



Austin Economic Development Corporation

Procurement Policies & Procedures Handbook



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1. Introduction to Austin Economic Development Corporation (AEDC)

Austin Economic Development Corporation ("AEDC") has developed this Procurement Handbook ("Handbook") to support and promote best practices in the acquisition of goods and services. AEDC generally seeks to obtain the best value that results from an open and impartial process, while considering qualifications and competence, and in furtherance of the goals of non-discrimination and diversity participation. This Handbook, made effective _____, 2022, is the first version and is not superseded, and replaced by any previous editions. In the event of a conflict or inconsistency between this Handbook and applicable law, the requirements of applicable law shall control and prevail. The contents of this Handbook may be amended, expanded or waived by authorized action of the Board of Directors or their designees. Nothing in this Handbook creates, gives, or recognizes a property interest or right of any kind and this Handbook is for the exclusive use and benefit of AEDC. Compliance with all statutory and legal requirements is required of all vendors.

AEDC is a local government corporation created by the City pursuant to Chapter 431 of the Texas Transportation Code, to accomplish the governmental purposes of the City of Austin (the "City"). AEDC and the City have entered into an interlocal cooperation agreement, which memorializes the terms pursuant to which AEDC may operate and act on behalf of the City in performing various services and completing various projects on behalf of the City in furtherance of AEDC's authorized purposes. AEDC is an independent, public nonprofit corporation, whose affairs are managed and conducted by its 20-person Board of Directors, as provided for in AEDC's Articles of Incorporation and Bylaws.

2. Definitions

As used in this Handbook, the following terms have the meanings indicated, unless the context otherwise requires:

- A. "Board of Directors" means the Board of Directors of AEDC.
- B. "Board Chair" means the Chair of the Board of Directors or, in their absence, the Vice Chair of the Board of Directors.
- C. "Corporation" means the Austin Economic Development Corporation as a whole organization.
- D. "Director" means a voting or non-voting member of the Board of Directors, including the Board Chair and Vice Chair of the Board of Directors.
- E. "Disaster Protocol" as refers to the policies and guidelines established for AEDC's procurement, selection of contractors, contracts and contract administration related to properties managed by AEDC for repairs, renovations, or replacements damaged or destroyed, in whole or in part, resulting from the occurrence of a federally declared disaster emergency event.
- F. "Diversity Program" means the program implemented by AEDC to promote the growth and development of small, minority and women-owned business enterprises and historically underutilized businesses by providing opportunities to participate in its procurement and service contracts.

- G. "Evaluation Team" means the individuals selected by the President & Chief Executive Officer (CEO), based on the recommendations of the Chief Operating Officer (COO) and/or their designee, to assist AEDC in reviewing responses to a Solicitation in accordance with this Handbook.
- H. "Invitation to Bid" or "ITB" means the Solicitation for a competitive bid being offered by AEDC.
- I. "President & CEO" means the highest-ranking executive officer responsible for managing day-to-day operations and providing strategic leadership for the Corporation by working with the Board and other management to establish long-range goals, strategies, plans and policies.
- J. "COO" means the Chief Operating Officer of the Corporation, who shall lead purchasing and is principally responsible for the additional duties provided in this Handbook.
- K. "Request for Proposal" or "RFP" means any document(s), whether attached or incorporated by reference, used for soliciting proposals by the competitive sealed proposal procurement method.
- L. "Request for Qualifications" or "RFQ" is the competitive sealed procurement method that requests details about the qualifications of a professional whose services must be obtained in compliance with the Professional Services Procurement Act and for other professionals if AEDC chooses to use the RFQ process.
- M. "Solicitation" as used herein refers to any written procurement request from AEDC issued for competitive selection whether formal bid, RFP, or RFQ or otherwise.
- N. "Summary of Procurement" is a presentation, form, or collection of documents used to inform a committee or the Board of Directors of a proposed procurement requiring their consideration or approval. The summary will contain a description of the procurement process, term, amount of funds to be used, procurement method utilized, evaluation process, and small business/diversity participation.
- O. "Vendor" means a person or entity that has entered a contract with AEDC for the provision of goods or services, or a person or entity that seeks to enter a contract with AEDC for the provision of goods or services, by submitting a bid, proposal, or response to AEDC.

3. Procurement Priorities and Goals

A. Commitment to Transparency and Integrity

AEDC seeks to ensure that all its Solicitations foster full and transparent competition, seek quality and best value, maintain integrity and accountability, and promote the goal of creating opportunities. Appropriate efforts will be utilized to develop and implement planning, procedures and practices that promote these commitments to transparency and integrity.

B. Non-discrimination in Procurement Operations

Discrimination based on religion, sex, race, color, ethnic or national origin, sexual orientation, gender identity, age, or disability will not be tolerated, and all aspects of AEDC procurement

should be in a non-discriminatory manner. AEDC Employees, representatives, and Vendors should operate in a manner that provides and (in good faith) promotes equal opportunity without regard to any protected status and in conformity with all applicable laws and regulations prohibiting discrimination.

C. Commitment to Opportunity, Diversity and Small Business

AEDC is dedicated to promoting the growth and development of small, minority, women owned business enterprises, and historically underutilized businesses (MWBE/HUB) by providing opportunities to participate in its procurement and service contracts. In support of this commitment, AEDC will seek to establish procurement processes and systems that ensure the maximum practicable inclusion of diverse Vendors who are able to provide quality goods and services at competitive rates. The commitment to create opportunities, while requiring competitiveness and quality includes the establishment of contract-specific goals requiring Vendors to use good faith efforts to include where appropriate MWBE/HUB. The COO will report procurement MWBE/HUB participation to the Board of Directors as part of the Summary of Procurement, or as directed by the Board Chair.

D. The Proactive Effort to Achieve Equitable Services

Beyond AEDC's expectation to provide opportunities through a lens of diversity and small business is the guiding principle of equity. AEDC staff proactively seeks to build and foster the capacity for competitive skills in those historically underutilized to participate in its procurement and service contracts.

E. Use of Available Procurement Options

AEDC may employ all procurement methods to the fullest extent permitted by state law. In determining which procurement method to utilize, AEDC will evaluate specific needs, the time required for the procurement, and the necessary staffing requirements. AEDC seeks to utilize procurement methods that further enhance its policy goals, including diversity participation, so long as these policy goals and their implementation are in accordance with state and federal law.

F. Codes of Conduct

The leadership of AEDC seeks to build and maintain a reputation to support the vision and mission of the organization and community for many years to come. All employees will adhere to the Ethics, Conflicts and Non-Disclosure Policy of the Corporation (the "Ethics Policy") and conduct themselves professionally with added measures of honesty, integrity, and authenticity.

While the nature of the Corporation's work will inevitably bring employees into some challenging situations with other institutions, public services, partners, or others in the community, they should maintain a positive attitude towards each, as well as the Austin Economic Development Corporation, its officials, employees, contracted support, and stakeholders. Employees are asked to contribute to the goodwill of the organization by treating all internal and external contacts courteously, giving them due respect, recognition and making them feel valued.

AEDC requires that all Directors and employees be familiar with and abide by the requirements of the Ethics Policy to promote ethical conduct by Vendors.

G. Payment to Vendors

AEDC strives to maintain a positive relationship with its Vendors. Where determined to be practical and in the best interests of AEDC by the CEO, AEDC will include contractual clauses providing for alternative payment methods, such as electronic funds transfer, to provide timely, efficient payment of invoices.

H. Ethics Policy

AEDC representatives and Vendors are required to abide by the AEDC Ethics Policy, including but not limited to following rules related to confidentiality, reporting misconduct, conflicts of interest, disclosure requirements, and restrictions on communications. A copy of the Ethics Policy is available on AEDC's webpage, at [LINK].

4. Procurement Authority and Applicability of this Policy

A. Applicable Law

AEDC is a political subdivision of the State of Texas, and is subject to certain state laws applicable to the procurement of goods and services, including, without limitation to, the following. This Handbook is intended to comply with state law, and is designed to ensure ongoing compliance with applicable purchasing laws. Additionally AEDC staff will consult with legal counsel when conducting procurement and purchasing activities as set forth in this Handbook. In the event of an irreconcilable conflict between this Handbook and applicable law, applicable law will control.

Purchasing and Vendor Services. AEDC is not a municipality and is therefore not subject to the competitive purchasing requirements applicable to municipalities set forth in Chapter 252 of the Texas Local Government Code. Nevertheless, AEDC will endeavor to obtain competitive pricing using its own competitive purchasing processes as contemplated in this Handbook.

Professional Services. AEDC is a "governmental entity" within the meaning of Chapter 2254 of the Texas Government Code ("Chapter 2254"), governing the procurement and selection of professional services and consulting services, as such terms are defined in Chapter 2254. Unless otherwise exempt under Chapter 2254, all contracts for professional services will be procured in compliance with Chapter 2254. Contracts for professional services and awarded on the basis of demonstrated competence and qualifications to perform the services, and for a fair and reasonable price.

Construction Services. AEDC is subject to the same competitive bidding requirements as the City for the procurement of construction services, except as otherwise exempted under Chapter 431.110 of the Texas Transportation Code. For contracts for construction services procured using the delivery methodologies described in Chapter 2269, Texas Government Code ("Chapter 2269"), AEDC, such contracts will be procured in compliance with Chapter 2269, unless otherwise exempt.

Payment for Goods and Services. It is AEDC's policy to comply with the requirements of Chapter 2251 of the Texas Government Code, governing the prompt payment of Vendors for goods and services ("Chapter 2251"). All claims and disputes regarding payment, and the remedies for nonpayment, shall be in accordance with Chapter 2251.

B. Additional Restrictions

In any procurement for goods or services, certain restrictions may apply to the extent that the contract or project is funded from City, state or federal funds or uses other public support. Particularly, AEDC has agreed to comply with the City's policies for certain projects and services using City funds, including living wage requirements. The COO will consult with legal counsel regarding the applicability of any special requirements as appropriate.

C. Delegation of Authority

In an effort to promote efficiency, the Board of Directors has delegated to the CEO the authority to execute contracts and otherwise approve procurements for matters within appropriate thresholds.

The CEO has delegated authority to enter into contracts not to exceed \$250,000. Each of the COO and the CTO has delegated authority to enter into contracts not to exceed \$50,000. Additionally, the Board of Directors have delegated certain authority to the Executive Committee to approve certain contracts. The authority delegated by the Board of Directors to the foregoing persons is subject to the requirements of applicable law and the policies of AEDC. In all cases, the authority delegated by the Board of Directors is limited to contracts and undertakings for which amounts allocated and available for the applicable expense item in the then-current budget of AEDC as approved by the Board of Directors, or as subsequently amended.

Procurements for which delegated authority has not been granted must be presented to the Board of Directors for consideration and approval. AEDC will not enter any contract, modification, change order addendum, contract price adjustment or other commitment unless it is made in writing, in a form executed by a person having authority under AEDC's governing documents, or under primary or secondary authority delegated by the Board of Directors.

D. Role and Responsibilities of the COO or Designee

The COO and/or their designee is primarily responsible for conducting procurements with transparency while maximizing competition, seeking best value, and increasing opportunities for diversity businesses while meeting the needs of AEDC in accordance with this Handbook. The COO is also primarily responsible for contract administration after an award is made. The COO may assign or otherwise delegate their responsibilities to other AEDC employees or representatives as appropriate. Any AEDC employees or representatives involved in the procurement process or contract administration are required to be familiar with and understand this Handbook, AEDC policies, and applicable laws relating thereto. Any deviations, variations, or failure to follow the Handbook should be reported immediately to the COO, or President and CEO when the concern is directly associated with the COO. The COO and/or their designee will work directly with legal counsel to ensure the purposes of this Handbook are accomplished.

The COO and/or their designees shall have the following specific responsibilities:

- Conducting and supporting procurement of goods and services in the manner required in this Handbook;
- The proper marketing and advertizing of solicitations;
- Providing an efficient purchasing process for departments to utilize, including guidelines, purchasing options, small business/diversity information, and procedures for requisitions;
- Monitoring compliance with procurement rules and requirements during each Solicitation;
- Expediting the delivery of urgently needed goods and services when required;
- Periodically corresponding or meeting with departments to gather information to help improve the procurement process;
- Corresponding directly with Vendors as needed during procurements;
- Regularly reporting to the CEO on various procurement matters;
- Preparing reports requested by the Board Chair on various procurement matters;
- Securing and maintaining the confidentiality of bids, proposals, statements of qualification, scoring matrixes, and bid tabulations throughout the selection and evaluation process;
- Ensuring that procurements are supported by appropriate documentation regarding the proposed purchase of goods and services, utilization, method of procurement, and small business/diversity efforts, if any;
- As requested by the Board Chair, reporting to the Board of Directors on specific procurement matters;
- As requested by the CEO, evaluating the controls and procedures regarding spending at all levels to ensure integrity, efficiency and honest dealing by employees; and
- Following an award, ensure that Vendors and contracts are properly managed and supervised by the responsible AEDC employee or representative.

E. Use of Board Committees in Procurement Process

The Board of Directors may establish, in accordance with the AEDC Bylaws, one or more committees of Directors to help set policy, make recommendations, and assist the Board of Directors in various ways. The Board Chair may, at their discretion, subject to the AEDC Bylaws, form committees, task forces, subcommittees, or joint committees to address any aspect of AEDC business, including the assignments to committees related to procurement, and give direct assignments to each committee. In the instances when and if staff is seeking guidance and/or a recommendation(s) for action to work defined by the Procurement Policies and Procedures, before bringing matters to the Executive Committee and/or Board, the Audit and Finance Committee will serve as the appropriate committee.

F. Board of Directors – Final Decisions

Notwithstanding the delegation of authority to the CEO, COO, or the Executive Committee, the Board of Directors may consider and act on any matter at its discretion by retracting or modifying any aspect of such delegation of authority at any time.

G. Summary of Procurement for Board Review

To ensure that Board of Directors are fully aware of proposed expenditures before their approval, the COO/Purchasing Division shall prepare and distribute a Summary of Procurement for each item for which it is requesting approval from the Board of Directors within a reasonable time prior to requesting approval. The Summary of Procurement form will be distributed to the appropriate committee, if any, and the Board of Directors before consideration.

5. General Procedures for Initiating a Procurement

The COO and/or their designee will create the appropriate forms, procedures and guidelines for handling purchases of \$50,000 or less so long as they are consistent with this Handbook and applicable law. For purchases reasonably anticipated to be in excess of \$50,000, AEDC shall employ the procedures described herein to ensure uniformity and fairness in approach. Any deviations from such threshold amounts must be approved by the CEO (if under \$250,000) and the Executive Committee or the Board of Directors (if over \$250,000).

A. Procurements Under \$50,000

The COO and/or their designee, under the guidance of legal counsel, will determine which procurement method, if any, to utilize for any procurement of \$50,000 or less, for AEDC. The COO and/or their designee may require the requesting department to submit a requisition form or similar documentation to support and justify the procurement. All documentation shall be reviewed and approved by the COO and/or their designee before conducting a Solicitation or issuing a purchase order. Any fraudulent or improper use of procurement documents may subject an employee to disciplinary action, up to and including termination.

Requests for quotes may be used by AEDC for purchases expected to cost between \$25,000 and \$50,000 and may be required by the COO and/or their designee. Requests with a total value under \$25,000 require at least one quote/bid. Where possible, requisitions with a total value over \$25,000, but under \$50,000, require the COO and/or their designee to attempt to find at least three bids.

B. Procurements Over \$50,000

- i. **General.** It is the policy of AEDC that all contracts for goods and services in excess of \$50,000 shall be procured utilizing the competitive procurement methods and requirements described in this section, unless otherwise waived by the CEO (for contracts less than \$250,000), or by the Executive Committee (for contracts less than \$[_____]).

- ii. **Selection of a Procurement Method.** The COO and/or their designee, with the guidance of legal counsel, will determine which procurement method to utilize for any procurement over \$50,000. Selecting the appropriate procurement method is dependent on an array of factors, including price, timing, legal requirements, and business opportunities. To the extent required by law, or at the recommendation of the COO may require that the Board of Directors or the Executive Committee identify the appropriate procurement method for certain procurements.
- iii. **Identify Small Business/Diversity Opportunities.** Commitment to diversity opportunities requires that, early in the procurement process, efforts be made to consider the extent of divisible opportunities for small business and diversity participation, so as to appropriately establish contractual goals based on good faith efforts. The COO and/or their designee will communicate regularly with departments and consider upcoming procurements with the mission of determining the appropriate contract goals for diversity participation in accordance with the Diversity Program. Each contract goal should be based on the subcontracting opportunity, availability of diversity businesses, and their capacity.

In all competitive procurements exceeding \$50,000, AEDC will seek to encourage the full participation of minority- and women-owned business enterprises in all phases of procurement activity and afford them a full and fair opportunity to compete for contracts, utilizing the following practices where appropriate:

- a. Establish of appropriate MWBE participation goals ;
- b. Consider the segmenting of contracts to facilitate the participation of MWBE participation;
- c. Provide assistance to MWBE enterprises, either directly, or through utilizing City resources, in overcoming contracting barriers;
- d. Provide timely information on contracting opportunities through the minority and women business and community organizations, including minority chambers of commerce;
- e. Requiring respondents to use good faith efforts to subcontract with MWBE firms and provide responsiveness with access to City and other local resources for identifying M/WBE certified firms.

6. General Methods and Requirements for Procurements

A. Request for Proposals Method

A Request for Proposal allows AEDC to consider a variety of factors in addition to price to select the Vendor who provides the best overall value to AEDC. Factors for evaluation may include, but are not limited to, the following:

- Experience/reputation;
- Quality of goods or services;
- Price;
- Achievement of MWBE/HUB contracting goals;
- Safety record;
- Proposed personnel;
- Financial capability; and
- Other relevant factors.

Prior to the publishing of an RFP, weights will be assigned to each factor used in the evaluation.

B. Request for Qualifications Method

A Request for Qualifications allows AEDC to evaluate the qualifications of certain professionals (e.g., architects and engineers) whose services must be obtained in compliance with applicable law, and other professionals, if AEDC chooses to use the RFQ process.

C. Formal Competitive Bid Procedures Method

When competitive sealed bids are used as the procurement method, AEDC will utilize a formal bid process in accordance with applicable law. Detailed specifications, committed funding, and an estimated cost are required before issuing an Invitation to Bid.

D. Interlocal Agreements and Purchasing Cooperatives

A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror when AEDC is obligated to order all of its actual requirements for the specified supplies or services from those contractors. A multiple award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. If a multiple award is anticipated prior to issuing a solicitation, AEDC shall reserve the right to make such an award, and the criteria for award shall be stated in the solicitation.

E. Multiple Award

AEDC may join or contract with other governmental entities to receive or supply goods and services as part of a purchasing cooperative. The COO and/or their designee shall ensure that each purchasing cooperative or interlocal agreement includes established terms and conditions sufficient to protect the best interests of AEDC and may supplement such terms and conditions as directed by legal counsel. Any procurement through a purchasing cooperative or interlocal agreement more than \$250,000 must be approved by the Executive Committee or the Board of Directors.

F. Public Posting, Advertisements and Announcements

AEDC recognizes the need for publicity and advertisement of procurement opportunities. The COO and/or their designee will ensure publicity of procurements. All Requests for Information, Requests For Proposal, Requests For Qualification/, and Invitations to Bid, etc. if estimated in good faith by the COO and/or their designee to exceed \$250,000, should be advertised in keeping with Texas law and, to the extent practicable, advertised or communicated:

- For one-to-two weeks in the Austin Business Journal and two or more diverse community publications;
- On the AEDC website;
- In a notice to all Directors, City of Austin Council members, small business associations, local chambers of commerce and known diversity contractors; and
- In a notice to AEDC's list of previous Vendors with relevant skills, services, or goods.

G. Pre-Submittal Conference

AEDC may conduct pre-submittal or pre-proposal conferences before submission of responses to Solicitations to further explain or clarify a Solicitation and respond to questions from Vendors. Attendance at a pre-submittal conference is not mandatory. At the conference, AEDC will review significant points in the Solicitation. If modifications or amendments are made to a Solicitation, then the COO and/or their designee must ensure proper publication and notice of these changes. It is the responsibility of each Vendor to monitor the AEDC website for such Solicitation changes and modify their response accordingly.

H. Bid Bonds

Vendors seeking to be awarded a contract may be required to post a bid bond. If a bond is required, then AEDC will include the requirement in the Solicitation.

I. Affirmation of No Conflicts and Confidentiality by Evaluation Team

Evaluation Team members are prohibited from participating in any way with the review or consideration of a procurement if a conflict of interest exists (or would appear to a reasonable person to potentially exist). Evaluation Team members shall disclose and discuss any actual or potential conflict of interest (including those that would appear to a reasonable person to be a potential conflict of interest) in accordance with AEDC's Ethics Policy prior to participating in the review or consideration of a procurement. At the request of the COO, each member of an Evaluation Team shall execute a No Conflict and Confidentiality Statement before participating in the selection process in a form approved by the legal counsel.

J. Delegated Authority to COO

The Board of Directors delegates to the COO the authority to create rules and procedures and to use forms, documents, exhibits or other instruments required for each Solicitation. The COO

and/or their designee shall, however, consult with the legal counsel on any forms, documents or exhibits necessary for bids or proposals.

K. Restrictions on Communications

AEDC imposes material restrictions in its procurements while a Solicitation is being considered. Vendors are solely responsible for observation and compliance with such restrictions. AEDC representatives and prospective Vendors (including their representatives and persons acting on their behalf) should refrain from communicating with one another regarding a solicitation except as specifically allowed in the Solicitation (e.g., at a pre-submittal meeting).

L. Confidentiality

AEDC recognizes the importance of maintaining the confidentiality of Vendor information to the fullest extent permitted by law, while also balancing interests of integrity and transparency. AEDC representatives will abide by the Ethics Policy as it relates to maintaining confidentiality. In addition, the Board of Directors, employees, and representatives shall use confidential information received through a Solicitation solely for the purposes outlined in the Solicitation. This policy is not intended to prevent disclosure where disclosure is required by law; including, without limitation, pursuant to the Texas Public Information Act. The Board of Directors, employees, volunteers, and contractors should always exercise good judgment and care to avoid unauthorized or improper disclosures of confidential information. All members of the organization operating under requests for confidentiality should be sensitive to the risk of inadvertent disclosure in all settings.

7. Submission of Bids and/or Proposals

A. Timelines of Submission

Bids and proposals must be submitted in accordance with the requirements set forth in the Solicitation. Any bid or proposal that is materially late will be rejected, unless the delay is caused internally by the mishandling of mail delivery.

B. Amendment and Withdrawal of Bids/Proposals

Any bid or proposal may be amended or withdrawn by any method authorized by the Solicitation prior to the deadline for submission. To be effective, any notice of the amendment or withdrawal must be received by the COO and/or their designee in the manner designated in the Solicitation or in the absence of instruction by written notice to the COO.

C. Mistakes and Minor Irregularities

A minor informality or irregularity is one that is merely a matter of form and not of substance. It can also pertain to an immaterial defect in a bid/proposal or a variation of a bid/proposal from the exact Solicitation requirements that could be corrected or waived without being prejudicial to other Vendors. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services

being acquired. The COO and/or their designee may either allow the Vendor an opportunity to cure any deficiency resulting from a minor informality or irregularity, or waive the deficiency in their reasonable discretion. There is no authority to permit correction of a submittal that is non-responsive.

D. Responsiveness of Submittal

For a bid, proposal, or statement of qualifications to be responsive, it must substantially comply with the requirements and specifications set out in the Solicitation. The COO and/or their designee will conduct a pre-award review to determine that the potential winning Vendor has offered a responsive bid. If an Evaluation Team is used in considering the submitted bids, then the Evaluation Team may make the determination of “responsible Vendor,” but such confirmation or failure to confirm must be reviewed and acknowledged by the COO and/or their designee. The COO and/or their designee must notify the Vendor that its submittal has been determined as non-responsive.

E. Right to Reject Responses and Waive Formalities

AEDC reserves the right to accept or reject all responses and waive formalities to best serve the interests of AEDC. Moreover, in case of ambiguity or lack of clarity in any response, AEDC reserves the right to consider the most advantageous interpretation of, or to reject, the response as being non-responsive. The COO and/or the designee should document logic or justification at the time of rejection for proper documentation and consistency with future processes.

F. Postponement or Cancellation of Bid/Proposal Opening

The COO and/or their designee may postpone, delay, or extend a Solicitation opening by means of a letter of clarification or addendum. Any Solicitation issued by AEDC may be cancelled by the COO and/or their designee if it is determined that such cancellation is the best interest of AEDC in consultation with legal counsel. In such a situation, all aspects of the Solicitation are cancelled. The COO and/or the designee should document logic or justification at the time of postponement or cancellation for proper documentation and consistency with future processes. AEDC reserves the right to pursue any other method for securing goods or services prior to or following the cancellation of a solicitation.

G. Tie Bids

In the case of competitive sealed bid solicitations if two or more Vendors submit the lowest bid, then the award shall be made to earliest bid received, according to AEDC records and good faith judgment.

8. Evaluation Process for Bids and/or Proposals

A. Competitive Sealed Bids Over \$50,000

Competitive sealed bids shall remain sealed until the time appointed in the solicitation. The COO and/or their designee shall open competitive bids over \$50,000.00, in person or virtually, at the

designated time specified in the Solicitation. At least one witness must be present. The COO and/or their designee shall read aloud the name of each Vendor, the amount bid, and other information deemed appropriate by the COO and/or their designee, if any.

B. Evaluation of Requests for Proposals and Requests for Qualifications

The following is AEDC's standard practice for the evaluation of solicitations. Recognizing that each procurement is unique and may be subject to constraints, the COO or their designee may use other evaluation processes and practices for any procurement that it deems to be in the best interest of AEDC under the given circumstances, in consultation with legal counsel as necessary.

For all Solicitations, other than competitive bids, where the value of the agreement is anticipated to be more than \$250,000, an Evaluation Team will be made part of the process. If the amount of the potential contract is less than \$1,000,000, then the composition of the Evaluation Team may be limited to employees at the discretion of the CEO. For all procurements reasonably anticipated to be more than \$1,000,000, AEDC will make reasonable efforts under the specific circumstances of the procurement to utilize an Evaluation Team including both employees and non-employees.

The Evaluation Team should bring together as much knowledge as possible to ensure the best response to the Solicitation is selected. Experience or expertise in the following areas should be considered when putting together an Evaluation Team: Operational knowledge, financial analysis, technical expertise, diversity awareness, administrative support, and industry experience. Evaluation Team members must be able to commit the required time, be free of actual and potential conflicts of interests, and able to maintain the confidentiality of the process. Evaluation Team members may be disqualified for failing to adhere to any of these requirements. Finally, the Evaluation Team must be diverse and inclusive of representation across race, ethnicity, gender, age, etc.

A pre-defined scoring matrix developed by the COO and/or their designee will be used by the Evaluation Team. This scoring matrix will be consistent with the Solicitation and will be explained and demonstrated to the Evaluation Team by the COO and/or their designee prior to the team considering any proposals. All scoring and voting documents from the Evaluation Team will be properly secured and maintained by the COO and/or their designee. Any irregularity or impropriety in the evaluation process must be reported immediately to the COO, the CEO, or legal counsel.

The Evaluation Team may use either the numerical or the consensus/narrative method of scoring proposals. The decision as to which one to use will be made by the COO and/or their designee; provided, however, that any procurement more than \$2.5 million dollars must utilize the numerical method for evaluation.

- i. Numerical Scoring Method.** The numerical scoring method quantifies rather than qualifies the evaluations, wherein the RFP/RFQ has determined in advance the maximum number of points for each criterion. Individually, every voting Evaluation Team member will assign points to each criterion for the proposal or qualification evaluated. Using this method, team member scoring should be done by written vote and in secret. Secrecy in

the individual scoring is paramount and the COO and/or their designee shall conduct the process to prevent sharing of individual scoring before the tabulations. If any Evaluation Team member enters a score in any category greater than the maximum score allowed for the category, then that score will automatically be adjusted to reflect the maximum amount allowed for the category. If there is any appearance of impropriety in the scoring process, then legal counsel will be asked to review the scoring process to provide feedback to the COO for determination.

- ii. **Consensus/Narrative Method.** The consensus/narrative method is a process wherein the Evaluation Team arrives at a common understanding as to the ranking of offers. It may involve numerical scoring or a narrative appraisal of the significant strengths, weaknesses and risks of each proposal or qualification. An adjectival approval (such as poor, fair, excellent, or most important, very important, important) may be used. The committee confirms the consensus by vote and in writing.

C. Local Preference Program

The COO and/or their designee may, with the approval of legal counsel, include a provision in a Solicitation allowing limited preference for a Vendor whose principal place of business is in Travis County or a contiguous county ("Local Vendor"), as long as the COO and/or their designee determines and certifies in writing that a local preference is in the best interests of AEDC. AEDC may award up to five percent of available points to, or accept an amount bid or proposed by, a Local Vendor under this Section in accordance with the provisions of the Solicitation, only if the Local Vendor has offered a price in its bid or proposal that is no more than five percent greater than the lowest bid or proposed price received, and the lowest price bid or proposed was submitted by a Vendor whose principal place of business is outside of Travis County or a contiguous county, as certified by the COO and/or their designee. Nothing in this Section creates, gives, or recognizes an interest or right of any kind for any Vendor prior to the award of a contract or guarantees that any local preference whatsoever will be given.

9. Procedures for Construction Services Contracts (Over \$50,000)

AEDC may use any one of the following types of construction delivery methods to the fullest extent permitted by law:

- Competitive sealed bids;
- Competitive sealed proposals;
- Construction manager agent;
- Construction manager-at-risk;
- Design-build; and
- Job order contract.
- Public-private partnership delivery.

A. Best Value Determination

Before advertising for a construction services contract, AEDC must determine which method above provides the best value to AEDC. Where best value may be utilized in the process, the following criteria may be considered for evaluation with a weight assigned to each:

- Price;
- Experience and reputation;
- Quality of goods or services;
- Impact on the ability to comply with rules relating to historically underutilized businesses;
- Safety record;
- Proposed personnel;
- Whether the Vendor's financial capability is appropriate to the size and scope of the project; and
- Any other relevant factor specifically listed in the request for bids, proposals, or qualifications. (If the competitive sealed bid process is used, then the foregoing selection criteria can only be used to determine whether the contractor is a responsible Vendor, as the award can only be made to the lowest responsible Vendor.)

If any delivery method other than competitive sealed bid is used, then the respondents will be graded based on the selection criteria provided in the Solicitation, and the award will be made to the respondent who provides the "best overall value" to AEDC for the project. The award does not have to be made based on the lowest price. The Evaluation Team will rank the respondents based on their scores on the selection criteria, and negotiations will begin with the highest-ranked respondent. If successful negotiations cannot be reached, then AEDC has the right to cease negotiations and begin negotiations with the next highest-ranked respondent.

10. Contract Performance

Each Vendor should expect regular and customary inquiries from AEDC regarding contract performance. These inquiries may include the following:

- Timely execution of core contract responsibilities;
- Costs and expenses consistent with the identified costs for contract;
- Quality of the work and product presented to AEDC;
- Satisfaction of the contract goals for small business and diversity participation;
- Compliance with prevailing wage requirements;
- Safety procedures and completion;
- Compliance with specific contract obligations and/or contract promises made by Vendor;
- Timely payment to subcontractors; and
- Adherence to governmental rules and regulations.

The objective of the performance review is to confirm contract compliance. AEDC (through its COO and/or their designee or person designated by the CEO) will record clear failures by Vendor to meet

any core contract obligations as listed above and efforts to afford opportunities for the Vendor to satisfy those obligations. Any such clear failures will be reported to the CEO, Audit & Finance Committee and Board Chair, as appropriate. The COO and/or their designee, will maintain copies of any contract evaluations recording clear failures to perform.

A. Change Orders and Contract Modifications

Any material change(s) to the contract cost/fee, scope of work, duration or any other element of the contract will necessitate a written contract change order addendum, or amendment signed by the CEO or their designee (each a “Change Order”). The form and content of all Change Orders must be approved in advance by the legal counsel.

For competitively procured contracts, Change Orders are permissible only if the change is considered within or materially consistent with the scope of work of the original solicitation and does not constitute a significant change from the original purpose of the work. For competitively bid contracts, if a significant change in scope or purpose of work results from the change, AEDC must issue a new Solicitation. No Change Order may be made without proper authorization.

A Change Order under \$250,000 must be authorized by the CEO, unless the Change Order would cause the total contract value to exceed \$250,000. All Change Orders over \$250,000 (and any Change Order causing the total contract value to exceed \$250,000) must be approved by the Executive Committee or the Board of Directors unless otherwise delegated. Legal counsel shall advise on the legal aspects of Change Orders as deemed necessary by the contract manager, regardless of amount.

B. Small Business/Diversity Compliance

Small business and diversity participation is central to procurement at AEDC. This requires full participation by our Vendors, and AEDC will closely monitor compliance. Failure to use good faith efforts to meet a diversity goal or disregard of other contractual terms related to diversity participation may constitute grounds for contract termination.

C. Early Contract Termination

AEDC expects full and complete performance from each of its Vendors. Failure to meet any of the major contract terms may constitute grounds for early termination. Where appropriate and subject to negotiation, material contracts with Vendors will include provisions for termination “for cause” and termination “for convenience.” The CEO is delegated the authority to terminate a contract if AEDC is so authorized by contract and if all contract requirements applicable to termination are followed. Any early termination of contract valued more than \$250,000 must be reported to the Board Chair and appropriate committee, if any.

D. Contract Term Renewals

A contract term may be renewed or extended, consistent with the terms and conditions thereof, by either the COO or CEO in coordination with legal counsel. Any desired contract renewal or extension not allowed under the terms and conditions of the original contract shall be treated as

a new procurement and must be conducted in accordance with the provisions of this Handbook. However, in cases of emergency or material hardship, the CEO may, with approval of the Board Chair, continue a contract for a limited period to prevent the hardship or negate the ill effects of the emergency or material hardship.

E. Compromise and Settlement Agreements

At the direction of the CEO or Board Chair, the COO and/or their designee in consultation with legal counsel, will negotiate and execute compromise and settlement agreements. All compromise and settlement agreements must be approved by the CEO, and any compromise and settlement agreement over \$250,000 must also be approved by the Executive Committee or the Board of Directors.

11. Emergency Procurement(s)

An emergency is a condition that creates a threat to an employee, property, or operations, or to public health, welfare or safety, arising from natural forces (e.g., fire, wind, flood, storm, earthquake, epidemic or other natural disaster); riot, act of terrorism, unlawful assembly or mob violence; or hostile acts of a public enemy. Emergency also means any condition that requires immediate action to protect life or property or to correct a condition that places continuity of essential operations by AEDC in material peril. As a guiding principle, the COO and/or their designee will not treat the following situations or conditions as an emergency:

- Depleted supplies due to poor planning or management;
- Broken or damaged equipment or vehicles caused by not following scheduled maintenance; or
- Purchasing of items through standard purchasing procedures which will not disrupt services, will not significantly increase the cost of AEDC operations, and will not stop work in progress.

The COO and/or their designee will forward the emergency procurement request to the CEO. The CEO, alone, may declare the existence of an emergency, approve the request, and waive the requirements set forth in this Handbook. For emergency procurements equal to or greater than \$250,000, the CEO shall promptly report the existence of and approval of the request to the Board Chair. The CEO shall report such items deemed an emergency and over \$250,000 to the Board of Directors at its next regularly scheduled meeting. For emergency construction projects limited in scope (e.g., a broken window), the COO and/or their designee shall ascertain whether the same type of construction requested is currently and readily available under a Job Order Contract.

If a contract for the items or services is already in place, then the COO and/or their designee will contact the appropriate Vendor to fulfill the request. If the item or service is not covered by the Job Order Contract, then the COO and/or their designee shall take immediate action to resolve the emergency condition, using good faith efforts to select sources.

12. Sole Source Justification(s)

AEDC seeks to promote competition to get best value by requiring bids for prospective Vendors whenever possible; however, AEDC may purchase equipment, supplies, materials, or services through non-competitive negotiation (sole source) when the award of a contract is not feasible under any of the other described procurement methods in this Handbook.

Sole source purchases are purchases of goods or services that are available from only one source or vendor (e.g., a manufacturer, publisher, service provider). Procurement without competition is authorized under the limited conditions stated above and subject to written justification documenting the conditions which preclude the use of a competitive process. Negotiation should be attempted before agreeing to a sole source purchase because the lack of competition may lead a vendor to charge unreasonably high prices. The requesting department should provide a sole source letter to the COO and/or their designee that details a list of requirements relating to delivery, quality, performance, and other relevant conditions and do everything possible to strengthen the bargaining position of AEDC.

Sole source purchases under \$50,000 must be approved by the COO and/or their designee. Sole source purchases from \$50,000 to \$250,000 must be approved by the CEO. Sole source purchases over \$250,000 will be presented to the Executive Committee or Board of Directors.

13. Solicitation Protest(s)

To preserve and protect the integrity of its procurement process, AEDC will allow and consider material, timely, good-faith protests submitted by a Vendor in accordance with the requirements of this Section in connection with a Solicitation expected to result in a contract, as determined by AEDC, valued more than \$250,000. To the limited extent a protest is allowed after the submission deadline set forth in a subject Solicitation, only a Vendor who has submitted a bid, proposal or statement of qualifications is qualified to protest a matter involving the Solicitation. Except as allowed under this Section, all other protests of any kind or type, including, but not limited to, Solicitation content, terms and conditions, selection criteria and related evaluations, and manner of selection shall be disregarded.

A. Timeline for Filing Protests

Any protest relating to the form, terms and conditions, selection criteria, specifications, exhibits, or any other material Solicitation content must be filed by the Vendor with the COO and/or their designee no later than five business days prior to the submission deadline set forth in the Solicitation. If the protest consists of a dispute regarding the Vendor recommended by the Evaluation Team, or otherwise relates to the alleged misapplication of selection criteria set forth in a Solicitation, then the COO and/or their designee must receive the protest after the submission deadline, but at least five business days following receipt of notice of non-selection.

B. Written Protest Submission Requirements

To be considered by AEDC, each Vendor protest must include, at a minimum, all the following information:

- The name, address and contact information of the Vendor, with sufficient information to establish that a bona fide Vendor is the person or entity filing the protest;
- The full title of the Solicitation;
- Material grounds for the protest, including the provisions of the Solicitation and the applicable law or regulation that serves as the basis for the protest;
- A statement of the specific relief requested by the Vendor;
- Reference to and attachment of any pertinent documents or sources relied upon by the protestor that the protesting party wishes to have AEDC consider; and
- An affidavit attached to support any factual allegations stated in the submission. The COO and/or their designee will notify the Vendor promptly to acknowledge receipt of a protest.

C. Protest Procedures

Protests relating to the form, terms and conditions, selection criteria, specifications, exhibits, or other Solicitation content made by a Vendor, in accordance with the requirements of this Section, will be reviewed and resolved by the COO and/or their designee in consultation with legal counsel, or their respective designees. Any protest consisting of a selection dispute or relating to the alleged misapplication of criteria set forth in a Solicitation will be resolved in a manner approved by the CEO, after consulting with the Board Chair and legal counsel, in the best interests of AEDC.

14. Miscellaneous Policy and Procedure Items

A. Federal Funding Requirements

If AEDC engages in a procurement utilizing federal funds or that has applicable federal regulations, then AEDC will adhere to policies and procedures required by federal law and regulation.

B. Disaster Protocol for Repairs

In the event a federally declared disaster that requires repair, renovation or replacement of City of Austin facilities leased or managed by AEDC, procurements for disaster related repair, renovation or replacement will be subject to Disaster Protocols as outlined in the Lease Agreement between the City of Austin and AEDC and any amendments thereto.

C. Prevailing Wage and Living Wage

AEDC will require payment of a prevailing wage rate on construction projects in accordance with Chapter 2258 of the Texas Local Government Code. Vendors on construction projects are required to adhere to all contract provisions regarding payment and reporting of a prevailing wage rate.

For all construction contracts payable from City funds, AEDC will require the payment of a living wage in accordance with the City's current living wage policies and requirements.

D. Procurement Training

The CEO may direct the COO and/or their designee to conduct annual training regarding the requirements and expectations for procurement. Training sessions should review and examine the basic tenants of procurement at AEDC, this Handbook, the Diversity Program, the Code of Business Conduct and Ethics, and any recent developments or changes in procurement law.

E. Procurement Evaluation

AEDC strives to continuously improve its mechanisms and procedures for procurement. In that regard, the Board of Directors will periodically review various aspects of procurement at AEDC to ensure compliance and support best practices.

F. Open Records and Record Management

AEDC has adopted separate policies and procedures in accordance with the Public Information Act that govern availability and accessibility to public information, as well as how AEDC retains and destroys records.