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SUBJECT: Procurement Policy

PURPOSE

It shall be C-TRAN's policy to secure all goods and services in an open manner that permits, wherever possible, the agency to receive the best value of public funds. To this end, this procurement policy has been prepared to give direction to the appropriate employees.

1 GENERAL POLICY

1.1 Code of Ethics

Public employment is a public trust. Public employees must discharge their duties impartially, so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of C-TRAN's procurement function.

No C-TRAN employee, officer, agent, or any member of his/her immediate family shall receive any benefit, gratuity or reward, directly or indirectly, from any C-TRAN contract. This restriction applies to partners of C-TRAN employees or to organizations to which they may belong. The following services and purchasing activities are exempted from this restriction:

- Electrical, water, or other utility services by a municipality engaged in the business of providing such services at the same rates and on the same terms as are available to the general public.
- A publication of legal notices required by law to be published by C-TRAN, upon competitive bidding at rates not higher than prescribed by law for members of the general public.
- Corporate discounts available to the general public or all government agencies.

No employee, officer or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a conflict. The extent of such interest shall be disclosed to the Board of Directors and noted in the official minutes. This disclosure shall occur prior to the formation of the contract. The Board shall then ratify the contract in good faith by a vote sufficient to accept the contract. Any agent of C-TRAN that has remote interest in any contract shall not vote on the ratification of the contract.

If any interested party in a contract attempts to influence any officer or employee of C-TRAN, the procurement shall be canceled.

Any contract made in violation of this section shall be void and cannot, in any way, be the basis of claim against C-TRAN. Any officer or employee violating the provisions of this section shall be liable to C-TRAN, and maybe disciplined, up to and including termination, and possibly subject to other penalties as may otherwise be imposed upon him/her by law.

In addition to all other penalties, civil or criminal, the violation by any C-TRAN officer or employee of the provisions of this section shall cause forfeiture of his/her office or employment.

No C-TRAN employee, officer, or agent shall solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. In compliance with RCW 42.52.150, the following unsolicited gifts may be accepted by C-TRAN employees:

- advertising or promotional items of nominal value, such as pens, calendars, and note pads
- unsolicited flowers, plants and floral arrangements that are left to decorate the agency's office
- food and beverages consumed at a hosted meeting or reception where the attendance is related to the employee's position at C-TRAN

Organizational conflicts of interest, both real and apparent, shall be avoided to the maximum extent possible. An organizational conflict of interest exists when because of the relationship with a parent company, affiliate, or subsidiary organization, C-TRAN is

unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

If an organizational conflict of interest is determined to exist, C-TRAN may, at its discretion, offer the opportunity to correct the organizational conflict of interest, disqualify a Submitter from further participation in procurement, cancel the procurement or, if award has already occurred, C-TRAN may cancel the Contract. If the Submitter was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to C-TRAN, C-TRAN may terminate the contract for default.

1.2 Enforcement

Each Department Director shall be responsible for procurements made for his/her department and ensure all purchases are made in accordance with this policy, state laws and federal regulations. The Director over Procurement, or their designee, shall monitor C-TRAN procurement policies to enforce compliance with regulations. In the case of an irresolvable dispute between a Department Director and the Director over Procurement, the Executive Director/CEO shall make the final determination.

1.3 Planning

It is the responsibility of the consumer or designated Department Director to ensure sufficient unexpended budget exists to make the contemplated purchase. Furthermore, it is the Department Director's responsibility to determine that all procurements are required to meet only C-TRAN's needs and to avoid the purchase of unnecessary or duplicative items. The Department Director shall give consideration to consolidation or breaking out items to obtain a more economical purchase.

Where appropriate, an analysis shall be made of a lease vs. purchase alternative and any other appropriate analysis, such as, delivery costs, after-market support and service, travel and per diem costs for out of area consultants, etc., to determine which approach would be the most economical and provide the greatest return value to C-TRAN.

To foster greater economy and efficiency, Department Directors are encouraged to enter into state and local intergovernmental agreements, whenever they are available, for the procurement of common goods and services. Department Directors are also encouraged to evaluate the feasibility and project cost impacts of using federal excess and surplus property in lieu of purchasing new equipment and property.

1.4 Contracting With Disadvantaged Business Enterprise (DBE) Firms

In accordance with regulations of the US Department of Transportation (DOT), 49 CFR Part 26 C-TRAN has established a Disadvantaged Business Enterprise (DBE) program. It is C-TRAN's policy to ensure DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT assisted contracts. Department staff will work with the Procurement Coordinator to follow the established plan and encourage DBE participation in C-TRAN contracts per the DOT approved DBE Program.

1.5 Contract Awards

Contracts will be awarded only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Time and material contracts shall be used only after a determination that no other type of contract is suitable. In the use of time and material contracts, a ceiling price shall be established before contract award. Once the ceiling price has been reached, the contractor shall then proceed at his/her own risk.

When contracting for tangible goods, the contract shall limit option quantities for additional equipment and supplies to what is reasonably anticipated to be needed for the life of the contract.

1.6 Federal Regulations

When procuring items funded by federal grants, procurement officers shall review and follow the provisions of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;" Section 36, "Procurement;" and Federal Transit Administration Circular 4220.1F, "Third Party Contracting Guidelines," as amended.

1.7 Vendor Lists

C-TRAN will establish a small works roster for public works projects under \$300,000. C-TRAN may set up their own list, or enter into an agreement with another local government or agency for use of their preapproved list (RCW 39.04.155). Guidance for use of the small works roster is set forth in section 3 of this policy.

In addition, C-TRAN may establish their own list, or enter into an agreement with another government or agency to establish a consultant roster for consultants interested in doing business with C-TRAN to register on and provide their general statement of qualifications (RCW 39.80). C-TRAN will utilize the general statement of qualifications when selecting an Architectural and Engineering firm as described in the procurement procedures and as set forth in section 2 of this policy.

1.8 Local Geographical Preference

C-TRAN will conduct procurements in a manner that prohibits the use of in-state or local geographical purchase preferences which serve to restrict full and open competition, except in those cases where applicable federal or state statutes expressly mandate or encourage geographic preference. This does not preempt state licensing laws. When employing the qualifications - based method for contracting for architectural and engineering 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.

Local suppliers are encouraged to participate in C-TRAN's procurement activities. In addition to meeting the required specifications with the lowest cost, C-TRAN seeks the supplier that can provide the best delivery of services and timely after-market support.

1.9 Payment

Advance funding payments made to a contractor, prior to the incurrence of costs by the contractor, shall be prohibited. Progress payments made to a contractor while work is being performed by the contractor shall be allowed, as authorized by the Project Manager in consultation with the appropriate Department Director.

2 PROCUREMENT METHODS

The entire purchase or contract regardless of what each single item costs, is totaled to arrive at a purchase price. A purchase must not be divided or reduced (split) to avoid exceeding a procurement threshold requiring a competitive process.

2.1 Excluded Procurements

Services not covered under this policy include:

1. Audit services provided under the authority of the Washington State Auditor's Office;
2. Repair services provided by or through the manufacturer or manufacturer's authorized service dealer; and
3. Electrical, water or other utility services by a municipality
4. Legal advertisements

2.2 Purchases under \$35,000

Purchases, the cost of which are less than \$35,000, shall be procured through informal quote, proposal, or procedures. Employees are expected to use their best professional judgment when making purchases and maximize C-TRAN dollars for value. It is expected that the best possible value be obtained and that no favoritism be shown in selecting suppliers. Employees should distribute purchases equitably among qualified suppliers per the purchasing procedures. For these purchases a price analysis should be performed, generally comparing prices from vendors and other available sources.

For Architectural and Engineering contracts within this threshold, the Project Manager should refer to the consultant roster (RCW 39.80) and review the qualifications of three firms in the appropriate area of expertise prior to negotiating the contract price with the most qualified firm.

2.3 Purchases over \$35,000

Purchases, the cost of which exceeds \$35,000 without sales tax, shall be procured by competitive bid, request for proposal, two-step procurement, or request for statement of qualification process, whichever method lends itself to the most beneficial acquisition:

2.3.1 Competitive Sealed Bids - Invitation to Bid

An Invitation to Bid is a formally advertised and competitive selection process where a firm fixed priced contract is awarded to the responsive and responsible bidder with the lowest price. In order for sealed bids to be feasible, the following conditions should be present:

1. A complete, adequate, precise, and realistic specification or purchase description is available;
2. There is a reasonable expectation of receiving more than one sealed bid;
3. The procurement generally lends itself to a firm fixed price contract;
4. The award can be made principally on the basis of price and price-related factors listed in the solicitation;
5. No discussion or negotiation with bidders is necessary.

The following requirements apply to procurement by competitive sealed bids:

1. Advertise for all solicitation requests in at least one newspaper of general circulation once each week for two consecutive weeks before the date fixed for opening of the bids;
2. Bids shall be solicited from an adequate number of known suppliers;
3. The bidding documents will include any specifications and pertinent attachments, describing the item or services sought in order for the bidder to properly respond;
4. Sufficient time is allowed for in the solicitation, submission, and evaluation of sealed bids;
5. A public bid opening will be held at the date and time specified.
6. Procurement will review the bids and, working with the Project Manager, determine the lowest bid from a responsible and responsive bidder;
7. 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;
8. Any or all bids may be rejected if there is a sound documented reason; and
9. A staff report requesting the Board of Directors to award the contract to the recommended product or service provider will be prepared and presented to the Board.

2.3.2 Competitive Proposal – Request for Proposals (RFP)

This method shall be used when the nature of the procurement does not lend itself to sealed bidding and more than one source is willing to submit a proposal. Either a fixed price or cost reimbursement type contract is awarded. Competitive proposals should be used when one, or more, of the following conditions is present:

1. The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price are present;
2. There is uncertainty about whether more than one bid will be submitted in response to an invitation to bid;
3. Due to the nature of the procurement award does not need to be based exclusively on price or price-related factors and the importance of cost or price may vary;
4. Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals.

The following requirements apply to procurement by competitive proposals:

1. Advertise for all solicitation requests in at least one newspaper of general circulation once each week for two consecutive weeks before the date fixed for opening of the bids;
2. All evaluation factors and their relative importance will be identified in the RFP;
3. Proposals will be solicited from an adequate number of sources;
4. C-TRAN will follow its Procurement procedures for conducting technical evaluations of the proposals received and for selecting the successful vendors;
5. Awards will be made to the responsible Proposer whose proposal is the most advantageous to C-TRAN's program with price and other factors considered;
6. A staff report requesting the Board of Directors to award the contract to the recommended product or service provider will be prepared and presented to the Board;

2.3.3 Request for Statement of Qualifications – Architectural and Engineering Services

Qualifications-based procurement procedures are required for the selection of contractors performing A & E services, as based on the Brooks Act (49 U.S.C. Chapter 11) and state requirements (RCW 39.80) C-TRAN is also required to use qualifications-based procurement procedures to acquire services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.

The following procedures apply to qualifications-based procurement:

1. Qualifications are evaluated to determine contract award;
2. Price is excluded from the evaluation process;
3. Negotiations are first conducted with only the most qualified offeror;
4. Only after failing to agree on a fair and reasonable price can negotiations begin with the next most qualified offeror.
5. A staff report requesting the Board of Directors to award the contract to the recommended product or service provider will be prepared and presented to the Board;

2.4 Sole Source

Whenever it appears there is one source from which to obtain any equipment or service required by C-TRAN, the reasons for this sole source must be well justified and thoroughly documented.

The sole source procurement is allowable only when at least one of the following circumstances apply to the requirement:

1. The item is available only from one single source.
2. A sufficient emergency exists for the requirement that it will not permit the delay of competitive solicitation;
3. After solicitation of a number of sources, competition has been proven inadequate;
4. When authorized by the FTA, only after a formal determination is provided by the FTA.

2.5 Cooperative Purchasing (RCW 39.34.03)

In procurements where it may be advantageous for C-TRAN to purchase goods and services in cooperation with other public agencies or purchasing cooperatives, the requirement for bid solicitation notice in the newspaper of general circulation shall be fulfilled with the posting of the Invitation to Bid or Request for Proposals on a Web site. The Web site shall be any state or local Web site established and maintained by a public agency, purchasing cooperative, or a similar service provider. The posting shall be for the sole purpose of public notice for bids or proposal solicitations. The awarding agency may also fulfill this requirement by providing an access link from the state's Web portal to the public notice of solicitation.

2.6 United States Government, State of Washington, or Political Subdivisions

Services, materials, and equipment may be purchased from the United States Government or any agency of the state of Washington or political subdivision without the necessity to require sealed bids, if the purchase is found to be in the best interest and at a favorable price to C-TRAN.

3 PUBLIC WORKS

3.1 Public Works Defined

Public works is by law, a lien or charge on any public property. The term “public works” shall include all work, construction, alteration, repair, or improvement executed at the cost of C-TRAN, regardless of the cost of the work. This work can include even minor repairs if not of a general maintenance nature. Public works, therefore, can incur very nominal costs; however, they are still considered public works from the first dollar. C-TRAN shall conduct all public works projects in compliance with RCW 39.04. For construction projects that are partially or wholly funded with federal grants, additional requirements regarding the Davis-Bacon Act and other federal requirements shall be followed.

3.2 Public Works Performed by C-TRAN Employees

Whenever the Procurement Officer shall determine that any public work is necessary to be done, if the estimated cost of the work is more than \$25,000 (RCW 39.04.020) and if it will be completed by C-TRAN employees, the following procedure shall be followed:

1. Plans and/or specifications and an estimate of the cost of the work shall be a Staff Report presented to the C-TRAN Board of Directors of C-TRAN for approval.
2. At least 15 days before the beginning of the work, the Procurement Officer shall publish the estimate, together with the description of the work, in at least one legal newspaper of general circulation. The publication shall be in, or as near as possible, to that part of the county in which such work is to be done. When the Executive Director/CEO has declared the work an emergency and requires immediate execution, publication of the description and estimate may be done within seven days after commencement of the work.

3.3 Public Works by Contract

3.3.1 Costs under \$35,000

C-TRAN may use the “Limited Public Works Process” for contracts with an estimated cost of less than \$35,000 (RCW 39.04.155). This process allows C-TRAN to waive bonding requirements (RCW 39.08.010) and retainage

requirements (RCW 60.28.011) by assuming liability for the contractor's non-payment of labors, material and taxes.

For projects less than \$35,000 C-TRAN procurement will develop procedures for use to ensure equitable distribution of projects and compliance with all applicable RCWs.

3.3.2 Costs over \$35,000

If the estimated cost of performing public works exceeds \$35,000 and will need to be completed by an outside contractor, the Procurement Coordinator will adhere to the sealed bid policy section 2.3.1, and established procedures specific to public works.

Before beginning work on the project, a performance bond and payment bond shall be furnished with sureties licensed to do business in the State of Washington. The performance bond and the payment bond shall be in the full amount of the contract price between the bidder and the Board. If the bidder fails to enter into the contract in accordance with the bid and furnish a performance bond within ten days from the date of which the contractor is notified that they are the successful bidder, then such check or bid bonds shall be forfeited to C-TRAN. In this case, the contract may be awarded to the next lowest responsible and responsive bidder or may be re-advertised, at C-TRAN's option.

If the bidder fails to enter into a contract in accordance with the bid and the Board deems it necessary to take legal action to collect on any bid bond therein, then C-TRAN shall be entitled to collect from said bidder any legal expenses including reasonable attorney fees incurred.

Per the requirements of RCW 60.28.011 retainage, will be reserved and retained from monies earned by the Contractor on estimates during the progress of the work, a sum equal to 5 percent of all such estimates, unless the project is funded with federal transportation grant dollars.

The contractor may request (RCW 60.28.011) that the retainage be:

- Retained in a fund by C-TRAN;
- Deposited by C-TRAN in an interest bearing account;
- Placed in escrow with a bank or trust company by C-TRAN.

In addition to the options above the contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to C-TRAN and form a bonding company meeting the required standards.

Upon completion of a project, or a request to reduce retainage, C-TRAN staff will follow established procedures and the requirements of RCW 60.28.011 to process the release of retainage.

4 EMERGENCIES

In the event of an emergency the Executive Director/CEO may, in writing, waive provisions of this procurement policy, subject to grantor agency approval if required, provided that this finding of emergency shall be confirmed by the Board of Directors at its next scheduled meeting. For the purposes of this section “emergency” means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

When any emergency shall require the immediate execution of such public work, upon a finding of the existence of such emergency by the authority having power to direct such public work to be done and duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work.

5 PROCUREMENT RECORDS

The Procurement staff shall maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following:

1. The rationale for the method of procurement;
2. The selection of contract type;
3. The rationale for contractor selection or rejection;
4. The basis for the contract price (Independent Cost Estimate);
5. The bid or proposal tabulation worksheet;
6. All documented communication with potential contractors, prior to the bid opening date;
7. Advertising affidavits of publication;
8. Bidders lists, with names, addresses, and telephone numbers; and
9. All bids or proposals received.