



## MEMO

Date: September 4, 2016

To: Executive Committee

From: Bonnie Waninger, Executive Director

Re: Procurement Procedures

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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.

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.

- 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

- 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.

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.



- 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

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

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

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

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

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

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

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

### **3.0 GENERAL PROCUREMENT**

- a. CVRPC will maintain oversight to ensure 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 governing the performance of its employees engaged in the selection, award, and administration of contracts. 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 the employee, officer or agent or, any member of his or her immediate family or, his or her partner, or any organization that employs, or is about to employ, any of the above has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

CVRPC officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subcontracts. CVRPC may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct will provide for disciplinary actions to be applied for violations of such standards by officers, employees or agents of CVRPC.

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.

d. To foster greater economy and efficiency, CVRPC will endeavor to enter into State and local intergovernmental agreements for procurement or use of common or shared 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 award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

**Comment [BW4]:** New requirements.

g. CVRPC will maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily 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.

h. CVRPC will use time and material-type contracts on State and/or Federal jobs only after a determination that no other contract is suitable, and if the contract includes a ceiling price 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.

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

high degree of oversight in order to obtain reasonable assurance that the contractor is using 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.

i. 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. The Federal awarding agency will not substitute its judgment for that of CVRPC unless the matter is primarily a Federal concern. Violations of 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.

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

**Comment [BW8]:** New federal requirement.

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 contracts 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 or other relevant requirements of the procurement; and

vii. Any arbitrary action in the procurement process.

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

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

selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

**Comment [BW10]:** New federal requirements.

l. 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. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance of other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated. All solicitations will identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

**Comment [BW11]:** Revised to reflect new federal language.

m. CVRPC 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. CVRPC will not preclude potential bidders from qualifying during the solicitation period.

**Comment [BW12]:** New federal language.

n. CVRPC will use one of the following methods of procurement.

i. Procurement by Micro-Purchase. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,500 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, CVRPC will distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if CVRPC considers the price to be reasonable.

**Comment [BW13]:** New. This now applies to supplies, which were formerly exempt if valued under \$350; now must spread micro purchases among vendors.

ii. Procurement by Small Purchase. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$25,000 (Vermont Bulletin 3.5). If small purchase procedures are used, price or rate quotations must be obtained from at least three qualified sources.

**Comment [BW14]:** Threshold raised; formerly \$10,000

iii. Simplified Bid Process. Contracts greater than \$25,000, but not more than \$100,000, can follow either a simplified bid process or a standard bid process (Vermont Bulletin 3.5). A “simplified bid process” means that CVRPC has developed a specific and detailed statement of work for the service or product desired and has solicited written

**Comment [BW15]:** Threshold raised; formerly \$10,000

price quotations from at least three potential vendors known to provide the specified services or products.

**Procedures for the Simplified Bid Process:**

1. Prepare a written specifications before bid solicitation consisting of:
  - a. General statement of services required,
  - b. Performance requirements,
  - c. Expectations regarding service location, schedule, including deadlines for deliverables and/or milestones, if applicable, and
  - d. Other specific requirements or conditions.
2. Prepare a list of at least three (3) potential vendors to be solicited.
3. Obtain price quotations by one or a combination of the following methods: current price lists, advertisements, telephone or verbal quotes, facsimile quotations, email quotes or written bids.
4. Construct the procurement file as outlined in CVRPC's procurement summary. All records relating to the simplified bid process shall be retained in the contract file in accordance with CVRPC's record retention schedule.
5. Document and retain in the procurement file all communications with contractors to obtain price quotes.

**Comment [BW16]:** Required process provided for easy access by staff.

- iv. **Standard Bid Process.** A standard Request for Proposals (RFP) is required for all services which are anticipated to exceed a maximum contract amount of \$100,000 or more (Vermont Bulletin 3.5). An RFP must contain a clear and concise statement of work and describe the criteria used to select the contractor. The RFP will include a cover page, introduction, brief description of CVRPC, statement of work to be performed, RFP response requirements, contract elements, and basis for selection.

The bid most responsive to the selection criteria established in the RFP should be accepted. A complete copy of the RFP, contractors solicited, price quotations, bids received, and written selection justification shall be placed in the contract file.

- v. **Procurement by Sealed Bids (formal advertising) (2 CFR §200.320(c)).** 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 following conditions apply.

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business; and

**Comment [BW17]:** New section. CVRPC is now completing projects that include construction activities.

3. The procurement lends itself to a firm fixed price, and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

1. The invitation for bids will be publically advertised, and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;
2. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services for the bidder to properly respond;
3. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
4. 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 must 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
5. Any or all bids may be rejected if there is a sound documented reason.

- vi. Procurement by Competitive Proposals (2 CFR §200.320(d)). 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:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum practical;
2. Proposals must be solicited from an adequate number of qualified sources;
3. CVRPC will have a written method for conducting technical evaluation of the proposals received and for selecting recipients; and
4. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
5. CVRPC 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

Comment [BW18]: New federal option.



procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms are a potential source to perform the proposed effort.

vii. Procurement by Noncompetitive Proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

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. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from CVRPC; or
4. After solicitation of a number of sources, competition is determined inadequate.

o. CVRPC will take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are used when possible. Affirmative steps must include:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises, are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

**Comment [BW19]:** Revised to reflect new requirements, and to detail required affirmative steps for ease of staff access.

p. Procurement of Recovered Materials. CVRPC, as a political subdivision of Vermont, and its contractors will comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**Comment [BW20]:** New; applied in 2015 when VT legislation designated RPCs as official subdivisions of the State of Vermont.

q. Contract cost and price. CVRPC will perform a cost or price analysis in connection with every procurement action in excess of the \$100,000 threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, CVRPC will make independent estimates before receiving bids or proposals.

**Comment [BW21]:** Threshold added per federal regulations.

CVRPC 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 must 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.

Cost of prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or costs estimates included in the negotiated prices would be allowable for CVRPC under 2 CFR §200, Subpart E - Cost Principles. CVRPC may reference its own cost principles that comply with the Federal cost principles. The cost plus a percentage of cost and percentage of construction cost methods of contracting will not be used.

**Comment [BW22]:** New federal language.

r. Federal awarding agency or pass-through entity review. CVRPC will make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if CVRPC desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-

**Comment [BW23]:** Modified requirement for VTrans review based on new federal requirement.

through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

- i. CVRPC will make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent costs estimates when:

1. CVRPC's procurement procedures or operation fails to comply with these procurement standards;
2. The procurement is expected to exceed the \$100,000 threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
3. The procurement, which is expected to exceed the \$100,000 threshold, specifies a "brand name" product;
4. The proposed contract is more than the \$100,000 threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
5. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the \$100,000 threshold.

- ii. CVRPC is exempt from the pre-procurement review if the Federal awarding agency or pass-through entity determines that its procurement systems comply with these standards.

1. CVRPC may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards for its system to be certified. Generally, these reviews must occur where there is a continuous high-dollar funding, and third party contracts are awarded on a regular basis.
2. CVRPC may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from CVRPC that it is complying with these standards. CVRPC will cite specific policies, procedures, regulations or standards as being in compliance with these requirements and have its system available for review.

- s. **Bonding Requirements.** For construction or facility improvement contracts or subcontracts exceeding the \$100,000 threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the CVRPC provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is

**Comment [BW24]:** CVRPC now works on agreements involving construction.

adequately protected. If such as determination has not been made, the minimum requirements must be as follows:

- i. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as bid bond, certified check, or other negotiable instrument accompanying a bid as assurance tha the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- ii. 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.
- iii. 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.

t. Contract Provisions. CVRPC’s contracts will contain the applicable provisions as described below and contained in 2 CFR Part 200, Appendix II – Contract Provisions for non-Federal Entity Contracts Under Federal Awards. In addition to other provisions required by the Federal agency or CVRPC, all contracts made by CVRPC under the Federal award will contain provisions covering the following, as applicable:

- i. Contracts for more than the \$100,000 threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions as appropriate.
- ii. All contracts in excess of \$10,000 will address termination for cause and for convenience by CVRPC, including the manner by which it will be effected and the basis for settlement.
- iii. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 will include the equal opportunity clause provided under 41 CFR 601-4(b), in accordance with Executive Order 11246 “Equal Employment Opportunity” (30FR 12319, 12935, 3 CFR Part 1964-1965 Comp., p. 339), as amended by Executive Order 11375 “amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFP part 60,

**Comment [BW25]:** All text related to Contract Provisions is new. The requirements have not changed, but they must now be cited in contracts and agreements. They are listed in the Procurement Procedures to insure staff incorporates them into contracts if the standard CVRPC contract is not used or if the template is changed.

1 “Office of Federal Contract Compliance Programs, Equal Employment Opportunity,  
2 Department of Labor.”  
3

- 4 iv. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal  
5 program legislation, all prime construction contracts in excess of \$2,000 awarded by  
6 non-Federal entities must include a provision for compliance with the Davis-Bacon  
7 Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor  
8 regulations (29 CFR Part 5, “Labor Standards Provisions as Applicable to Contracts  
9 Covering Federally Financed and Assisted Construction”). In accordance with the  
10 statute, contractors will be required to pay wages to laborers and mechanics at a rate  
11 not less than the prevailing wages specified in wage determination made by the  
12 Secretary of Labor. In addition, contractors will be required to pay wages not less  
13 than once a week. CVRPC will place a copy of the current prevailing wage  
14 determination issued by the Department of Labor in each solicitation. The decision to  
15 award a contract or subcontract must be conditioned upon the acceptance of the wage  
16 determination. CVRPC will report all suspected or reported violations to the Federal  
17 awarding agency. The contracts will also include a provision for compliance with the  
18 Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of  
19 Labor regulations (29 CFR Part 3), “Contractors and Subcontractors on Public  
20 Building or Public Work Financed in Whole or in Part by Loans or Grants from the  
21 United States”). The Act provides that each contractors or subrecipient will be  
22 prohibited from inducing, by any means, any person employed in the construction,  
23 completion or repair of public work, to give up any part of the compensation to which  
24 he or she is otherwise entitled. CVRPC will report all suspected or reported  
25 violations to the Federal awarding agency.  
26

- 27 v. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where  
28 applicable, all contracts awarded by CVRPC in excess of \$100,000 that involve the  
29 employment of mechanics or laborers must include a provision for compliance with  
30 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29  
31 CFR Part 5).  
32

- 33 vi. Rights to Inventions Made Under a Contract or Agreement. If the Federal award  
34 meets the definition of “funding agreement” under 37 CFR §401.2(a) and the  
35 recipient or subrecipient wishes to enter into a contract with a small business firm or  
36 nonprofit organization regarding the substitution of parties, assignment or  
37 performance of experimental, developmental, or research work under that “funding  
38 agreement,” the recipient or subrecipient must comply with the requirements of 37  
39 CFR Part 401, “Rights to Inventions Made by nonprofit Organizations and Small

Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

- vii. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires CVRPC to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Contract Act as amended (33 U.S.C. 1251-1387).
- viii. 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 (43 U.S.C. 6201).
- ix. Debarment and Suspension (executive Orders 12549 and 12689). A contract award (see 2 CFR §180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1968 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- x. Byrd Anti-Lobbying Amendment (31 U.S.C 1352). Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not, and has not, used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- xi. CVRPC will comply with 19 VSA 10a for procurement of Architectural Engineering (A/E) and related professional services.
- xii. CVRPC shall use State and/or Federal agency provided pro-forma contracts and agreements for contractual compliance with State and Federal requirements.

**Comment [BW26]:** Removed former sections t and u. VTrans no longer requires Planning Coordinator approval and procurement selection committee membership is recorded on the procurement summary.

**Comment [BW27]:** Updated; formerly said “VTrans”.

xiii. All contracts using U.S. EPA Assistance. All contracts using U.S. EPA Assistance shall including the following:

**Comment [BW28]:** New; applied previously. Detailed here for ease of staff access.

1. Salary Caps. All contracts using U.S. EPA assistance for a contractor or subrecipient shall comply with 40 CFR 30.21-28 including 30.27(b) dealing with the authorized direct salary cap under federal assistance agreements.
2. Minority/Women's Business Enterprise (MBE/WBE). CVRPC shall make a good faith effort to encourage the participation and bidding of minority and women-owned business enterprises whenever procuring construction, equipment, services and supplies, especially as related to accomplishing the goals and conditions of federal assistance awards and contracts. CVRPC will follow the guidelines and requirement of Title 40 CFR Part 33, Subpart C, in addition to using the basic reporting requirements of EPA Form 5700-52A to document and implement the policies, procedures and systems necessary to make opportunities available to MBE/WBE firms.

u. Cost Sharing, Matching, and In-Kind Contributions. CVRPC may accept cash and third party in-kind support to assist in the implementation and pursuit of its goals and mission. When addressing federal cost share, match or in-kind contribution requirements of federal assistance awards, all contributions, including cash and third party in-kind, shall meet all of the requirements of 40 CFR 30.23, including the following criteria:

- i. Contributions are verifiable from the recipient's records.
- ii. Contributions are not included as contributions for any other federally-assisted project or program.
- iii. Contributions are necessary and reasonable for proper and efficient accomplishment of project or program objectives.
- iv. Contributions are allowable under the applicable cost principles.
- v. Contributions are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

#### **4.0 PURCHASE OF EQUIPMENT**

All equipment procured on behalf of a State and/or Federal agency must be pre-approved if not in an approved work plan. Title to the equipment shall be jointly held between said State and/or Federal agency and CVRPC. The purchased equipment must be directly related to the implementation of a specific State and/or Federal program and is to be used only for the

originally authorized purpose. If the equipment is no longer needed, CVRPC will notify the State and/or Federal agency of this for possible use on other projects or programs supported by said agency.

However, when acquiring replacement equipment approved by a specific State and/or Federal agency, 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 with agency approval. All documentation showing trade in value must accompany CVRPC's invoice in which reimbursement is being requested for that equipment.

**Comment [BW29]:** New federal requirement.

CVRPC will not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private firms which provide equivalent services.

CVRPC will be responsible for the management of the equipment while in use in such a fashion that at a minimum meets the following requirements:

- i. 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.
- ii. A physical inventory of the property must be taken and the results reconciled with the property records at least every two years.
- iii. 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.
- iv. Adequate maintenance procedures must be developed to keep the property in good condition.
- v. Proper sales procedures designed to ensure the highest possible return must be developed and implemented if CVRPC is authorized to sell the property.

**Comment [BW30]:** CVRPC will need to develop an Equipment Sales Procedure.

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:

- i. 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.



- 1        ii.    Items of equipment with a current per-unit market value in excess of \$5,000 may be  
2            retained or sold and the State or Federal agency shall have the right to an amount  
3            calculated by multiplying the current market value or proceeds from sale by the State  
4            or Federal government's share of the equipment.

5  
6    In cases where CVRPC fails to take appropriate disposition actions, the State and/or Federal  
7    awarding agency may direct CVRPC to take excess property and disposition actions. The  
8    Federal government may reserve the right to transfer title to the Federal government or a third  
9    party when such a third party is otherwise eligible under existing statutes. Such transfers shall be  
10   subject to the following standards:

- 11  
12        i.    The property shall be identified in the agreement or otherwise made known to  
13            CVRPC in writing.  
14  
15        ii.   The State and/or Federal awarding agency shall issue disposition instructions within  
16            120 calendar days after the end of said agency's support of the project for which it  
17            was acquired. If the State and/or Federal agency fails to issue disposition instructions  
18            within the time frame, CVRPC will follow the instructions as described above. When  
19            title is transferred, CVRPC will be paid an amount calculated by applying the  
20            percentage of participation in the purchase to the current fair market value.

21  
22    **5.0    PURCHASE OF SUPPLIES**

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

28  
29  
30    Adopted by the Central Vermont Regional Planning Commission Executive Committee, \_\_\_\_\_  
31    \_\_\_\_\_, 2016.

32  
33  
34    \_\_\_\_\_  
35    Byron Atwood  
36    Chair