



# **REQUEST FOR PROPOSALS**

## **Triennial Performance Audit 2018/19, 2019/20, 2020/21**

**June 14, 2021**

**EL DORADO COUNTY TRANSPORTATION COMMISSION**

2828 Easy Street, Suite 1  
Placerville, California 95667  
(530) 642-5260  
[www.edctc.org](http://www.edctc.org)

**2021 COMMISSIONERS**

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**Alex Fong (ex-officio)** ..... as designated by the Director of Caltrans District 3  
**Cody Bass (ex-officio)** ..... City of South Lake Tahoe

**EDCTC STAFF**

**Woodrow Deloria**..... Executive Director  
**Dana Keffer**..... Executive Assistant  
**Karen Thompson**..... Administrative Services Officer  
**Jerry Barton**..... Senior Transportation Planner  
**Dan Bolster**..... Senior Transportation Planner

**REQUEST FOR PROPOSALS  
TRIENNIAL PERFORMANCE AUDIT**

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1: Sample Cost Proposal

2: Sample Professional Services Agreement

## I. INTRODUCTION

The El Dorado County Transportation Commission (“EDCTC” or the “Commission”) is the Regional Transportation Planning Agency (RTPA) for El Dorado County. EDCTC represents the regional transportation planning interests and is responsible for coordinating regional transportation for the western slope of El Dorado County and the City of Placerville. This planning and programming authority does not include that portion of the County within the Tahoe Regional Planning Agency (TRPA) boundaries. TRPA is the RTPA for the Tahoe area.

The Commission is composed of the following members: four Supervisors appointed by the El Dorado County Board of Supervisors, two Council Members appointed by the City Council of each incorporated city in the portion of El Dorado County outside of the Tahoe Basin, unless there is only one incorporated city, in which case that city shall appoint three Council Members. The City Council of the City of South Lake Tahoe shall appoint one Council Member to serve as an ex officio non-voting member and the District Director of the California Department of Transportation (Caltrans, District 3) shall designate one ex officio non-voting member. The City shall also appoint a Council Member to serve as an alternate.

### DUTIES AND RESPONSIBILITIES

The duties and responsibilities of the Commission include the following:

1. Establishment of rules and regulations to provide for administering transportation planning and allocating the Transportation Development Act (TDA) Funds
2. Receipt and approval of claims for TDA Funds
3. Conduct public meetings and hearings as required by law
4. Administer the regional transportation planning process
5. Every five years update and adopt a Regional Transportation Plan
6. Every two years adopt a Regional Transportation Improvement Program
7. Work with the Sacramento Area Council of Governments, as the federally-designated transportation planning agency for El Dorado County to determine air quality conformity of transportation plans, programs, and projects
8. Oversee the delivery of State Transportation Improvement Program projects, pursuant to the requirements of Senate Bill 45 (Statutes of 1997) and the April 1998 Memorandum of Understanding with Caltrans
9. Coordinate, consult, and collaborate with the Shingle Springs Rancheria
10. Conduct outreach efforts to the traditionally under-represented and under-served populations such as the elderly, disabled, low-income, and minority (i.e., African American, Hispanic, Asian American, American Indian/Alaskan Native, and Pacific Islander) community groups
11. Administer the El Dorado County Airport Land Use Commission and related aviation system planning activities
12. Administer the El Dorado County Freeway Service Patrol

## II. BACKGROUND

The Transportation Development Act (TDA) has provided transit assistance for the El Dorado County Transit Authority (EDCTA) since the early 1980's. To qualify for operating assistance, a rural transit service must, in part, maintain a minimum blended farebox recovery ratio of 11.5 percent and operate under a Regional Transportation Planning Agency (RTPA). However, because Western El Dorado County has a mix of urban and rural areas, EDCTC developed a formula for a minimum blended farebox recovery. The ratio is based upon the proportions of Western El Dorado County within the census-designated urban and rural areas. Based on the 2020 Census population figures for urban and rural areas of Western El Dorado County, the current minimum blended farebox recovery ratio is 12.2 percent. Additionally, the Performance Audit Guidebook for Transit Operators and Regional Transportation Planning Entities published by the California Department of Transportation (Caltrans) require that a transit service receiving TDA assistance perform a triennial performance audit (Audit). The Audit is to review how the operator has provided the public with transportation services while complying with the State requirements.

The EDCTC is statutorily required by Section 99246 of the California Public Utilities Code to designate entities other than itself to conduct a performance audit of the activities of the Regional Transportation Planning Agency and the Transit Operator to whom it allocates funds. The Audits will cover the fiscal years 2018/19, 2019/20, and 2020/21 and must be conducted in compliance with relevant sections of the Transportation Development Act.

## III. PROJECT SUMMARY AND DESCRIPTION

The Audits must be completed and submitted to the State by June 30, 2022 and must be conducted in compliance with the Performance Audit Guidebook for Transit Operators and Regional Planning Entities, issued by the California Department of Transportation.

The Audits will evaluate the efficiency, effectiveness, and economy of the operation of the El Dorado County Transit Authority and the El Dorado County Transportation Commission and shall be conducted in accordance with the efficiency, economy, and program results portion of the Controller General's Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.

The proposed budget for the performance audits is \$25,000 and consultants should submit a proposal based on that funding level.

## IV. SCOPE OF WORK/SERVICES

### TASK 1: PERFORMANCE AUDIT OF THE EL DORADO COUNTY TRANSIT AUTHORITY

The consultant will be required to perform the following tasks as part of the transit operator's performance audit.

#### **TASK 1A: Determine Compliance with Statutory and Regulatory Requirements**

The consultant will be required to review and determine the operator's compliance with the Transportation Development Act and related sections of the California Code of Regulations. At a minimum, the Code Sections for which compliance is to be verified are those specified within the Performance Audit Guidebook for Transit Operators and Regional Transportation Planning Entities, published by the California Department of Transportation. If the consultant identifies instances of non-compliance, a finding regarding the non-compliance should be made in the Audit report.

**TASK 1B: Follow-Up on Prior Performance Audit Recommendations**

The consultant will review the most recent prior performance audit for the operator and assess the operator's implementation of audit recommendations. The auditor will need to make determinations as to whether recommendations which have not been implemented are: (a) no longer applicable, (b) infeasible, or (c) should still be implemented. If a prior audit recommendation has not been implemented but still has merit, the consultant should include the prior audit recommendation in the current audit report. The consultant will evaluate recommendations that have been implemented or are being implemented. For these recommendations, the consultant should assess the benefits provided (or likely to be provided) by the recommendation. Significant accomplishments in implementing prior recommendations should be recognized.

**TASK 1C: Verify Performance Indicators**

As part of the performance audit, Section 99246 of the Public Utilities Code requires verification of five performance indicators: operating cost per passenger, operating cost per vehicle service hour, passengers per vehicle service hour, passengers per vehicle service mile, and vehicle service hours per employee. The consultant will review and validate the operator's collection of basic data needed to calculate these indicators for each fiscal year within the three-year period. The consultant will be expected to analyze performance indicators with the intent of identifying potential issues or concerns that may need further examination during the functional review.

**TASK 1D: Review Operator Functions**

The consultant will review each operator function, consistent with the Performance Audit Guidebook for Transit Operators and Regional Transportation Planning Entities. The functional review is expected to include interviews with the operator's management, staff, and governing board, advisory committee, as well as with selected EDCTC staff. Concerns over inefficient or ineffective operator performance may be raised by:

- operator and EDCTC interviews concerning operator functions
- documents, such as productivity committee reports, user surveys, or short-range transit plans
- review and analysis of TDA-required performance indicators
- follow up of prior performance audits
- review of operator compliance with statutory and regulatory requirements.

Such concerns of inefficient or ineffective performance should lead to further investigation, which may include the verification and calculation of additional performance indicators. The investigation of functional concerns and potential improvements should make up the basis of most findings in the audit report.

**TASK 2: PERFORMANCE AUDIT OF THE EL DORADO COUNTY TRANSPORTATION COMMISSION**

The consultant will be required to perform the following tasks as part of the RTPA's performance audit:

**TASK 2A: Determine Compliance with Legal and Regulatory Requirements**

The consultant will be required to review and determine the EDCTC's compliance with the Transportation Development Act and related sections of the California Administrative Code of Regulations. The specific Code Sections for which compliance is to be verified are those specified within the Performance Audit Guidebook for Transit Operators and Regional Transportation Planning Entities. Should the consultant identify instances of non-compliance, a finding regarding the non-compliance should be made in the audit report.

**TASK 2B: Follow-Up on Prior Performance Audit Recommendations**

The consultant will review the most recent prior performance audit for the EDCTC and assess the EDCTC's implementation of audit recommendations. The Auditor will need to make determinations as to whether recommendations that have not been implemented are (a) no longer applicable, (b) infeasible, or (c) should still be implemented. If a prior audit recommendation has not been implemented but still has merit, the consultant should include the prior audit recommendation in the current audit report. The consultant will evaluate recommendations that have been implemented or are being implemented. For these recommendations, the consultant should assess the benefits provided (or likely to be provided) by the recommendation. Significant accomplishments in implementing prior recommendations should be recognized.

**TASK 2C: Review EDCTC Functions**

The consultant will review each EDCTC Transportation Development Act related function, consistent with the Performance Audit Guidebook for Transit Operators and Regional Transportation Planning Entities. The functional review is expected to include interviews with the EDCTC's jurisdictions. Supplemental interviews with other regional agencies and State or Federal agencies may be appropriate to gather more detailed information about areas of concern. Concerns over inefficient or ineffective EDCTC performance may be raised by:

- EDCTC, advisory committee, and operator interviews concerning EDCTC functions
- documents such as the Regional Transportation Plan and adopted policies and procedures for evaluating TDA claims
- follow up of prior performance audits
- review of EDCTC compliance with statutory regulatory requirements.

Concerns of inefficient or ineffective performance should lead to further investigation. The detailed investigation of functional concerns, problems, and potential improvements should make up the basis of most findings in the Audit.

**TASK 3: DELIVERABLES**

The consultant must provide ten (10) bound copies, one (1) unbound original (suitable for reproduction), and one (1) electronic PDF copy of both the EDCTC and EDCTA draft performance audit reports to the EDCTC Project Manager for review and comment prior to finalization. After the EDCTC and the operator review and comment upon the draft, the report will be presented to the EDCTA Board and the EDCTC Board with two weeks allowed for comment or suggested modifications. The consultant should be prepared to make the oral presentation of the report to the El Dorado County Transit Authority Board and the El Dorado County Transportation Commission.

Once all comments have been addressed, the consultant must complete the final reports and deliver ten (10) bound copies, one (1) reproducible copy, and one (1) electronic PDF copy of both the final EDCTC and EDCTA performance audit reports to the EDCTC's Project Manager.

The report must address each of the performance audit project requirements outlined in Tasks 1 and 2. The EDCTC Project Manager will present the final report to the Board for adoption with final copies forwarded to the appropriate Caltrans representatives.

**V. CONTACT PERSON AND PROJECT MANAGER**

Dana Keffer, Executive Assistant  
El Dorado County Transportation Commission  
2828 Easy Street, Suite 1, Placerville, CA 95667  
530.642.5260, dkeffer@edctc.org

## VI. PROJECT TIMETABLE

June 14, 2021 .....	Issue Request for Proposals
<b>August 2, 2021 4:00 PM .....</b>	<b>Closing Date for Receipt of Proposals</b>
August 6, 2021 .....	Finalists contacted to schedule interviews, if required
August 9, 2021 .....	Conduct interviews, if necessary
September 2, 2021 .....	Contract presented to Commission for award
March 14, 2022 .....	Drafts due to Project Manager for review
April 7, 2022 .....	Drafts TPA presentations to Commission and Transit Board
May 5, 2022 .....	Final TPA offered to Commission for adoption

Proposals must be **received** no later than **4:00 pm on AUGUST 2, 2021** at the EDCTC office.

**EL DORADO COUNTY TRANSPORTATION COMMISSION**  
**2828 EASY STREET, SUITE 1**  
**PLACERVILLE, CA 95667**

Proposals must be submitted in a sealed envelope that is clearly marked “**TRIENNIAL PERFORMANCE AUDIT.**” If mail delivery is used, the proposer should mail the proposal early enough to provide for arrival by this deadline. Proposer uses mail or courier service at his/her own risk. EDCTC will not be liable or responsible for any late delivery of proposals. **Postmarks will not be accepted.** Until award of the contract, the proposals shall be held in confidence and shall not be available for public review. Upon award of a contract to the successful proposer, all proposals shall be public records. No proposal shall be returned after the date and time set for opening thereof.

By submitting a proposal, the proposer certifies that his or her name or firm’s name, as well as that of proposer subcontractors, does not appear on the Comptroller General’s list of ineligible contractors for federally assisted projects.

## VII. GENERAL CONDITIONS

### A. Limitations

This Request for Proposals (RFP) does not commit EDCTC to award a contract, to pay any costs incurred in the preparation of the proposal in response to this request, or to procure or contract for services or supplies. EDCTC expressly reserves the right to reject any and all proposals or to waive any irregularity or information in any proposal or in the RFP procedure and to be the sole judge of the responsibility of any proposer and of the suitability of the materials and/or services to be rendered. EDCTC reserves the right to withdraw this RFP at any time without prior notice. Further, EDCTC reserves the right to modify the RFP schedule described above.

### B. Award

EDCTC plans to ask RFP finalists, if required, to present oral presentations regarding their firms and any special expertise in the necessary areas. All finalists may be required to participate in negotiations and submit such price, technical, or other revisions of their proposals as may result from negotiations. EDCTC also reserves the right to award the contract without discussion or interviews, based upon the initial proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. However, selection will be based upon demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required. Following

the initial qualifications-based selection, the price proposal provided will be the basis for negotiations to ensure EDCTC receives a fair and reasonable price.

**C. RFP Addendum**

Any changes to the RFP requirements will be made by written addenda by EDCTC and shall be considered part of the RFP. Upon issuance, such addenda shall be incorporated in the RFP documents, and shall prevail over inconsistent provisions of earlier issued documentation.

**D. Verbal Agreement or Conversation**

No prior, current, or post award verbal conversations or agreement(s) with any officer, agent, or employee of EDCTC shall affect or modify any terms or obligations of the RFP, or any contract resulting from this RFP.

**E. Pre-contractual Expense**

Pre-contractual expenses are defined as expenses incurred by proposers and selected contractor in:

1. Preparing proposals in response to this RFP
2. Submitting proposals to EDCTC
3. Negotiations with EDCTC on any matter related to proposals, and
4. Other expenses incurred by a contractor or proposer prior to the date of award of any agreement.

In any event, EDCTC shall not be liable for any pre-contractual expenses incurred by any proposer or selected contractor. Proposers shall not include any such expenses as part of the price proposed in response to this RFP. EDCTC shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

**F. Signature**

The proposal shall provide the following information: name, title, address, and telephone number of the individual with authority to bind the company and also who may be contacted during the period of proposal evaluation. The proposal shall be signed by an official authorized to bind the consultant(s) and shall contain a statement to the effect that the proposal is a firm offer for at least a ninety (90) day period. Award of the contract is expected September 2, 2021.

**G. Term**

The term of the contract will be approximately a seven-month term from September 2, 2021 to completion of the project. Project is expected to be completed on May 5, 2022 when the final TPA is presented to the Commission and adopted, or as agreed upon by the proposer and the EDCTC Project Manager.

**H. Fiscal Out Clause**

The Agreement may be terminated at the end of any fiscal year, June 30, without further liability other than payment incurred during such fiscal year, should funds not be appropriated by EDCTC to continue services for which the agreement was intended.

**I. Insurance**

The successful firm shall provide evidence of the following insurance requirements:

1. Workers Compensation: Employer's Liability – Statutory requirements for Workers' Compensation \$1,000,000 Employers' Liability
2. Comprehensive Automobile: Bodily Injury/Property Damage \$1,000,000 each accident
3. General Liability: \$1,000,000 per occurrence naming the El Dorado County Transportation Commission as an additional insured, and
4. Errors and Omissions/Professional Liability (errors and omissions liability insurance appropriate to the Consultant's profession as defined by EDCTC): \$1,000,000 per claim

**J. Contract Arrangements**

The proposer is expected to execute a contract similar to EDCTC's Professional Services Agreement, which meets the requirements of the current Federal transportation bill.

1. Disadvantaged Business Enterprise (DBE) Policy: It is the policy of the U.S. Department of Transportation that minority- and women-owned business enterprises (hereby referred to as DBE's) as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. DBE certified consultants are encouraged to submit proposals. EDCTC will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR, Part 26 on the basis of race, color, sex, or national origin.
2. DBE Obligation: The recipient or its contractor agrees to ensure that DBE's have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.
3. Title VI of the Civil Rights Act of 1964: The contractor agrees to comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and the regulations of the U.S. Department of Transportation issued thereunder in 49 CFR Part 21.
4. Equal Employment Opportunity: In connection with the performance of the contract, the contractor shall not discriminate against any employee or applicant for employment because of race, color, age, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Each proposal, to be considered responsive, must include the following:

- A. A copy of the consultant(s) affirmative action policy (applicable for firms with 50 or more employees); and
- B. A discussion of the consultant(s) program for use of DBEs in the performance of this work, including the following:
  - The names and addresses of DBE firms that will participate
  - The description of the work each named firm will perform, and

- The dollar amount of participation by each DBE firm
5. Conflict of Interest: Firms submitting proposals in response to this RFP must disclose to EDCTC any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided under Agreement for consulting services to be awarded pursuant to this RFP. If this firm has no conflict of interest, a statement to that effect shall be included in the proposal.

## VIII. PROPOSAL CONTENT AND ORGANIZATION

Proposals should be limited to specific discussion of the elements outlined in this RFP. The intent of this RFP is to encourage responses which meet the stated requirements, and which propose the best methods to accomplish the work.

The organization of the proposal should follow the general outline below. Each proposal should consist of a technical proposal (items 1-7 below) and a cost proposal (item 8).

1. Transmittal Letter  
The transmittal letter should include the name, title, address, phone number, and original signature of an individual with authority to negotiate on behalf of and to contractually bind the consultant(s) firm, and who may be contacted during the period of proposal evaluation. Only one transmittal letter need be prepared to accompany all copies of the technical and cost proposals.
2. Table of Contents  
A listing of the major sections in the proposal and the associated page numbers.
3. Introduction  
In this section, the proposer should demonstrate an adequate understanding of the role and relationships of EDCTC and an awareness of issues specific to the TRIENNIAL PERFORMANCE AUDIT.
4. Technical Approach  
Technical approach should include:
  - a) A brief description of the consultant(s) firm, including the year the firm was established, type of organization of firm (partnership, corporation, etc.), and any variation in size over the last five years, along with a statement of the firm's qualifications for performing the subject consulting services;
  - b) A brief description of the firm's experience with similar projects;
  - c) A thorough explanation of the consultant's proposed course of action. References should be made to the RFP requirements and the consultant's plans for meeting those requirements; and
  - d) An itemized description of the proposed project schedule and the end products to be produced.
5. Project Management  
The proposer must prepare an explanation of the project management system and practices to be used to assure that the proposed services are completed timely, and that the quality of the products will meet EDCTC's requirements.
6. Consultant Staff  
The proposal must describe the qualifications and experience of each professional who will participate in the project, including a resume for each member of the project team. A project

manager must be designated, and an organizational chart showing the manager and all project staff proposed who will provide services must be included.

*Time and Services Proposal:* The Proposal must indicate the anticipated total efforts, expressed in percentages of person-hours to be provided by each professional and each member of the supporting professional staff. Specific responsibilities of the lead consultant and other key personnel should be detailed. Do not include any cost information with the time and services proposal.

7. Consultant Qualifications and References

The proposal must include a list of references for similar clients. References should include client contact names, addresses, phone numbers, descriptions of the type of work performed, approximate dates on which the work was completed, and professional staff who performed the work. If a subcontractor is proposed, two to three similar qualifications and references should be provided for the subcontractor. The proposal must also include discussion of the consultant's affirmative action policy, use of DBEs in the performance of this work, and disclosure of any actual, apparent, or potential conflicts of interest.

8. Cost Proposal

The proposer shall prepare a detailed cost proposal for the work to be performed. The cost proposal shall itemize the direct hourly rates, fringe benefit rate, indirect cost rate, travel, materials, and supplies. Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 Contract Cost Principles and Procedures and 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall be used to determine the allowability of individual project cost items. See the attached Sample Cost Proposal including the requirements for indirect cost reimbursement. The same cost proposal detail is required for sub-consultants. Include a total "not-to-exceed" amount for this proposal.

The cost proposal shall be submitted in a separately sealed envelope. This separately sealed envelope will not be opened until the consultants' proposals have been ranked based on their qualifications.

9. Number of Copies

The proposer must provide five (5) bound copies and one (1) unbound original (suitable for reproduction) of all submittals in response to this Request for Proposals.

All proposals shall be **received** no later than **4:00 pm on AUGUST 2, 2021** at the El Dorado County Transportation Commission, 2828 Easy Street, Suite 1, Placerville, California 95667. All proposals shall be submitted in a sealed envelope that is clearly marked "TRIENNIAL PERFORMANCE AUDIT." Late proposals will not be accepted.

All proposals, whether selected or rejected, shall become the property of the El Dorado County Transportation Commission.

All proposals received prior to the date and time specified above for receipt may be withdrawn or modified by written request of the proposer. To be considered, the modification must be received in writing, and in the same number of copies as the original proposal, prior to the date and time specified for receipt of proposals.

Until award of the contract, the proposals shall be held in confidence and shall not be available for public review. Upon award of a contract to the successful proposer, all proposals shall be public records. No proposal shall be returned after the date and time set for opening thereof.

## IX. PROPOSAL EVALUATION AND SELECTION

A proposal review panel made up of members of EDCTC and the selected Evaluation Committee will evaluate the proposals. Proposers may be telephoned and asked for further information, if necessary, and may be expected to appear for oral interviews on the date identified in the project timetable. Previous clients will also be called. The panel will make recommendations to the EDCTC Executive Director on the basis of the proposal, oral interview, and reference check. EDCTC reserves the right to select a consultant based solely on written proposals and not convene oral interviews.

Upon receipt of the proposals, a technical evaluation will be performed. Each of the major sections of the proposal will be reviewed and evaluated with criteria designed to help judge the quality of the proposal. Evaluation criteria will include such considerations as:

- Understanding the purpose and requirements of the TRIENNIAL PERFORMANCE AUDIT
- Familiarity with the project area and the type of issues and problems associated with the project.

### Time and Services Proposal

- Ability to meet the project's goals and objectives
- Approach to be followed and the tasks to be performed, including detailed steps, resources required, and proposed project schedule
- Qualifications, specific experience, and technical competence of the personnel to be assigned to this contract.

Following the qualification-based ranking, negotiations shall be conducted with the most qualified proposer. Failing an agreement on price, EDCTC will negotiate with the next most qualified proposer until a contract can be awarded to the most qualified offeror whose price is fair and reasonable.

## X. PROTEST PROCEDURES

### A. Purpose and Applicability

The procedures described in this section have been established to ensure uniform, timely, and equitable consideration of all complaints received by the EDCTC concerning its procurement activities.

The following protest procedures shall be employed for procurements conducted by the EDCTC. Such protests shall be applicable only to procurements wherein the EDCTC requests bids, proposals or offers for goods or services financed in whole or in part by public funds.

Procurements involving FTA funds are subject to additional protest procedures established by that agency. Procedures applicable to FTA-funded procurements are so identified.

### B. Definitions

The following definitions apply to terms used in this section:

**DAYS**: Unless otherwise specified, refers to the EDCTC working days.

**FILE OR SUBMIT**: Refers to the date of receipt by the EDCTC.

**INTERESTED PARTY**: All bidders or proposers involved in an EDCTC procurement.

This may also include a subcontractor or supplier who shows substantial economic interest in a provision of the RFP, or in the interpretation of such provision.

**BID:** Refers to and includes: i) the terms “offer” and “proposal” as employed in this document; ii) sealed bids; iii) competitive negotiation; and, iv) non-competitive negotiation.

### C. **Basis for Protest**

If in the course of a procurement action an interested party has reason to believe that: a) free and open competition does not exist; or b) the EDCTC solicitation documents contain restrictive specifications, such party may file a protest in accordance with the procedures described herein.

In addition to the above, protests may be filed based upon the following factual or alleged circumstances:

- (a) Violation of federal, state or local law or regulation
- (b) Sole source procurements
- (c) Failure to adhere to evaluation criteria set forth in solicitation documents, or use of additional criteria not so published
- (d) Changes to evaluation criteria made during the evaluation process
- (e) Local or DBE preferences
- (f) Solicitation advertising violating applicable laws or regulations
- (g) Provision of inadequate time to prepare a proposal.

Protests of the EDCTC procurements filed by interested parties shall be considered in two general categories: 1) those filed prior to contract award, and 2) protests occurring after contract award has been made.

### D. **Pre-Award Protests**

The following procedures shall be followed for all protests filed prior to award of contract:

1. Protests must be filed no later than five (5) days prior to the date established in the solicitation for receipt of bids or proposals. Protest information requests and follow-up arguments that are submitted after the protest submission deadline, will not be considered to be part of the protest by the EDCTC.
2. Protests must be submitted in writing to the attention of the EDCTC Executive Director. The written protests shall include:
  - (a) The name, address, and telephone number of the protester
  - (b) The EDCTC solicitation number and project description
  - (c) A statement of the grounds for the protest, accompanied by all supporting documentation. All grounds must be fully supported with documentation
  - (d) The resolution sought from the EDCTC by the protester.
3. The EDCTC Executive Director shall receive the protest and issue written notification to the protester within (5) five days that the matter is undergoing review. Notice of the protest shall be given in writing to all known recipients of solicitation documents.
4. Procurement activity shall be suspended pending resolution of a protest unless one or more of the following conditions exists:
  - (a) The goods or services being procured are urgently required
  - (b) Delivery or performance will be unduly delayed by failure to make an award promptly

- (c) Failure to make prompt award will result in termination of a critical EDCTC function or activity or otherwise cause undue harm to the EDCTC, or
- (d) The EDCTC Executive Director prepares a written finding that such protest is clearly frivolous in nature, and therefore does not warrant a disruption of the procurement process

The EDCTC Executive Director shall be responsible for making a written determination that circumstances require the EDCTC to proceed with procurement during a pending protest. Unless such determination is made, the procurement shall be suspended pending resolution of the protest. All parties known to have received solicitation documents shall be notified in writing of such suspension by the EDCTC Executive Director.

5. All protests received within the specified period shall be examined by the EDCTC Executive Director.

No additional material shall be accepted for consideration during the protest review unless specifically requested in writing by the EDCTC.

6. The EDCTC Executive Director may attempt to resolve the protest with the affected party. If a) the EDCTC Executive Director elects not to attempt such resolution, or b) resolution is attempted but not achieved, the protesting parties may appeal to the El Dorado County Transportation Commission (hereinafter "Commission") after 30 calendar days and within 35 calendar days after receipt of the protest submittal. Failure to appeal to the Commission shall be a waiver of any other rights under the EDCTC Protest Procedures.

For these purposes, "resolution" shall mean the written withdrawal of a protest by the originating party.

7. The Commission shall formally consider the protests at a public meeting within 45 calendar days after the date on which the matter was appealed to the Commission. The Commission may elect to appoint a sub-committee to review the protest and make a recommendation to the Commission at the public meeting. Protesting parties shall be notified in writing of the date on which their matters shall be considered by the Commission. Such parties shall be afforded an opportunity to present their case at the Commission meeting.
8. The Commission shall then make a formal decision on such protests at a public meeting. The decision of the Commission, along with a formal record of the protest, shall become a matter of public record, and shall be considered final. The EDCTC Executive Director shall notify protesting parties in writing of any protest decision made by the Commission.

Except under conditions described in Item 4 above, such decision by the Commission shall be made prior to award of any contract related to the subject procurement.

9. Should the Commission deny the protest, the EDCTC may proceed with the procurement process. In the case of FTA-funded procurements, no contract shall be awarded within five (5) days following the Commission's decision unless such award is necessary due to circumstances described in Item 4 above. If the decision of the Commission is to uphold the protest, then the EDCTC shall proceed pursuant to Commission direction.

**E. Post-Award Protests**

Protests received after award of contract shall be considered only if received within five (5) days following the date on which the EDCTC Executive Director award recommendation is made. Post-award protests received after that time shall not be considered. Protest information requests and follow-up arguments that are submitted after the protest submission deadline, will not be considered to be part of the protest by the EDCTC.

Post-award protests shall be processed in the same fashion as that employed for pre-award protests. However, the award shall remain valid and procurement activities shall continue unless the EDCTC Executive Director determines in writing that suspension of such award is necessary pending protest resolution. In that event the awardee shall be so notified in writing, and the EDCTC Executive Director shall affect an agreement with the Contractor for suspension of activity.

**F. Additional Protest Procedures for FTA-Funded Procurements****FTA Protest Review Procedures**

The EDCTC shall inform protesting parties that circumstances under which FTA will accept and review protests are limited to the following:

- (a) The alleged failure of the EDCTC to have written protest procedures
- (b) The alleged failure of the EDCTC to follow such procedures
- (c) The alleged violation by the EDCTC of a specific federal requirement which provides an applicable complaint procedure

In the instance of (c) above, the applicable complaint procedure shall be submitted and processed in accordance with pertinent federal regulations e.g., 49 CFR Part 661, Section 661.15 for Buy America, or 49 CFR Part 26 for Disadvantaged Business Enterprise (DBE) participation.

Should a protest be filed with FTA under either (a) or (c) above, the following process will be used by FTA pursuant to Circular 4220.1B, Chapter V:

1. Parties shall file a protest with FTA no later than five (5) days after a final decision is rendered by the Commission as provided herein. In instances where the protester alleges that the EDCTC failed to make a final determination on the protest, protesters shall file a protest with FTA no later than five (5) days after the protester knew or should have known of the EDCTC' failure to render a final determination on the protest.
2. The EDCTC shall not award a contract for five (5) days following its decision on a bid protest except in accordance with the provisions and limitations of item 9 and item 4 of the protest procedures. After five (5) days, the EDCTC shall confirm with FTA that FTA has not received a protest on the contract in question.
3. Protests shall be filed with the FTA Region IX office.
4. The protest filed with FTA shall:
  - (a) include the name and address of the protester
  - (b) identify the grantee, project number, and the number, if any, of the contract solicitation.

- (c) contain a statement of the grounds for protest and any supporting documentation. This should detail the alleged failure to follow protest procedures or the alleged failure to have procedures, and should be supported by documentation to the extent possible
  - (d) include a copy of the local protest filed with the EDCTC along with a copy of the EDCTC decision, if any.
5. FTA shall notify the EDCTC in a timely manner of the receipt of a protest. FTA shall instruct the EDCTC to notify the contractor of the protest if award has been made or, if no award has been made, to notify all interested parties. The EDCTC shall instruct all who receive such notice that they may communicate further directly with FTA.
  6. The EDCTC shall submit the following information to FTA not later than ten (10) days after receipt of notification by FTA of the protest:
    - (a) a copy of the EDCTC protest procedures
    - (b) a description of the process followed concerning the protest, and
    - (c) any supporting documentation
  7. The EDCTC shall provide the protester with a copy of the above submission.
  8. The protester may provide any comments on the EDCTC submission no later than ten (10) days after the protester's receipt of such material.
  9. When a protest has been filed in a timely fashion with the EDCTC before award, the EDCTC shall not make an award prior to five (5) days after the resolution of the protest, or if a protest has been filed with FTA, during the period in which the protest is pending, unless the EDCTC determines that:
    - (a) The items to be procured are urgently required.
    - (b) Delivery or performance will be unduly delayed by failure to make the award promptly, or
    - (c) Failure to make prompt award will otherwise cause undue harm to the EDCTC or the Federal Government
- In the event that the EDCTC determine that the award is to be made during the five (5) day period following the local protest decision or the period in which the protest is pending, the EDCTC shall notify FTA prior to making such award.
10. Upon receipt of the material described herein, FTA will either request further information or a conference among the parties or will render a decision on the protest.
  11. The protest procedures contained herein shall be included in solicitation documents issued by the EDCTC for all federally assisted procurements.

## **XI. PAYMENT SCHEDULE**

Fees shall be billed on a monthly basis. Ten percent (10%) of the total contract amount will be withheld until successful completion of the contract. All invoices will be mailed to the EDCTC office at 2828 Easy Street, Suite 1, Placerville, CA 95667.

## **XII. PROFESSIONAL SERVICES AGREEMENT**

The selected consultant must enter into a Professional Services Agreement with EDCTC for provisions related to compensation, conflict of interest, indemnification, insurance, etc. The scope, budget, and schedule to complete the study will be incorporated into the professional services agreement. The proposal's transmittal letter shall state the Consultant's ability to comply with the contract provisions as outlined in EDCTC's sample professional services agreement or indicate which provisions will require amendments during contract negotiations.

### **ATTACHMENTS:**

1. Sample Cost Proposal
2. Sample Professional Services Agreement

ATTACHMENT 1  
SAMPLE COST PROPOSAL

**ATTACHMENT 2**

**SAMPLE PROFESSIONAL SERVICES AGREEMENT**

