

# Northwest Arkansas Regional Planning Commission

## Procurement Procedures

This document includes Independent Cost Estimate, Cost Analysis, Consultant Selection Procedures, Bid Protest and Debarment, Clauses and Certifications

Adopted: July 28, 2021

Revised and Adopted: January 26, 2022

# Northwest Arkansas Regional Planning Commission

## Procurement Procedures

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**RESOLUTION #2021-09**

**A RESOLUTION ADOPTING THE NWARPC PROCUREMENT PROCEDURES**

**WHEREAS**, as a recipient of federal aid, NWARPC is required to have adopted procurement procedures that comply with State and Federal requirements; and

**WHEREAS**, NWARPC had previously adopted ArDOT's procurement procedures for local public agencies as NWARPC's procedures; and

**WHEREAS**, said ArDOT procedures, as well as Federal requirements, have subsequently been updated and revised; and

**WHEREAS**, an updated version of the NWARPC Procurement Procedures has been developed, and has been reviewed for compliance as part of FTA's Triennial Review process of NWARPC's operations; and

**WHEREAS**, it is NWARPC's intent, desire, and policy to comply with all State and Federal procurement procedures through the adoption, submittal, and future application of the (updated) NWARPC Procurement Procedures.

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

**SECTION 1.** That the NWARPC Procurement Procedures, which are attached hereto and made a part hereof, be and are hereby adopted and approved.

**SECTION 2.** That a copy of this document shall be filed with State and Federal agencies as necessary and appropriate; and shall be utilized by the staff in future procurements.

**PASSED AND APPROVED THIS 28TH DAY OF JULY, 2021.**

  
\_\_\_\_\_  
CHAIR CHRIS KEENEY

ATTEST:

  
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**RESOLUTION #2022-02**

**A RESOLUTION ADOPTING THE REVISED NWARPC PROCUREMENT PROCEDURES**

**WHEREAS**, as a recipient of federal aid, NWARPC is required to have adopted procurement procedures that comply with State and Federal requirements; and

**WHEREAS**, NWARPC had previously adopted updated procurement procedures; and

**WHEREAS**, a revised version of the NWARPC Procurement Procedures has been developed, and has been reviewed for compliance as part of FTA's Triennial Review process of NWARPC's operations; and

**WHEREAS**, it is NWARPC's intent, desire, and policy to comply with all State and Federal procurement procedures through the adoption, submittal, and future application of the (revised) NWARPC Procurement Procedures.

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

**SECTION 1.** That the NWARPC Procurement Procedures, which are attached hereto and made a part hereof, be and are hereby adopted and approved.

**SECTION 2.** That a copy of this document shall be filed with State and Federal agencies as necessary and appropriate; and shall be utilized by the staff in future procurements.

PASSED AND APPROVED THIS 26TH DAY OF JANUARY, 2022.



CHAIR, MAYOR CHRIS KEENEY

ATTEST: Jeff Hawkins

## 1. Introduction

The purpose of procurement procedures is to establish a uniform policy relating to the purchase of services, solicitation of revenue contracts and goods by the Northwest Arkansas Regional Planning Commission.

NWARPC is the designated recipient for the Fayetteville-Springdale-Rogers AR-MO Urbanized Area for the Urbanized Area Formula Grants that are apportioned by FTA. The apportioned Section 5339 and Section 5307 FTA Urbanized Area Formula funds are utilized by [Ozark Regional Transit](#) and [Razorback Transit](#) for capital, operating assistance, preventative maintenance, ADA paratransit service and enhancements and by NWARPC for transit planning.

The purpose of the Procurements Procedures to ensure that all technical specifications and contract requirements are met and to monitor compliance with FTA and FHWA requirements.

NWARPC follows the Arkansas Department of Transportation (ARDOT) Local Agency Consultant Selection Procedures published on August 27, 2019 and included in this document. In addition, NWARPC follows supplemental FTA procurement selection procedures included in this document.

## 2. Local Agency Consultant Selection Procedures

The following *Local Agency Consultant Selection Procedures* was approved by the Arkansas Department of Transportation on August 27, 2019 and adopted by Northwest Arkansas Regional Planning Commission (NWARPC) on July 28, 2021. These procedures constitute the procurement policy for NWARPC. These procedures constitute the procurement policy for NWARPC and will be followed for Competitive Proposals in addition to Engineering and Design Services Proposals.

# LOCAL AGENCY

## CONSULTANT SELECTION PROCEDURES

August 27, 2019

Recommended:



Assistant Chief Engineer-Design  
Arkansas Department of Transportation

Approved:



Deputy Director and Chief Engineer  
Arkansas Department of Transportation

**LOCAL AGENCY**  
**CONSULTANT SELECTION PROCEDURES**

**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 and that the 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.

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”
- 23 U.S.C. 402 “Highway safety programs”
- 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”
- 48 CFR Part 31 “Contract Cost Principles and Procedures”
- 49 CFR Part 1.48(b) “The Federal Highway Administrator is delegated authority to administer the following provisions of title 23, Highways, U.S.C.”

In accordance with the above federal laws and regulations, the Arkansas Department of Transportation (Department) has approved these procedures for use by

the Local Agency 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.*).

The Local Agency will use these procedures for Federal-aid contracts and may elect to use them for non-Federal-aid contracts.

## **Section II – Advertisement for Letters of Interest**

The Local Agency may employ a consultant engineering firm when a need exists for engineering services, and it is in the Local Agency’s best interest to employ an engineer or engineering firm.

As a minimum, the Local Agency will advertise in a statewide newspaper, the Department’s website and the Local Agency’s website (if available), advising that consultant engineering services are being sought. In addition, the Local Agency 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 including primary contact information.
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](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.
4. The firm’s current copy (within 12 months) of the Department and Finance and Administration (DFA) Illegal Immigrant Contractor Disclosure Form (Ark. Code Ann. §19-11-105).  
<https://www.ark.org/dfa/immigrant/index.php/user/welcome>

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 work in general terms 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 projects they are interested in performing. When the Local Agency decides to proceed with a certain project, those firms having expressed interest in that 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 Local Agency may proceed with evaluation and selection if the Local Agency and the Department determines that the solicitation did not contain conditions or requirements that arbitrarily limited competition. Alternatively, the Local Agency 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 Local Agency 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 Local Agency employee may participate in selection, award or administration of a contract in which the Local Agency 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, 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 Local Agency will designate a Selection Committee (Committee) to evaluate and analyze the letters of interest (LOI) and proposals.

## **Section IV – Evaluation of Letters of Interest**

The Committee will evaluate each consultant firm based on the criteria provided in the detailed LOIs in general as follows:

No.	Evaluation Factors for LOIs	Maximum Points Possible
1	Professional staff including the education, experience, number of personnel available, and any partnerships with sub-consultants	10
2	General and professional reputation, including responsiveness to civil rights and equal employment opportunity requirements and opportunities	10
3	*Past work performance	10
4	Experience with projects of a similar nature as those advertised	10
	<b>Total Points for LOI</b>	<b>40</b>

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

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

## **Section V – Request for Proposal**

The Local Agency will prepare a scope of work statement and request proposals from the engineering firms on the short list. For projects with FHWA oversight, which are identified by FHWA as Projects of Division Interest (PoDI) projects, the Local Agency will forward the scope of work statement to the Department and FHWA for review and approval before soliciting request for proposals (RFPs). A Local Agency'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 Local Agency,
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, and
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, and
6. Updated Standard Form 330 Parts I and II, if necessary.

The Committee will review the proposals with particular attention to the five (5) listed evaluation factors for the proposals and will also consider the results determined in Section IV. The evaluation factors and their relative importance will be listed in the RFP if any of the factors are different from the list below.

No.	Evaluation Factors for Proposals	Maximum Points Possible
1	Obvious indication that the scope of work is clearly understood	20
2	Comprehensive, coherent, and detailed work plan	20
3	Realistic work schedule when applicable	10
4	Proposed working office location, need for a local office, and any local representative*	5
5	Identification of sub-consultants and responsiveness to DBE goals and opportunities	5
6	Total Points for LOI	40
	Total Points for Proposals	100

\*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.)

Based on these evaluation factors, the Committee will rank the consultants based on the total score and submit the list to the Local Agency who will either:

1. Select one (1) firm to enter negotiations with; or
2. Select
  - a. Multiple firms for an 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 will re-evaluate the firms based on the interview and the same evaluation factors as noted previously. The ranking list will be submitted to the Local Agency for review and final selection.

The Local Agency's contract file will contain records of the rankings and supporting data; however, the rankings will not be public information. Copies of the LOI advertisement, the rankings, and supporting data shall be submitted to the Department.

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.

## **Section VI – Negotiation and Contract Preparation**

Once a firm is selected for negotiation for a specific job or a group of projects, it will prepare a draft contract including a cost estimate for the project(s). 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 Local Agency 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 172, the draft contract must include an overhead 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 through 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 through 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.

Pursuant to this requirement, the Department will notify the Local Agency if an audit by a certified public accountant for the selected firm is necessary. The certified audit needs to be provided by the selected firm prior to the submission of the final draft contract.

The Local Agency will review the draft contract proposal and either approve it as submitted or enter into negotiations with the selected firm to establish a contract and contract ceiling price that the Local Agency deems is fair and reasonable. If a satisfactory contract cannot be negotiated with the selected firm, negotiations will be

formally terminated. The Local Agency will then enter into negotiations with the second ranked firm. If negotiations with that firm fail, the Local Agency will formally terminate those negotiations and begin to negotiate with the third ranked firm, and so on. If the Local Agency cannot negotiate a satisfactory contract with any of the firms on the short list, the Local Agency 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 Local Agency and the consultant agree the negotiated contract is fair and reasonable, the consultant will prepare a final draft and submit it to the Local Agency and the Department for review. After review and a determination that it is acceptable, the consultant will sign the contract. The Local Agency will then execute the contract. The contract will subsequently be submitted to the Department for final review and approval including funding. When approved, copies of the signed contract will be distributed within the Local Agency 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 the Local Agency executes an on-call or IDIQ contract, it 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 Local Agency. The task order will include a manpower estimate and cost. The Local Agency 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 Local Agency deems is fair and reasonable. After review and a determination that the task order is acceptable, the consultant will sign the task order. The Local Agency will then execute the task order. The task order will subsequently be submitted to the Department for final review and approval including funding. When approved, copies of the signed task order will be distributed within the Local Agency 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 Local Agency may designate staff members as key liaisons for specific projects or for technical matters during the administration of the contract period.

The Local Agency will:

1. Maintain the contract files,
2. Arrange and attend periodic progress meetings,
3. Coordinate reviews and approval actions with other agencies when necessary,
4. Review progress payments,
5. Coordinate questions from the consultant,
6. Negotiate any change or amendment to the contract and submit to the Department for review and approval, and
7. Prepare an evaluation of the consultant's performance after completion of the contract. A copy of the evaluation shall be submitted to the Department.

## **Section VIII – Consultant Liability**

The Local Agency 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 Local Agency, and conform to the requirements of the Agreement. This warrant is effective regardless of the degree of inspection and acceptance by the Local Agency or others.

If the consultant is required to correct or re-perform any work or services, the work will be performed at no cost to the Local Agency, 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 industry standards. If the consultant fails or refuses to correct or re-perform, the Local Agency 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 Local Agency by which the Local Agency approves specific services, as partial or complete performance of the contract. Correction is the elimination of a defect.

### 3. Additional Consultant Selection Procedures

#### Maintenance of contract oversight

NWARPC will maintain oversight to ensure that the contractors perform in accordance with the terms, conditions, and specifications of their contracts and/or purchase orders. The project manager in collaboration with the book-keeper will ensure that the contractor's invoices and purchase orders are in accordance with the contract specifications.

NWARPC will:

- Maintain the contract files
- Arrange and attend periodic progress meetings
- Coordinate reviews and approval actions with other agencies when necessary
- Review progress payments
- Coordinate questions from the consultant
- Negotiate any change or amendment to the contract and inform FTA of any changes to the contract
- Evaluate the consultant's performance after completion of the contract

#### Written standards of conduct

NWARPC ensures that employees and contractors will follow standards of conduct outlined in the NWARPC Employee Handbook, Conflict of Interest - Written Code of Standards and Procedures for Federal Procurement (Appendix B), as well as the Procurement Procedures outlined in this document.

#### A. THE PRE-CONTRACTING PHASE

##### 1. Prepare Written Codes of Standards of Conduct

NWARPC requires that each of its subrecipients maintain a written code of standards of conduct applicable to its employees (including contractor employees), officers, board members, and agents (including outside consultants) involved in the selection, award or administration of federal funded procurements. The NWARPC code of conduct complies with all the requirements as set forth in the NWARPC Employee Handbook. These federal requirements are incorporated in the Appendix B - Conflict of Interest - Written Code of Standards and Procedures for Federal Procurement of the NWARPC Employee Handbook.

## 2. Conflict of Interest Certifications

NWARPC is an oversight agency and requires evaluation and awarding committee's members (officers, board members, etc., as applicable) to submit a "Conflict of Interest" Certification on a project-by-project basis before that person commences work on the selection, award or administration of a contract. This certification states that neither the committee member (etc.) nor any member of his or her immediate family has a financial or employment interest in any of the relevant bidders, offerors, or contractors for the procurement in question. If the employee identifies a real or apparent conflict of interest, then NWARPC will take action to mitigate it. These actions are detailed in the Written Code of Standards and Procedures for Federal Procurement of the NWARPC Employee Handbook - Appendix B - Conflict of Interest.

## 3. Prepare Written Procedures for Addressing Personal and Organizational Conflicts of Interest.

Once a personal conflict has been identified, mitigating measures to allow the committee member back into the process, may include creation of blind trusts, recusal or limit on scope of participation. These procedures are detailed in the Written Code of Standards and Procedures for Federal Procurement of the NWARPC Employee Handbook - Appendix B - Conflict of Interest.

## B. THE PROPOSAL STAGE

### 1. Define the Project to Avoid Potential Conflicts.

NWARPC attempts to recognize and anticipate potential conflicts in procurements.

- a. NWARPC does not allow a company that prepares the specifications for procurement to supply the products.
- b. NWARPC attempts to structure all projects as to avoid conflicts among contractors and subcontractors.

### 2. Advance Restrictions.

When the grantee awards separate contracts on related procurements, the grantee might consider placing notice of an advance restriction in the solicitation where a conflict may arise. Prime contractors are required to inform prospective subcontractors (and to give evidence that they have done so) that the subcontractors also could be subject to the restrictions in future contracting. When an advance restriction is desired, the solicitation will include:

- An explanation of the conflict or potential conflict;
- The nature of the proposed restriction upon future contractor activities; and
- The terms of any proposed clause and whether those terms are negotiable, depending on the nature of the acquisition.



### 3. For Environmental Impact Statement Contracts, Comply with CEQ Regulations.

Regulations promulgated by the Council on Environmental Quality require each contractor who develops an environmental impact statement to sign a disclosure statement certifying that it has no financial or other interests in the outcome of the proposed project. This requirement is intended to prevent contractors who are hired to study alternatives and potential environmental impacts of proposed projects from presenting and profiting from biased recommendations. Pursuant to the regulations, grantees must require the submission of a disclosure statement in request for proposals for consulting services so that such conflicts can be identified early in the contracting process. The grantee also must comply with 40 CFR § 1506.5 and "Guidance Regarding NEPA Regulations," 48 Fed. Reg. 34263 (July 18, 1983).

### 4. Consult with Legal Counsel.

When necessary, before defining the scope of a project or publishing any document describing the project, such as a statement of work, NWARPC shall ask its counsel to review the project and any descriptive documentation for compliance with conflict rules.

## C. THE SELECTION AND AWARD PHASE

### 1. Obtain Conflict of Interest Certifications from employees, board members, agency personnel, evaluation and awarding committee members, as required.

Each committee member who will be assigned to work on the procurement should submit his or her certification to the NWARPC Project Coordinator before the selection process begins. If a committee member fails to submit the required no-conflict certification, then NWARPC should direct the Project Coordinator to evaluate and resolve the committee member's ability to sit on the committee.

## D. THE ADMINISTRATION PHASE

### 1. Monitor Contract Staff/Contractor Compliance with Conflicts Rules.

During the administration phase of a project, NWARPC should require each of its employees (etc.) involved in the project to report any changes in his or her financial holdings or other interests that might cause a conflict of interest. Similarly, NWARPC should require the contractor to report any changes in the company's financial holdings, newly developed contractual or other relationships, or those of its parents, subsidiaries, and affiliates. In this way, the grantee can monitor the situation and address personal or organizational conflicts that might arise during the administration phase of the project.

## 2. Obtain Certifications from Contractor Personnel Governed by Professional Codes of Responsibility.

Before a contractor begins work on a project, NWARPC may request a written statement from any contractor personnel working on the project whose conduct is governed by a professional code of responsibility, in each case identifying any relevant code and certifying that he or she will comply with its rules on all grantee-related work.

## 3. Disciplinary Action for Violation of Conflict of Interest

Any NWARPC employee (including contractor employee) that knowingly violates the Conflict of Interest Written Code of Standards and Conducts for Federal Procurements shall be disciplined according to the NWARPC Employee Handbook.

## E. THROUGHOUT THE ENTIRE PROCESS

### 1. Consult with Legal Counsel.

NWARPC will work with legal counsel throughout the entire process, as deemed necessary, to review all situations that appear to have the potential for a conflict of interest. Counsel may also suggest that involvement by FTA Regional Counsel would be appropriate and solicit FTA Regional Counsel's advice when necessary.

### 2. Mitigate Conflicts.

As potential conflicts arise during the procurement process, NWARPC will take steps to avoid the conflict or, if that avoidance is not possible, mitigate its effects.

### *Unnecessary or duplicative items*

The request for purchase is made with the Executive Director who will follow the proper procedures to ensure compliance with this policy. An order is not to be placed until the order approval is completed and signed by the Executive Director. The Executive Director shall review the procurement requisitions to avoid purchasing unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements or any other means to obtain a more economical purchase.

### *Award with responsible contractors*

All contracts, whether by formal bid or other means, shall be made on a competitive basis to the maximum practicable extent. Purchases shall be made and contracts awarded to only responsible contractors and suppliers. Responsible contractors and suppliers are defined as those that have the

financial means to fulfill the contract; have the ability to meet the required delivery or performance schedule, taking into consideration all existing commitments; have a record of satisfactory performance; have a satisfactory record of integrity; be neither debarred nor suspended from Federal programs under DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. parts 180 and 1200, or under the FAR at 48 C.F.R. part 9, subpart 9.4 or have other qualifications necessary to receive an award under applicable laws and regulations. **See 6. Contractor Responsibility/Responsiveness Determination Form on page...** Additional criteria will be specified by NWARPC within the RFP.

### *Time and Materials contracts*

NWARPC will not use time and materials contracts unless:

- (1) after determining that no other type of contract is suitable; and
- (2) if the contract specifies a ceiling price that the contractor will not exceed except at its own risk.

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

### *Contract dispute resolution*

**Disputes** – Unless otherwise noted within individual contracts, disputes arising in the performance of contracts with NWARPC, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of NWARPC's Executive Director. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by NWARPC, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

**Remedies** - Unless the contract provides otherwise, all claims, counterclaims, disputes and other matters in question between NWARPC and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Arkansas.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the NWARPC, or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**Disputes concerning labor standards** – Disputes arising out of the labor standards provisions of NWARPC contracts shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

## COMPETITION

### *Full and open competition*

All procurement transactions will be conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:

- a. Unreasonable requirements placed on firms in order for them to qualify to do business;
- b. Unnecessary experience and excessive bonding requirements;
- c. Noncompetitive pricing practices between firms or between affiliated companies;
- d. Noncompetitive awards to any person or firm on retainer contracts;
- e. Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- f. Specifying only a "brand name" product instead of allowing "an equal" product to be offered without listing its outstanding characteristics.

### *Prohibition on geographic preference*

Procurements shall be conducted in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection

criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

### *Use and maintenance of prequalification lists*

NWARPC does not utilize a pre-qualification list.

## METHODS OF PROCUREMENT

### *Allowed Method of Procurement:*

The method by which goods and services are procured is dictated by internal authority purchasing policies as adopted by the RPC/Policy Committee, as well as governmental requirements. Once need is established, the next step is to determine the appropriate purchasing technique. The table below is presented as a guideline.

PROCUREMENT METHOD	CRITERIA	CONDITIONS	EXAMPLES
<b>Micro-Purchase</b>	No quote required	Value of goods/services procured is less than \$3,500	Office supplies, Printing & Publications
<b>Small Purchase</b>	Documented quotes – minimum of two (2) quotes unless Executive Director requires 3 quotes	Value of goods/services procured is between \$3,500 and \$150,000. Item carries a warranty.	Computers, Electronics
<b>RFP</b>	Request for Proposal, Formal Advertising, Firm Fixed Price Contract	Professional services where supplier qualifications and experience are an important part of determination.	Professional Services: <ul style="list-style-type: none"> <li>• Auditing</li> <li>• Legal</li> <li>• Marketing or Contracted Services</li> <li>• Insurance Brokerage</li> </ul>

### *Micro purchase method of procurement – Under \$3,500*

NWARPC will comply with both ARDOT micro-purchase requirements, and also the FTA established threshold requirement. The following conditions shall be met:

1. Purchase requests are initiated by staff and communicated to Office Administrator/Bookkeeper and must be approved by the Executive Director. Orders are placed with selected vendor. Depending on circumstances, multiple quotes should be obtained verbally. No quote is required; however, sources should be evaluated to assure fairness and full knowledge of prevailing prices.
2. Exempt from “Buy America”.
3. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition.
4. The Davis-Bacon Act applies to construction contracts over \$2,000.

5. A determination that the price is fair and reasonable and how this determination was derived should be included and documented in the procurement file.

### *Small purchase method of procurement – Value between \$3,500 and \$150,000*

1. Purchase requests are initiated by staff and Office Administrator/Bookkeeper and must be approved by the Executive Director.
2. The Arkansas State eProcurement system (ARBuy <https://arbuy.arkansas.gov/bso/>) may be utilized. If not, two quotes minimum, unless the Executive Director requires three quotes, to be solicited in writing or by phone by Office Administrator/Bookkeeper. Quotes and sources are documented for file.
3. Order is placed with selected vendor.
4. Exempt from “Buy America”.

### *Competitive proposals*

Competitive proposals, commonly known as a request for proposals, or RFP, are a generally accepted procurement method when the nature of the procurement does not lend itself to sealed bidding and NWARPC expects that more than one source will be willing and able to submit an offer or proposal. NWARPC will follow the ARDOT’s consultant selection procedures included in this procurement document.

### *Non-competitive proposals*

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source (a/k/a as “sole source”). Noncompetitive or sole source procurements may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non- Federal entity; or (4) After solicitation of a number of sources, competition is determined inadequate. 2 C.F.R. § 200.320(f).

### *Sealed bid*

RFPs and RFBs are to be opened at the time and place stated in the request for bid. One witness is required at every bid opening. At this time, the name of the vendor, the submitted price (unless it is a

two-step bid process), and the tabulation of all requested documentation is announced. Any negotiating or changes of submitted bids by those present is not permitted. Final evaluation of submitted bids will not take place at this time.

All bids are to be sealed until the day & time of the opening. If a bid is received opened or opened accidentally, it shall be sealed, dated and signed by the person who received it. A brief explanation should also be attached.

Contracts will be awarded to the lowest responsive and responsible bidder. Accordingly, price will be important, but not the sole, consideration in the selection of a successful bidder. Most RFPs should include the procurement criteria for vendor selection. When determination of lowest and best bid is made, notification of award shall be made in writing and a date set for contractual commitment within a reasonable timeframe.

Bid evaluations will be conducted in the same manner as prescribed in the bid solicitation. The factors in the evaluation and their weighing should be consistently applied. In the review and evaluation of bids, the criteria for selection can be modified if it is determined to be in the best interest of NWARPC. The evaluation committee can develop and /or expand the previously stated selection criteria included in the RFP.

### *Prohibition of exclusionary or discriminatory specifications*

NWARPC is an Equal Opportunity Employer. As such, NWARPC agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, NWARPC agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for A-26 employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e *et seq.*, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of 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. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. 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, religion, national



origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, 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 FTA may issue.

3. **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, 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 FTA may issue.

4. **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § A-27 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

### Compliance with "Buy America"

FTA's "Buy America" law and regulations apply to projects that involve the purchase of more than \$100,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in the FTA assisted project. If FTA funds are used for the project, Buy America requirements apply to all procurement contracts under the project irrespective of whether a recipient decides to fund a discrete part of the project without FTA funds. Only if an activity is outside the FTA project and is financed entirely without funds to which FTA's Buy America regulations would apply may the recipient disregard FTA's Buy America requirements. Property that the contractor acquires to fabricate a deliverable for the recipient, such as tools, machinery, and other equipment or facilities, is not subject to FTA's Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third-party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, the recipient may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether the property acquired would comply with FTA's Buy America regulations. FTA's Buy America statute does not pre-empt State laws with stricter requirements on the use of foreign articles, materials, and supplies.

FTA cautions that its Buy America regulations that apply to FTA assisted third party procurements, published at 49 CFR Part 661, differ from Federal "Buy American Act" regulations that apply to direct Federal procurements, published in the FAR at 48 CFR Chapter 1, Subparts 25.1 and 25.2. FTA



strongly recommends that the recipient review FTA's Buy America regulations before undertaking any FTA assisted procurement.

## CONTRACT COST AND PRICE

### *Negotiation of contractor profit*

NWARPC will use Section VI – Negotiation and Contract Preparation in the ARDOT's Local Agency Consultant Selection as the basis for negotiation of Contractor profit.

### *Estimated costs*

Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

### *Prohibition of cost-plus contracts*

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

## 4. Northwest Arkansas Regional Planning Commission (NWARPC) Independent Cost Estimate and Cost Analysis

### 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 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:**

Amount Paid	Invoice Date	Invoice Description	Invoice Number	Vendor Name

**Signature of Preparer:**

The preceding cost estimate was obtained or prepared by:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## B. COST ANALYSIS

After obtaining written quotes or bids, a written evaluation of the prices must be performed comparing the quotes/bids to be 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:**

Item	In-House Estimate			

**Comments:**

## 5. Sole Source Justification

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: \_\_\_\_\_

## 6. Contractor Responsibility/Responsiveness Determination

The following form shall be completed during the procurement process to ensure that the contractor is a responsible party and does not appear to be declined or suspended from conducting business.

Solicitation Number:

Contractor Name:

Contractor Address:

Circle all applicable statements:

1. A review of Federal and state websites dated \_\_\_\_\_ has been conducted and the contractor DOES / DOES NOT appear as suspended or debarred.

Federal website: [www.sam.gov](http://www.sam.gov) (Attach printout of entity record)

2. The Contractor **HAS / HAS NOT** performed satisfactorily on other contract(s) awarded by this agency.

3. A survey of other agencies and companies doing business with the contractor was performed. **ADVERSE / NO ADVERSE** information has been received that would bring the contractor's present responsibility and technical capability into question.

List the agencies/companies contacted, dated contacted and person providing information.

Agency / Company	Date of Contact	Person Contacted	Adverse information provided?	
			Yes	No
			Yes	No
			Yes	No
			Yes	No

4. A review of the Contractor's financial and technical resources **DO / DO NOT** indicate that it is capable of performing the contract.

List documentation reviewed.

Document(s) Reviewed	Publication Date	Reflects capability?	
		Yes	No
		Yes	No
		Yes	No
		Yes	No

5. State/local government agencies were contacted, and the contractor **DOES / DOES NOT** have a record of any outstanding code violations, improper business practices, or similar history of non-compliance with public policy.

List agencies contacted.

Agency / Company	Date of Contact	Reflects a history of compliance?	
		Yes	No
		Yes	No
		Yes	No

6. Other pertinent information received **DOES / DOES NOT** affect the Contractor's responsibility.

List parties contacted and results of contact (*e.g., Better Business Bureau, Business Licenses, Dunn and Bradstreet, other credit agencies, [www.fapiis.gov](http://www.fapiis.gov)*,

Agency / Company	Date of Contact	Results

7. The Contractor **IS / IS NOT** responsive to the solicitation requirements and specifications.

In accordance with 24 CFR 85.36 (b)(8), the contractor is considered to be **RESPONSIBLE / NON-RESPONSIBLE** and **DOES / DOES NOT**

possess the ability to successfully perform under the terms and conditions of this contract.

Submitted by:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## 7. 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.



## 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.

## 8. NWARPC Procurement Checklist and Certifications

NWARPC will comply with the requirements of 49 U.S.C chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that will affect its third-party procurements. As part of the procurement process, NWARPC will identify the most recent FTA published Federal Clauses Certifications and Assurances list and include them in the solicitations based on the type of solicitation and projected total contract amount. NWARPC will select each Certification and Assurance pertinent to the solicitation and include them in the solicitation materials. In addition, the following Forms and Checklists will be used to include the most recent clauses and reference information in both the solicitation and contract documents. The table at the end of this document will serve as a guide/check list to the inclusion of Clauses and Certifications in the solicitation documents. The table will be updated as information from FTA is available.

## 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)

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Has complaint been resolved?                      YES                      NO

COMPLAINANT'S SIGNATURE: \_\_\_\_\_ TITLE \_\_\_\_\_

PHONE# \_\_\_\_\_ DATE: \_\_\_\_\_

ACTION TAKEN BY: \_\_\_\_\_ Resolution Code No.: \_\_\_\_\_

BUYER: \_\_\_\_\_ DATE: \_\_\_\_\_

PROFESSIONAL SERVICES / A&E

Project Name/Purchase: \_\_\_\_\_

Date:

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

PRE-SOLICITATION:

Independent Cost Estimate

*Pre-Solicitation Completed*

UPC Search For Potential DBE Firms \_\_\_\_\_ Firm(s) Found  
INITIAL ABOVE

Sole Source Justification (if applicable)

SOLICITATION:

Proof of Advertisement (if applicable)

Solicitation Completed (Initial Above)

**PRE-AWARD:**

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

Pre-Award Completed

INITIAL ABOVE

**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

Post-Award  
Completed

INITIAL ABOVE

\_\_\_\_\_  
Procurement Process Complete  
SIGNATURE

\_\_\_\_\_  
Date

OPERATIONS / MANAGEMENT

Project Name/Purchase: \_\_\_\_\_ Date: \_\_\_\_\_

Solicitation Type:     Request for Quotes     IFB     RFP     Sole Source

PRE-SOLICITATION:

Independent Cost Estimate

*Pre-Solicitation Completed*

UPC Search For Potential DBE Firms    \_\_\_\_\_ Firm(s) Found

INITIAL ABOVE

Sole Source Justification (if applicable)

SOLICITATION:

Proof of Advertisement (if applicable)

*Solicitation Completed*

INITIAL ABOVE



**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

*Pre-Award Completed*

INITIAL ABOVE

**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

*Post-Award*

*Completed*

INITIAL ABOVE

\_\_\_\_\_  
Procurement Process Complete  
SIGNATURE

\_\_\_\_\_  
Date

# Lobbying Certification

The following form will be required to be completed by applicants for procurements of grants and awards of **\$100,000 or more**.

## Certification Regarding Lobbying

### Certification for Awards, Grants, Contracts and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

APPLICANT'S ORGANIZATION: \_\_\_\_\_

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

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 any time 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, 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 may issue.

(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 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.

CLAUSE	COMMENTS	REFERENCE	Certification (Yes/No)
No Federal government obligations to third-parties by use of a disclaimer		§2.m	
Access to Records		§10.a	
Federal changes		§2.g	
Civil Rights (EEO, Title VI & ADA)		§13	
Incorporation of FTA Terms	Per FTA C 4220.1F		
Energy Conservation		§30	
Veterans Employment	<i>Capital projects, to the extent practicable</i>	<i>Section 2108 of Title 5</i>	
Termination provisions (Deficiency)		Appendix II to Part 2002	
Debarment and Suspension	2 CFR Parts 180 and 1200	§3.b	
Notice to FTA and U.S. DOT Inspector General of information related to fraud, waste, abuse, or other legal matters	Applies to all contracts at all tiers expected to equal or exceed \$25,000. The recipient must require a prime contractor to “flow-down” the requirement to subcontractors.	FTA Master Agreement (2019) §39(b)	
Lobbying		§3.d	
Buy America	When tangible property or construction will be acquired		

CLAUSE	COMMENTS	REFERENCE	Certification (Yes/No)
Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act		Appendix II to Part 200§17.n	
Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate <i>(Deficiency)</i>		Appendix II to Part 200	
Cargo Preference	When acquiring property suitable for shipment by ocean vessel	§16.b	
Fly America	When property or persons transported by air between U.S. and foreign destinations, or between foreign locations	§16.c	
Davis Bacon Act <i>(Deficiency)</i>	All prime construction contracts in excess of \$2,000	Appendix II to Part 200	
Copeland Anti-Kickback Act Section 1 Section 2	All Contracts >\$2,000	§28.a	
Contract Work Hours & Safety Standards Act <i>(Deficiency)</i>	All contracts in excess of \$100,000 that involve the employment of mechanics or laborers	Appendix II to Part 200§28.a	

CLAUSE	COMMENTS	REFERENCE	Certification (Yes/No)
<p>Bonding (<i>Deficiency</i>)</p> <ol style="list-style-type: none"> <li>1. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid" guarantee must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.</li> <li>2. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.</li> <li>3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.</li> </ol>	<p>For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected</p>	<p>2 CFR 200.325</p>	
<p>EEO (<i>Deficiency</i>)</p>	<p>All contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3</p>	<p>Appendix II to Part 200</p>	
<p>Seismic Safety</p>	<p>Contracts for construction of new buildings or additions to existing buildings</p>	<p>§26.b</p>	
<p>Special DOL Clause</p>	<p>Contracts &gt;\$10,000</p>	<p>§13.c(3)</p>	

CLAUSE	COMMENTS	REFERENCE	Certification (Yes/No)
Nonconstruction Employee Protection (Contract Work Hours and Safety Standards Act)	Applicable to all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) > \$100,000	§28.b	
Transit Employee Protective Arrangements	Applies to Section 5307, 5309, 5311 and 5316 projects	§28.d	
Charter Service Operations		§32	
School Bus Operations		§33	
Drug and Alcohol Testing	Safety sensitive functions. Applies to Sections 5307, 5309 and 5311 projects.	§40.b	
Rights to Inventions Made Under a Contract or Agreement <i>(Deficiency)</i>	Contracts that meet the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,”	Appendix II to Part 200	
Disadvantaged Business Enterprises (DBEs)	Contracts awarded on the basis of a bid or proposal offering to use DBEs	§13.d	



CLAUSE	COMMENTS	REFERENCE	Certification (Yes/No)
Prompt Payment and Return of Retainage	Per 49 CFR Part 26, if grantee meets the threshold for a DBE program	§13.d	
<p>6002 of the Solid Waste Disposal Act</p> <p><i>(Deficiency)</i></p> <p>When procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition</p> <p>Procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines</p>	For non-Federal entity that is a state agency or agency of a political subdivision of a state, contracts with purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000	2 CFR 200.322.	
ADA Access	Contracts for rolling stock or facilities construction/ renovation	§13.g	
Assignability Clause	Piggyback procurements	§17.a	
Special Notification Requirements for States		§42	

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE	Certification (Yes/No)
Bus Testing Certification and Report	Procurements of buses and modified mass-produced vans	§17.p(4)	
TVM Certifications	Procurements of buses and modified mass-produced vans	§13.d(3)	
Buy America Certification	Procurements of steel, iron or manufactured products > \$150,000	§16.a	
Pre-Award Audit	Rolling stock procurements	§17.p(3)	
Pre-Award Buy America Certification	Rolling stock procurements > \$150,000	§17.p(3)	
Pre-Award Purchaser's Requirement Certification	Rolling stock procurements	§17.p(3)	
Post-Delivery Audit	Rolling stock procurements	§17.p(3)	
Post-Delivery Buy America Certification	Rolling stock procurements > \$150,000	§17.p(3)	
Post-Delivery Purchaser's Requirement Certification	Rolling stock procurements	§17.p(3)	
On-Site Inspector's Report	Rolling stock procurements for more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population	§17.p(3)	
Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	Rolling stock procurements	§17.p(3)	
Excluded Parties Listing System search	Procurements > \$25,000	§3.b	
Lobbying Certification	Procurements > \$100,000	§3.d	

REQUIREMENT	COMMENTS	MASTER AGREEMENT REFERENCE	Certification (Yes/No)
Standard Form LLL and Quarterly Updates (when required)	Procurements > \$100,000 where contractor engages in lobbying activities	§3.d	
REQUIREMENT	COMMENTS	FTA C 4220.1F REFERENCES	
Contract Administration System			
Record of Procurement History			
Protest Procedures			
Selection Procedures			
Independent Cost Estimate	Awards over \$250,000		
Cost/Price Analysis	Awards over \$250,000		
Responsibility Determination			
Justification for Noncompetitive Awards	If applicable		
No excessive bonding requirements			
No exclusionary specifications			
No geographic preferences	Except for A&E services		
Evaluation of Options	If applicable		
Exercise of Options			