 out part of a Federal program.

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24 Supplies – All tangible personal property other than those as described as Equipment above.

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26 **3.0 GENERAL PROCUREMENT**

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28 a. CVRPC will maintain oversight to ensure that contractors perform in accordance with the
29 terms, conditions and specifications of their contracts or purchase orders.
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31 b. CVRPC will maintain a written code of standards of conduct governing the performance of
32 its employees engaged in the selection, award, and administration of contracts. No
33 employee, officer or agent of CVRPC shall participate in the selection, award or
34 administration of a contract supported by State or Federal funds if a conflict of interest, real
35 or apparent, would be involved. Such a conflict would arise when the employee, officer or
36 agent or, any member of his or her immediate family or, his or her partner, or any
37 organization that employs, or is about to employ, any of the above has a financial or other
38 interest in or a tangible personal benefit from a firm considered for a contract.
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1 CVRPC officers, employees or agents will neither solicit nor accept gratuities, favors or
2 anything of monetary value from contractors, potential contractors, or parties to subcontracts.
3 CVRPC may set standards for situations in which the financial interest is not substantial or
4 the gift is an unsolicited item of nominal value. The standards of conduct will provide for
5 disciplinary actions to be applied for violations of such standards by officers, employees or
6 agents of CVRPC.

7
8 c. CVRPC will review proposed procurements to avoid purchase of unnecessary or duplicative
9 items. Consideration will be given to consolidating or breaking out procurements to obtain a
10 more economical purchase. Where appropriate, an analysis should be made of lease versus
11 purchase alternatives, and any other appropriate analysis to determine the most economical
12 approach.

13
14 d. To foster greater economy and efficiency, CVRPC will endeavor to enter into State and local
15 intergovernmental agreements for procurement or use of common or shared goods and
16 services.

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18 e. CVRPC will endeavor to use Federal and State excess and surplus property in lieu of
19 purchasing new equipment and property whenever such use is feasible and reduces project
20 costs.

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22 f. CVRPC will award contracts only to responsible contractors possessing the ability to perform
23 successfully under the terms and conditions of a proposed procurement. Consideration will
24 be given to such matters as contractor integrity, compliance with public policy, record of past
25 performance, and financial and technical resources.

Comment [BW4]: New requirements.

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27 g. CVRPC will maintain records sufficient to detail the history of procurement. These records
28 will include, but are not necessarily be limited to, the rationale for the method of
29 procurement, selection of contract type, contractor selection or rejection, and the basis for the
30 contract price.

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32 h. CVRPC will use time and material-type contracts on State and/or Federal jobs only after a
33 determination that no other contract is suitable, and if the contract includes a ceiling price
34 that the contractor exceeds at its own risk.

Comment [BW5]: Modified language to allow flexibility for professional services contracts, such as legal or bookkeeping technical assistance, where estimates may not be possible.

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36 Time and material type contract means a contract whose cost to a non-Federal entity is the
37 sum of: the actual cost of materials, and direct labor hours charged at fixed hourly rates that
38 reflect wages, general and administrative expenses, and profit. Since this formula generates
39 an open-ended contract prices, a time-and-materials contract provides no positive profit
40 incentive to the contractor for cost control or labor efficiency. Therefore, each contract must
41 set a ceiling price that the contractor exceeds at its own risk. Further, CVRPC must assert a

1 high degree of oversight in order to obtain reasonable assurance that the contractor is using
2 efficient methods and effective cost control.

Comment [BW6]: New language is part of federal regulation to explain the shift away from time and material contracts.

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4 i. CVRPC alone will be responsible, in accordance with good administrative practice and
5 sound business judgment, for the settlement of all contractual and administrative issues
6 arising out of procurements. These issues include, but are not limited to, source evaluation,
7 protest, disputes, and claims. These standards do not relieve CVRPC of any contractual
8 responsibilities under its contracts. The Federal awarding agency will not substitute its
9 judgment for that of CVRPC unless the matter is primarily a Federal concern. Violations of
10 law will be referred to the local, State or Federal authority having proper jurisdiction.

Comment [BW7]: Removed language related to protect procedures (pg.3, 3.0(i), and a protestors right to pursue a protest with a Federal agency. Second to last line (non-substitution of judgment) is a new federal requirement.

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12 j. All procurement transactions will be conducted in a manner providing full and open
13 competition. To ensure objective contractor performance and to eliminate unfair competitive
14 advantage, contractors that develop or draft specifications, requirements, statements of work,
15 and invitations for bids or requests for proposals will be excluded from competing for such
16 procurements. Some of the situations considered to be restrictive of competition include, but
17 are not limited to:

Comment [BW8]: New federal requirement.

18 i. Placing unreasonable requirements on firms in order for them to qualify to do
19 business.

20 ii. Requiring unnecessary experience and excessive bonding;

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22 iii. Noncompetitive pricing practices between firms or between affiliated companies;

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24 iv. Noncompetitive contracts to consultants that are on retainer contracts;

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26 v. Organizational conflicts of interest;

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28 vi. Specifying only a "brand name" product instead of allowing "an equal" product to be
29 offered and describing the performance or other relevant requirements of the
30 procurement; and

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34 vii. Any arbitrary action in the procurement process.

Comment [BW9]: New from federal regulations. Draws attention to restrictive competition practices for staff.

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36 k. CVRPC will conduct procurements in a manner that prohibits the use of statutorily or
37 administratively imposed state or local geographical preferences in the evaluation of bids or
38 proposals, except in those cases where applicable Federal statues expressly mandate or
39 encourage geographic preference. This shall not preempt state licensing laws. When
40 contracting for architectural and engineering (A/E) services, geographic location may be a

