Northwest Arkansas Regional Planning Commission

Procurement Procedures

This document includes Independent Cost Estimate, Cost Analysis, Consultant Selection Procedures, Sole Source Justification, Bid Protest and Debarment, Clauses and Certifications
Northwest Arkansas Regional Planning Commission

Procurement Procedures Documents

1. Independent Cost Estimate and Cost Analysis
2. Consultant Selection Procedures
3. Sole Source Justification
4. Bid Protest and Debarment Procedures
5. Procurement Clauses and Certifications Checklist
A. INDEPENDENT COST ESTIMATE

A written independent cost estimate (ICE) must be performed for all procurements above the micro purchase threshold. This may be performed either in-house, by an outside consultant, or by a third-party vendor who is not allowed to either quote or bid the procurement. Some sources for these estimates could be previous procurements or purchases for the same or similar materials or services, other agencies or companies who had similar procurements, professional consultants, catalog or current price lists, state contract pricing, et.

The written ICE must be done before obtaining Requests for Proposals (RFPs), quotes or bids for the procurement and be signed and dated by the person(s) performing the estimate.

Contract Type: _____________________________ Date of Estimate: _____________________________

Description of Services: _________________________________________________________________

Method of Obtaining the Estimate:

I have obtained the following estimate from:

☐ Published Price List/Past Pricing
☐ Engineering or Technical Estimate
☐ Independent Third Party Estimate
☐ Other (specify) _________________________________________________________________

Cost Estimate Details:

Through the method stated above, it has been determined that the total cost of the services is expected to be: $____________________________ (See below for detailed cost estimate calculations.)

Previous Expenditure: _____________________________
Inflation Rate Applied: _____________________________
Estimated Cost: _____________________________
**Payment History:**

<table>
<thead>
<tr>
<th>Amount Paid</th>
<th>Invoice Date</th>
<th>Invoice Description</th>
<th>Invoice Number</th>
<th>Vendor Name</th>
</tr>
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</tbody>
</table>

**Signature of Preparer:**

The preceding cost estimate was obtained or prepared by:

________________________ ___________________________ ___________________

Name  Signature  Date
B. COST ANALYSIS

After obtaining written proposals, quotes or bids, a written evaluation of the prices must be performed comparing the quotes/bids to the independent cost estimate previously completed. Any differences must be explained and supporting documentation must be attached.

PO/Contract:
__________________________________________________________________________

The evidence compiled by a Cost Analysis includes:

- Developing and examining data from multiple sources whenever possible that prove or strongly suggests the proposed price is fair.
- Determining when multiple data consistently indicate that a given price represents a good value for the money.
- Documenting data sufficiently to convince a third party that the analyst’s conclusions are valid.

Date: ___________________  Prepared by: _____________________________

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

☐ Comparison with competing suppliers’ prices. (Complete comparison matrix and attach supporting quotes.)

☐ Comparison of proposed pricing with in-house estimate for the same item. (Complete summary matrix.)

☐ Comparison of proposed pricing with historical pricing from previous purchases of the same type, coupled with marked data, such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record.)

☐ Analysis of price components against current published standards, such as labor rates, to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)
## Summary Matrix:

<table>
<thead>
<tr>
<th>Item</th>
<th>In-House Estimate</th>
</tr>
</thead>
<tbody>
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<td></td>
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</tr>
</tbody>
</table>

## Comments:
Section I – Application *(These procedures do not apply to Design-Build Contracts.)*

These procedures apply to federally and state funded contracts for engineering and design related services for projects and are issued to ensure that a qualified consultant is obtained through an equitable qualifications-based selection procurement process, that prescribed work is properly accomplished in a timely manner at a fair and reasonable cost.

Engineering and design related services are defined in 23 Code of Federal Regulations (CFR) Part 172 to include program management, construction management, preliminary engineering, design engineering, surveying mapping, or architectural related services with respect to a highway construction project. These services also include professional services of an architectural or engineering nature, as defined by State law, which are required to or may logically or justifiably be performed or approved by a person licensed, registered, or certified to provide the services with respect to a highway construction project. Contracts for these services that are paid with Federal-aid highway program (FAHP) funding will be awarded following these selection procedures. State funded projects for these services will follow this procedure as well in the event that during the project FAHP funds are requested after initial consultant selection on the project.

The federal laws and regulations that govern the procurement of engineering and design related services with FAHP funds are:

- 23 United States Code (U.S.C.) 106 “Project approval and oversight”
- 23 U.S.C. 112 “Letting of contracts”
- 23 U.S.C. 114(a) “Construction Work In General”
- 23 U.S.C. 302 “State transportation department”
- 23 U.S.C. 315 “Rules, regulations, and recommendations”
- 40 U.S.C. Chapter 11 – Selection of Architects and Engineers, §§1101 et seq., commonly called the “Brooks Act”
- 2 CFR Part 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”
- 23 CFR Part 172 “Procurement, Management, and Administration of Engineering and Design Related Services”
The Federal Highway Administration (FHWA) has approved these procedures for use by the Arkansas State Highway and Transportation Department (Department) for the “competitive negotiation” (qualifications-based selection) method of procurement as defined in 23 CFR §172.7, Procurement Methods and Procedures that complies with the Brooks Act, (40 U.S.C. §§1101, et seq.).

Section II – Advertisement for Letters of Interest

The Arkansas State Highway Commission (Commission) authorizes the Director of Highways and Transportation to employ a consultant when a need exists for engineering and design services and it is in the Department’s best interest to contract with a consultant firm.

As a minimum, the Department will advertise at least once in a newspaper with statewide circulation and on the Department’s website, advising that consultant services are being sought for a minimum of three (3) weeks from the date of the newspaper advertisement. In addition, the Department may advertise in appropriate national trade magazines or websites for specialized services.

Interested firms must furnish:

1. A cover letter with the firm’s response
2. The firm’s completed Architect-Engineer Qualifications Standard Form (SF) 330 Parts I and II (48 CFR §53.236-2(b)) (SF 330 is available on the Department’s website http://arkansashighways.com/consultant_services/advertisements/advertisements.aspx.)
3. A current copy of the firm’s equal employment opportunity policy required per Arkansas Code Annotated (Ark. Code Ann.) §19-11-104

Advertisements may be for either a specific single project; a group of projects; or for an on-call or indefinite delivery/indefinite quantity (IDIQ) for an established contract period (not to exceed 5 years), to be determined at a later date with specific task orders issued for each project. (23 CFR §172.9(a))

When advertising a specific project, the advertisement will describe the general nature of the project allowing firms to evaluate their interest in performing the desired services.

When advertising a group of projects, a general description of work will be furnished. Firms will be asked to specify the types of projects they are interested in performing. When the Department decides to proceed with a certain project, those firms having expressed interest in that type project will be considered for selection.
When advertising for an on-call / IDIQ projects with later specified task orders, the advertisement will include a general description of work for the project task and the number of consultants anticipated to be selected.

If a solicitation fails to yield three qualified respondents, then the Department may proceed with evaluation and selection if the Department determines that the solicitation did not contain conditions or requirements that arbitrarily limited competition. Alternatively, the Department may pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to re-compete under a new solicitation. 23 CFR §172.7(a)(1)(iv)(D)

Solicitations will include language to comply with state procurement laws, rules, and regulations including but not limited to Ethical Standards (Ark. Code Ann. §19-11-708), Employee and Relative Disclosure, and Equal Opportunity Policy.

Interested firms are advised that in order to comply with state and federal requirements that the Department will verify suspension and debarment actions and eligibility status of consultants in accordance with 2 CFR Part 1200 and 2 CFR Part 180.

Ark. Code Ann. §§19-11-701 through 19-11-714 addresses ethics and conflicts of interest. Federal regulations about conflicts of interest are described in 2 CFR §200.112, 23 CFR §1.33, and provisions of 23 CFR §172.7(4). No Department employee may participate in selection, award or administration of a contract in which the Department employee or any member of his or her immediate family has a financial, prospective financial, or other interest. Additionally, in accordance with Ark. Code Ann. §19-11-704(b) it is a breach of ethical standards for any person, including potential consultants, contractors, or parties to subagreements to engage in any conduct or behavior with other consultants, contractors, cities, counties, state agencies, or metropolitan/local planning organizations that may influence any public employee to breach the standards of ethical conduct provided by state and federal laws.

Section III – Selection Committee

The Department’s Assistant Chief Engineer with the Deputy Director and Chief Engineer’s concurrence will designate a Selection Committee (Committee) to evaluate and analyze the letters of interest and proposals.
Section IV – Evaluation of Letters of Interest

The Committee will evaluate each consultant firm based on the criteria provided in the detailed letters of interest (LOI) in general as follows:

<table>
<thead>
<tr>
<th>No.</th>
<th>Evaluation Factors for LOIs</th>
<th>Maximum Points Possible</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Professional staff including the education, experience, number of personnel available, licensure and registration (if required), and any partnerships with subconsultants</td>
<td>10</td>
</tr>
<tr>
<td>2</td>
<td>General and professional reputation, including responsiveness to civil rights and equal employment opportunity requirements and opportunities</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>*Past work performance with the Department</td>
<td>10</td>
</tr>
<tr>
<td>4</td>
<td>Experience with projects of a similar nature as those advertised</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td><strong>Total Points for LOI</strong></td>
<td><strong>40</strong></td>
</tr>
</tbody>
</table>

*Past performance or evaluations from other clients will be considered when the firm has not worked for the Department previously.

Following their review, the Committee will prepare a short list (minimum of three) of top ranked consultants and recommend to the Deputy Director and Chief Engineer that these firms submit detailed proposals for further evaluation.

Section V – Request for Proposal

The Department will prepare a scope of work statement and request for proposals (RFP) from the consultants on the short list. For projects with FHWA oversight, Projects of Division Interest (PoDI) projects, the Department will forward the scope of work statement for FHWA review and approval before soliciting RFPs. A Department’s scope of work will typically include the following:

1. A detailed purpose and description of the work
2. Services that will be furnished by the Department
3. Services that will be furnished by the consultant
4. Deliverables to be provided
5. Project conditions of the work
6. Schedule for performance of the work
7. Special conditions of the work including applicable standards, specifications, and policies
8. Assurance of participation of certified Disadvantaged Business Enterprises (DBE) in Federal-aid projects as Department goals for the Project are established.
The short-listed firms should submit proposals that contain the following:

1. A cover letter with primary contact information
2. A detailed work plan that identifies the major tasks of work
3. A list of major concerns associated with completing the work
4. A detailed work schedule for specific projects as requested
5. A manpower estimate for specific projects as requested
6. Updated SF 330 Parts I and II if necessary

The Committee will review the proposals with particular attention to the five (5) listed evaluation factors for proposals and will also consider the results determined in Section IV. The evaluation factors with weighting of the factors will be listed in the RFP and will follow the factors listed below unless otherwise indicated in the RFP.

<table>
<thead>
<tr>
<th>No.</th>
<th>Evaluation Factors for Proposals</th>
<th>Maximum Points Possible</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Obvious indication that the scope of work is clearly understood</td>
<td>20</td>
</tr>
<tr>
<td>2</td>
<td>Comprehensive, coherent, and detailed work plan (may include innovative concepts or alternatives, quality control procedures)</td>
<td>20</td>
</tr>
<tr>
<td>3</td>
<td>Realistic work schedule when applicable (work load capacity)</td>
<td>10</td>
</tr>
<tr>
<td>4</td>
<td>Proposed working office location, need for a local office, and any local representative*</td>
<td>5</td>
</tr>
<tr>
<td>5</td>
<td>Identification of subconsultants and responsiveness to DBE goals and opportunities</td>
<td>5</td>
</tr>
<tr>
<td>6</td>
<td>Total Points for LOI</td>
<td>40</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No.</th>
<th>Evaluation Factors for Proposals</th>
<th>Maximum Points Possible</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Total Points for Proposals</td>
<td>100</td>
</tr>
</tbody>
</table>

*Locality preference shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. (Consultants indicating that it will satisfy this factor in some manner, such as establishing a local project office, shall be considered to have satisfied this factor.)

Using these evaluation factors, the Committee will rank the consultants based on the total score and submit the list to the Deputy Director and Chief Engineer who will either:

1. Select one firm based on the total score to enter negotiations with; or
2. Select
   a. Multiple firms based on total score for an on-call or IDIQ contract; or
   b. Three or more firms to interview (a firm may present additional information concerning their proposal at the interview). After the interviews, the Committee re-evaluates the firms based on the interview and the same evaluation factors as noted previously.
The Deputy Director and Chief Engineer will review the ranking after any additional presentations or interviews and if he concurs, will submit the ranking to the Director for concurrence prior to Commission Action.

Per the April 29, 2015 Stewardship and Oversight Agreement, FHWA will provide approval for hiring of consultants that serve in a “management” role (23 CFR §172.9).

Notification must be provided to all responding consultants of the final selection of the most qualified consultant including the ranking of the top three consultants on projects where only one consultant is selected. The contract file will contain records of the solicitation, proposal, evaluations, and selection rankings.

General Time Table

The following proposed timetable is for planning purposes only. The Department will make every attempt to comply with the times and dates set forth in this table, but reserves the right to adjust this timetable as required during the course of the RFP process.

<table>
<thead>
<tr>
<th>Event</th>
<th>Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOI Advertisement</td>
<td>0</td>
</tr>
<tr>
<td>Requests for Clarification Due</td>
<td>2</td>
</tr>
<tr>
<td>Final Amendments Issued</td>
<td>3 days prior to LOI Due</td>
</tr>
<tr>
<td>Letters of Interest Due</td>
<td>3</td>
</tr>
<tr>
<td>Short List Firms Notification</td>
<td>5</td>
</tr>
<tr>
<td>Requests for Clarification Due</td>
<td>7</td>
</tr>
<tr>
<td>Final Amendments Issued</td>
<td>3 days prior to RFP Due</td>
</tr>
<tr>
<td>Request for Proposal Due</td>
<td>8</td>
</tr>
<tr>
<td>Interview Short Listed Firms as applicable</td>
<td>10</td>
</tr>
<tr>
<td>Contract Award by Commission</td>
<td>10-12</td>
</tr>
</tbody>
</table>

Section VI – Negotiation and Contract Preparation

Once a firm is selected for negotiation for a specific project or a group of projects, a draft contract including a cost estimate will be prepared by the firm for the project. The other firms on the short list will be advised of the firm selected, subject to successful negotiations. Prior to receipt or review of the draft contract and cost estimate, the Department shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct cost and consultant’s fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation to ensure a fair and reasonable cost is obtained.

More than one firm may be selected for an on-call or IDIQ contract. The contract will establish a maximum ceiling price for work issued under the contract as well as an expiration date not to exceed 5 years, per 23 CFR Part 172. Individual task order cost estimates will be negotiated when issued.

The selected firm will prepare a draft contract based on a sample contract furnished by the Department. In accordance with the principles of 23 CFR Part 172, the
draft contract must include an indirect cost rate that is approved by the Department. If the contract exceeds $250,000, in accordance with the Department’s Indirect Cost Rate Audit Requirements, the indirect cost rate shall be verified by an audit performed by a certified public accountant on behalf of the consultant. If the contract is less than $250,000 and at least one of these conditions applies:

1. When there is insufficient knowledge of the consultant’s accounting system
2. When there is previous unfavorable experience regarding the reliability of the consultant’s accounting system
3. When the contract involves procurement of new equipment or supplies for which cost experience is lacking

then the Consultant shall provide the indirect cost rate verified by an audit performed by a certified public accountant on behalf of the consultant. The certified audit shall be provided by the selected firm prior to the submission of the final draft contract.

The Department will review the draft contract and either approve it as submitted or enter into negotiations with the selected firm to establish terms of the contract and contract ceiling price that the Department deems is fair and reasonable. If a satisfactory contract cannot be negotiated with the selected firm, negotiations will be formally terminated. The Department will then enter into negotiations with the second ranked firm on the short list. If negotiations with that firm fail, the Department will formally terminate those negotiations and begin to negotiate with the third ranked firm, and so on. If the Department cannot negotiate a satisfactory contract with any of the firms on the short list, the Department shall either:

1. Request proposals from additional firms who have submitted LOIs and are considered competent and qualified; evaluate and rank the firms based on the criteria described in Section V; and continue the negotiation process, or
2. Terminate all negotiations and begin the selection process again, or
3. Pursue procurement following the noncompetitive method when competition is determined to be inadequate and it is determined to not be feasible or practical to re-compete under a new solicitation. 23 CFR §172.7(a)(1)(iv)(D)

When the Parties agree the negotiated contract to be fair and reasonable, the consultant will prepare a final draft and submit it to the Department. After review and a determination that it is acceptable, the consultant will sign the contract. The Director will then execute the contract on behalf of the Commission. The Department will distribute copies of the signed contract within the Department and to the Consultant.

For projects with FHWA oversight and for on-call or IDIQ contracts where the consultant performs a management role utilizing federal funds, the Department will forward the initial and final drafts of the contract to FHWA for review and comment. The FHWA approves the final executed contract by stamp and signature and retains a copy.

After an on-call or IDIQ contract is executed, the Department will assign specific projects by task order for the duration of the contract period. The consultant will
prepare each task order based on the scope of work furnished by the Department. The task order will include a manpower estimate and cost. The Department will review the task order and approve it as submitted or negotiate with the consultant to establish a task order and task order amount that the Department deems is fair and reasonable. After review and a determination that the task order is acceptable, the consultant will sign the task order. The Director will then execute the task order on behalf of the Department. The Department will distribute copies of the signed task order within the Department and to the consultant.

For PoDI projects, the Department will forward the initial and final drafts of the task order to FHWA for review, comment, and approval. Upon FHWA approval, the final task order is executed.

Section VII – Monitoring the Contract

The Department staff will administer the contract. Steps in monitoring the contract include:

1. Consultant Contracts office (CC) will maintain the contract files
2. The appropriate Division Project Manager (PM) will arrange and attend periodic progress meetings
3. The PM will coordinate any reviews and approval actions with FHWA and other agencies when necessary
4. CC will review progress payments while verifying project progress with the PM
5. The PM will direct questions from the Consultant to the proper personnel in the Department
6. CC will negotiate any change or amendment to the contract after receiving documentation from the Consultant and the PM
7. The PM will prepare an evaluation of the Consultant’s performance after completion of the contract with input from other Department personnel

Section VIII – Consultant Liability

The Department will include a contract requirement that the consultant will warrant that all services and work products provided as part of the contract are performed in accordance to the prevailing industry standards, including standards of conduct and care, format and content, meet the satisfaction of the Owner, and conform to the requirements of the Agreement. This warrant is effective regardless of the degree of inspection and acceptance by the Department.

If the consultant is required to correct or re-perform any work or services, the work will be performed at no cost to the Department, and any work or services corrected or re-performed by the Consultant shall also be warranted that it is free from defects in workmanship in accordance with the industry standards. If the Consultant fails or refuses to correct or re-perform, the Department may, by contract or otherwise, correct or replace the deficient items or services with similar work or services, and charge the cost to the consultant or make an equitable adjustment in the consultant’s reimbursement.
Acceptance is an act of an authorized representative of the Department by which the Department approves specific services, as partial or complete performance of the contract. Correction is the elimination of a defect.

**Section IX – Insurance**

The consultant will be required to have professional liability insurance coverage. Additional insurance may also be required and could include:

1. Worker’s compensation insurance
2. Automobile and general liability insurance
3. Valuable papers insurance

Specific information about insurance requirements is found in the sample contracts on the Department website. [http://arkansashighways.com/consultant_services/sample_contracts.aspx](http://arkansashighways.com/consultant_services/sample_contracts.aspx)
Effective immediately, the Department’s procurement limits are being increased to conform to State Procurement Law. The new procurement limits are as follows:

- **Small Purchases**: Up to $20,000
- **Competitive "Quotation" Bids**: From $20,000 to $75,000
- **Competitive Sealed Bids**: More than $75,000

These limits are **absolute** and cannot be exceeded. The AHTD Accounting Manual, Section 30, Purchasing and Payment Procedures, will be updated to reflect these new limits.

Please make all appropriate personnel in your areas of responsibility aware of these changes.

Danny Keene  
Division Head  
Equipment and Procurement

c:  Director  
   Deputy Director and Chief Operating Officer  
   Deputy Director and Chief Engineer  
   Assistant Chief - Administration  
   Assistant Chief Engineers  
   Chief Fiscal Officer  
   Chief Legal Counsel
RESOLUTION #2017-3

A RESOLUTION ADOPTING THE AHTD CONSULTANT SELECTION PROCEDURES AS NWARPC’S CONSULTANT SELECTION PROCEDURES; AND STATE AND FTA PROCUREMENT PROCEDURES

WHEREAS, as a condition of the receipt and use of federal funds, NWARPC must, according to the Federal Transit Administration (FTA) guidance, have written procurement procedures; and

WHEREAS, it is the intent and desire, and policy of NWARPC that all procurements comply with State and Federal requirements, including the Common Grant Rule and the Super Circular.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE NORTHWEST ARKANSAS REGIONAL PLANNING COMMISSION:

SECTION 1. That the Arkansas Highway & Transportation Department’s federally approved “Local Agency Consultant Selection Procedures” be, and are hereby adopted as NWARPC’s consultant selection procedures.

SECTION 2. That it is the policy of NWARPC that all procurements comply with State statutes, and applicable Federal requirements, including the Common Grant Rule and the Super Circular issued by the federal Office of Management & Budget (OMB).


Chairman

ATTEST:
This form should be completed in compliance with the Federal Transit Administration to justify non-competitive awards for goods and services.

A recipient may use noncompetitive proposals only when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:

- Unique or Innovative Concept - The offeror demonstrates a unique or innovative concept or capability not available from another source.
- Patents or Restricted Data Rights - Patent or data rights restrictions preclude competition.
- Substantial Duplication Costs - Follow-on contracts for (1) replacement equipment, parts or accessories; or (2) technical service of equipment of a highly technical or specialized nature.
- Unacceptable Delay - Follow-on contract for continued development or production of a highly-specialized equipment and major components thereof, when it is likely award to another contractor would result in unacceptable delays in fulfilling needs.
- Single Bid or Proposal - Only one response to a solicitation and upon review that specifications were not unduly restrictive.
- Unusual and Compelling Urgency - Limited solicitation due to impending injury to operations, or compelling public emergency.
- Other - Fully document reasoning below.

NOTE: A sole source award may not be based solely on (1) the unique capability of the offeror to provide the specific property or services proposed; (2) lack of advanced planning; (3) concerns related to the amount of funds available.

DETAILED JUSTIFICATION FOR NO COMPETITION. (Please be precise in explanation)


Sole Source Justification Submitted by:

Signature:____________________________

Date:____________________________
NORTHWEST ARKANSAS REGIONAL PLANNING BID PROTEST AND DEBARMENT PROCEDURES

SUBJECT: Bid Protests and Debarment Procedures

PURPOSE: To establish Formal Solicitation Protest Process and bidder debarment procedures

SCOPE: Applies to all NWARPC formal bids and proposals

A. BID PROTEST PROCEDURE

When to File: Protests are to be submitted in writing and received by the NWARPC’s Executive Director, at 1311 Clayton St., Springdale, AR, 72762 within seven (7) working days after the aggrieved person knows or should have known of the facts giving rise thereto. Protests based upon restrictive specifications or alleged improprieties in any type of solicitation, which are apparent prior to bid opening or the closing date for receipt of initial proposals, should be filed no later than three (3) working days prior to bid opening or the closing date for receipt of proposals.

Subject of Protest: Protestors may file a protest on any phase of solicitation or award, including but not limited to specification or award.

Form: The protest must be in writing and include, as a minimum, the following:
(a) The name and address of the protestor.
(b) Appropriate identification of the procurement by bid number or project name.
(c) A statement of the reasons for the protest.
(d) Any available exhibits, evidence or documents substantiating the protest.

Decision: The Executive Director shall make a decision, in writing, on a protest within seven (7) working days after receiving all relevant, requested information. The decision of the Executive Director is final.

Withholding of Award: When a protest has been filed before award, NWARPC will not make an award prior to the resolution of the protest. When a protest has been filed before the opening of bids, NWARPC will not open bids prior to the resolution of the protest, unless NWARPC 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.
(c) Failure to make prompt award will otherwise cause undue harm to NWARPC.
Protests involving Federal Transit Administration (FTA) Funded Projects:

- Vendors who protest an FTA funded purchase have an additional remedy if their protest is denied by NWARPC. They may also protest the award (after these administrative processes have been exhausted) directly to the FTA.

- FTA will only entertain a protest that alleges the grantee failed to follow their protest procedures and that such a protest must be filed in accordance with FTA Circular 4220.1F.

- NWARPC will allow for a request for reconsideration if data becomes available that was not previously known, or there has been an error of law or regulation.

- NWARPC will notify FTA of any protests received relating to FTA funded projects.

B. REMOVAL OR SUSPENSION FROM VENDOR'S LIST

DEBARMENT MEASURES AND RULES

NWARPC has a formal procedure to be followed in the event a vendor is to be removed from NWARPC's bidding lists. Attached is a sample of the Vendor Complaint Evaluation Form to be used initially; additional information may be requested by NWARPC. The vendor will be contacted for resolution of the problem by NWARPC staff.

Resolution of controversies

1. (a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Executive Director shall have authority to remove a person for any of the reasons set forth in subsection (2) of this section from consideration for award of contracts. The removal shall not be for a period of more than three (3) years.

(b) NWARPC shall have authority to suspend a person from consideration for award of contracts if there is probable cause to believe that such person has engaged in activities that may lead to removal. The suspension shall not be for a period exceeding three (3) months. However, if a criminal indictment has been issued for an offense which would be a cause for removal under subsection (2) of this section, the suspension may, after consultation with NWARPC Attorney, remain in effect until after the trial of the suspended person.

(c) The authority to remove or suspend shall be exercised pursuant to rules which shall provide for an expeditious resolution of the issue of removal or suspension.

2. A person/company may be removed for any of the following reasons:

   (a) Conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract.
(b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records or receiving stolen property.

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.

(d) Failure without good cause to perform in accordance with the terms of any contract.

(e) Removal by another governmental entity for any cause listed in the rules.

Issuance and Appeal of Decision

1. The Executive Director shall promptly issue a written decision regarding any removal or suspension if it is not settled by mutual agreement. The decision shall state the reasons for the action taken and give notice to the prospective contractor, or contractors. The decision of the Executive Director is final.

2. A decision shall be effective immediately. A copy of the decision rendered under subsection (1) of this section shall be mailed or otherwise furnished immediately to the prospective contractor, or contractors. The decision shall be final and conclusive.

DEBARMENT PROCEDURES

Suspension

1. **Initiation.** After consultation with the NWARPC Attorney, and where practicable, the contractor or potential contractor who is to be suspended, the Executive Director may issue a written determination to suspend a person from consideration of contracts pending an investigation to determine whether cause exists for removal. A notice of suspension, including a copy of the determination, shall be sent to the suspended contractor or prospective contractor. Such notice shall:

   (a) State that the suspension will be for the period necessary to complete an investigation into possible removal;

   (b) Inform the suspended person that bids or proposals will not be solicited from him or her and, if received, will not be considered during the period of suspension; and

   (c) Inform the contractor or prospective contractor of the suspension and debarment process.

2. **Effect of decision.** A contractor or prospective contractor is suspended upon issuance of the notice of suspension.
Removal

1. **Initiation.** Following completion of the investigation to determine whether a contractor or prospective contractor has engaged in activities which are a cause for removal, and after consultation with the NWARPC Attorney, the Executive Director may, after allowing the contractor a reasonable opportunity to respond to the allegations, debar a contractor or prospective contractor. A written notice of removal shall be sent by certified mail, return receipt requested. The notice shall state the reason for debarment. The Executive Director will allow a contractor, five (5) working days to respond to the reasons for suspension or debarment.

2. **Notice of hearing.** If a hearing is requested, the Executive Director or his/her designee shall send a written notice of the time and place of the hearing to all parties and NWARPC Attorney. Such notice shall be sent by certified mail, return receipt requested.

3. **Hearing Procedures.** The weight to be attached to any evidence presented shall be within the discretion of the Executive Director or his/her designee. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The Executive Director, or his/her designee may request evidence. A hearing may be recorded at the request of the Executive Director or the contractor, but need not be transcribed except at the request and expense of the contractor or prospective contractor. A record of those present, identification of any written evidence presented, copies of all written statements, and a summary of the hearing shall be sufficient record. The Executive Director or his/her designee may:

   (a) Hold informal conferences to settle, simplify or fix the issues or to consider other matters that may aid in an expeditious disposition of the appeal;

   (b) Require parties to state their position with respect to the various issues;

   (c) Require parties to produce for examination those relevant witnesses and documents under their control;

   (d) Regulate the course of the hearing and conduct of participants;

   (e) Receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial or unduly repetitious;

   (f) Request and set time limitation for submission of briefs; and

   (g) Administer oaths or affirmations.
Decision by the Executive Director

The Executive Director his/her designee shall promptly issue a final written decision on the issue. However, if an action concerning the suspension or removal has been commenced in court, the Executive Director shall not act on the matter but shall refer it to NWARPC Attorney.

1. Decision of the Executive Director. The decision of the Executive Director is final.

2. Effect of removal decision. A removal decision will take effect thirty (30) working days after the contractor or prospective contractor receives notice of the decision. After the removal decision takes effect, the person shall remain so removed unless a court or the Executive Director reverse the decision or until the removal period specified in the decision expires.

3. Lists of removed and suspended persons. The Executive Director shall maintain a current list of all removed or suspended persons.
VENDOR/CONTRACTOR EVALUATION REPORT

VENDOR/CONTRACTOR:___________________________________________________________

ADDRESS:____________________________________ CONTACT PERSON:_____________________

CITY:____________________________________ INVOICE # ________ AMOUNT $______________

STATE:_______________ ZIP:_________________ INVOICE DATE ____________________

NATURE OF COMPLAINT (check all that apply)

☐ Delivery __________ Days Late
☐ Poor Quality
☐ Failure to Respond to Calls
☐ Poor Service
☐ Failure to Respond to Invoice Request
☐ Incorrect Invoices
☐ Failure to Meet Specifications
☐ Failure to Respond to Certified Letter
☐ Failure to Provide Warranty
☐ Other (explain) _____________________

DETAILS OF COMPLAINT: (Attach second page if necessary)

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

_________________________________________________________________________

Has complaint been resolved? YES NO

COMPLAINANT'S SIGNATURE:_________________________ TITLE ______________________________

PHONE# ______________________________ PHONE# ______________________________

DATE:____________________________ DATE:____________________________

ACTION TAKEN BY:____________________________ Resolution Code No.:____________________

BUYER:_________________________________________ DATE:_______________________________
# NWARPC PROCUREMENT CHECKLIST

## PROFESSIONAL SERVICES / A&E

<table>
<thead>
<tr>
<th>Project Name/Purchase:</th>
<th>Date:</th>
</tr>
</thead>
</table>

**Solicitation Type:**
- [ ] Request for Quotes
- [ ] IFB
- [ ] RFP
- [ ] Sole Source

## PRE-SOLICITATION:

- [ ] Independent Cost Estimate
- [ ] UPC Search For Potential DBE Firms
  - [ ] Firm(s) Found
- [ ] Sole Source Justification (if applicable)

## SOLICITATION:

- [ ] Proof of Advertisement (if applicable)

---

**Pre-Solicitation Completed**

**INITIAL ABOVE**

**Solicitation Completed**

**INITIAL ABOVE**
FEDERAL CLAUSES (C 4220.1F - APPENDIX D):

- All No Federal Obligations to Third Parties
- All False Statements or Claims Civil and Criminal Fraud
- All Access to Third Party Contract
- All Changes to Federal Requirements
- All Termination
- All Disadvantaged Business Enterprises (DBE)
- All Incorporation of FTA Terms
- All Energy Conservation
- All Civil Rights (Title VI, EEO, ADA)
- $25,000 Suspension and Debarment
- $100,000 Resolution of Disputes, Breaches, or Other Litigation
- $100,000 Lobbying
- $100,000 Clean Air
- $100,000 Clean Water
- A&E Only Seismic Safety
- A&E Only ADA Access
- ITS Projects Conformance with ITS National Architecture
- R&D Only Patent Rights
- R&D Only Rights in Data and Copyright Requirements
- Transport Fly America

OTHER REQUIREMENTS:

- All Non-Collusion Statement
- All Non-Discrimination/Sexual Harassment
- All Contractor Integrity
CERTIFICATIONS:

☐ All Non-Collusion Statement
☐ All Non-Discrimination/Sexual Harassment
☐ All DBE Certification
☐ All Affidavit of Disadvantaged Business Enterprise
☐ All Contractor Integrity
☐ All Debarment, Suspension and Other Ineligibility and Voluntary Exclusion
☐ All Motor Vehicle Safety and Pollution Certificate
☐ All Equal Employment Opportunity
☐ All Drug Free Workplace
☐ All ADA Compliance
☐ All Title VI Compliance
☐ All Environmental, Resource Conservation, and Energy Requirements
☐ > $100,000 Lobbying Certificate
☐ > $100,000 Standard Form LLL and Reporting Instructions
☐ > $100,000 Bus Testing Certification
☐ > $100,000 TVM Certifications
☐ > $100,000 Buy America Certification
☐ All Indemnification
☐ All Inspection
☐ All Liquidated Damages (with damage cost calculation)
☐ All Prohibited Interest
☐ All Bonding Requirements
☐ All Recycled Products
☐ All Bus Testing
☐ All Motor Vehicle Safety and Pollution
☐ All Resolution of Disputes, Breaches, or Other Litigation
**PRE-AWARD:**

- [ ] > $25,000  SAM Search and Printouts
- [ ] All  Cost Analysis
- [ ] RFP  Evaluation Scoring/Proposal Ranking  Completed

**POST-AWARD:**

- [ ] POS  Send Executed Purchase Order to Vendor
- [ ] All  DBE Forms Provided to DBE Officer
- [ ] All  Hard copy files complete - stored in:
  - [ ] Maintenance  [ ] Admin.  [ ] Accounting

**Procurement Process Complete**

SIGNATURE

DATE
Project Name/Purchase: ____________________________ Date: ________________

Solicitation Type: [ ] Request for Quotes [ ] IFB [ ] RFP [ ] Sole Source

**PRE-SOLICITATION:**

- □ Independent Cost Estimate
- □ UPC Search For Potential DBE Firms ______ Firm(s) Found
- □ Sole Source Justification (if applicable)

**SOLICITATION:**

- □ Proof of Advertisement (if applicable)
FEDERAL CLAUSES (C 4220.1F - APPENDIX D):

- **ALL** No Federal Obligations to Third Parties
- **ALL** False Statements or Claims Civil and Criminal Fraud
- **ALL** Access to Third Party Contract
- **ALL** Changes to Federal Requirements
- **ALL** Termination
- **ALL** Disadvantaged Business Enterprises (DBE)
- **ALL** Incorporation of FTA Terms
- **ALL** Energy Conservation
- **ALL** ADA Access
- **ALL** Transit Employee Protective Agreements
- **ALL** Drug and Alcohol Testing
- **ALL** Recycled Products
- **> $2,000** Contract Work Hours and Safety Standards Act
- **> $10,000** Civil Rights (Title VI, EEO, ADA)
- **> $25,000** Suspension and Debarment
- **> $100,000** Resolution of Disputes, Breaches, or Other Litigation
- **> $100,000** Lobbying
- **> $100,000** Clean Air
- **> $100,000** Clean Water
- **ITS Projects** Conformance with ITS National Architecture
- **Transport** Fly America

OTHER REQUIREMENTS:

- **All** Non-Collusion Statement
- **All** Sexual Harassment
- **All** Contractor Integrity
CERTIFICATIONS:

□  > $18,500  Non-Collusion Statement
□  > $18,500  Non-Discrimination/Sexual Harassment
□  > $18,500  DBE Certification
□  > $18,500  Affidavit of Disadvantaged Business Enterprise
□  > $18,500  Contractor Integrity
□  > $25,000  Debarment, Suspension and Other Ineligibility and Voluntary Exclusion
□  > $100,000  Lobbying Certificate

PRE-AWARD:

□  > $25,000  SAM Search and Printouts
□  All  Cost Analysis
□  RFP  Evaluation Scoring/Proposal Ranking Completed

POST-AWARD:

□  POS  Send Executed Purchase Order to Vendor
□  All  DBE Forms Provided to DBE Officer
□  All  Hard copy files complete - stored in:

[ ] Maintenance  [ ] Admin.  [ ] Accounting

Procurement Process Complete
SIGNATURE

Date
ADDITIONAL PROCUREMENT PROCESS FORMS

In accordance with NWARPC policy and compliance with federal regulations, the clauses listed herein apply to purchase orders funded in whole or in part with federal funds. Vendors filing an order in whole or in part agree to comply with the applicable federal provisions.

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES – (1) NWARPC and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal Assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

FALSE OR FRAUDULENT STATEMENTS OR CLAIMS - The supplier acknowledges and agrees that:

(1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. Part 31, apply to its activities in connection with the Project. Accordingly, by accepting the purchase order, the supplier certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by the purchase order. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Recipient to the extent the Federal Government deems appropriate.

(2) If the supplier makes a false, fictitious, or fraudulent claim, state, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized for 49 U.S.C. § 5307, the Government reserves the right to impose on the Recipient the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

ACCESS TO RECORDS - Upon request, the supplier agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the supplier and its subcontractors pertaining to the Project.

CHANGES TO FEDERAL REQUIREMENTS- Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in this Agreement and in agreements between the NWARPC and FTA, as they may be amended or promulgated from time to time during the terms of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

TERMINATION OF CONTRACT - This contract may be terminated upon the occurrence of any of the following:

A. If, through any cause the supplier shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or, if the supplier shall violate any of the covenants, agreements or stipulations of the Agreement, NWARPC may terminate this Agreement by giving written notice to the supplier of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. The supplier will only be paid for services and materials delivered and accepted.

B. NWARPC may terminate this Agreement at anytime without cause, provided that it gives written notice to the supplier of such termination, which shall be effective on the date of such notice. In the event of such termination, the supplier shall be compensated for the materials and services or materials delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

CIVIL RIGHTS REQUIREMENTS - (1) Nondiscrimination – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332. the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements that the FTA may issue.

(2) Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws, 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of the U.S. Department of Labor (U.S. DOL) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts et. seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex or age. 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. In addition, the Contractor agrees to comply with any implementing requirements that the FTA may issue.

(b) Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, The Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements the FTA mayissue.

(c) Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
(d) The Contactor also agrees to include these requirements in each subcontract financed in whole or in part with the Federal Assistance provided by the FTA, modified only if necessary to identify the affected parties.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) - It is federal and state policy to award a fair share of contracts to disadvantaged business firms.

Accordingly, affirmative steps must be taken to assure that disadvantaged businesses are utilized to meet DBE goals and objectives as outlined in the Grant Agreement. It is hereby declared to be the public policy of the NWARPC to encourage, develop and support the full participation of disadvantaged business in NWARPC contracts. “Disadvantaged Business Enterprises” as defined in Section 8(d) of the Small Business Act, is a small business concern owned and controlled by socially and economically disadvantaged individuals. The term “owned” means that at least fifty-one percent (51%) of the business is owned by disadvantaged group members, or in case of publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by disadvantaged group members.

INCORPORATION OF FTA TERMS - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, revised February 15, 2011, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NWARPC requests which would cause NWARPC to be in violation of the FTA Terms and Conditions.

ENERGY CONSERVATION REQUIREMENTS - Contractor agrees to recognize and comply with the mandatory standards and policies relating to energy efficiency that are contained in the Pennsylvania State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. § 6321 et seq.

RECYCLED PRODUCTS - The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.