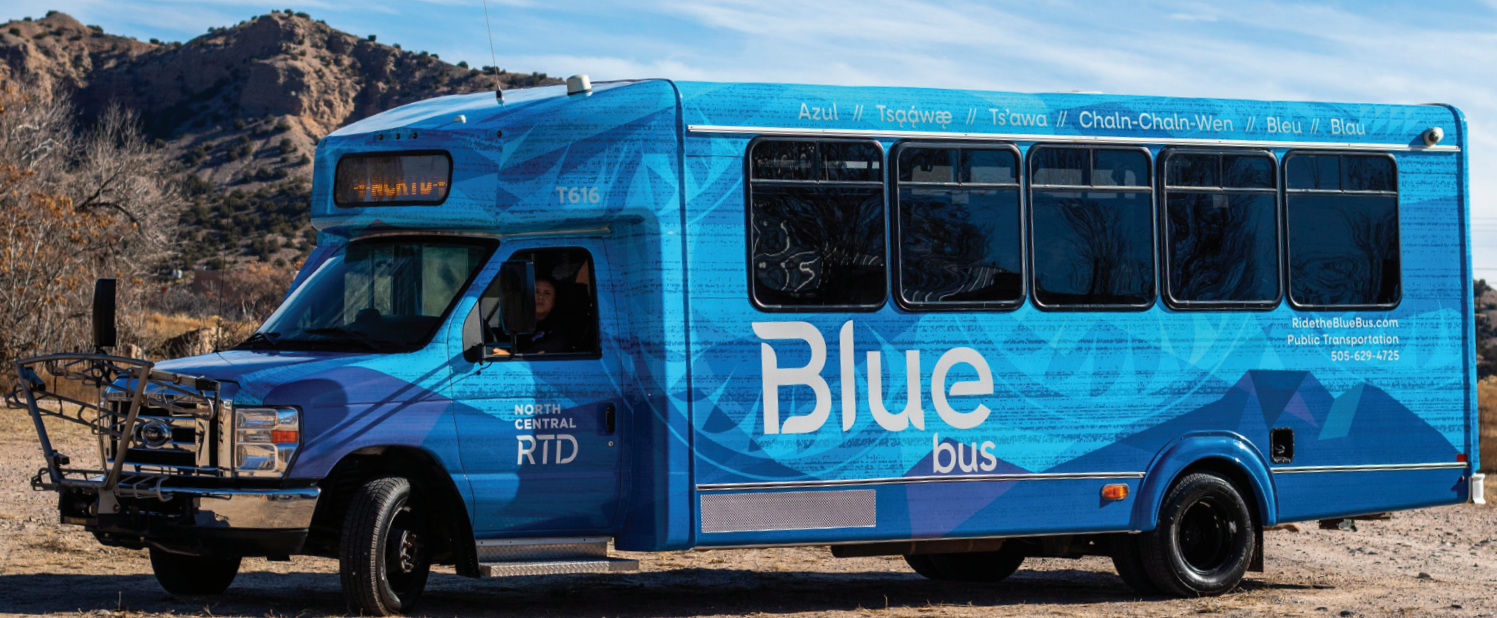


# 2023 **NORTH CENTRAL RTD PROCUREMENT REGULATIONS**

Amended and Adopted by Resolution No. 2023-31  
on September 8, 2023





# **North Central Regional Transit District Procurement Policy**

**Amended and Adopted by Resolution No. 2023-31  
on September 8, 2023**



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**North Central Regional Transit District**  
**Procurement Policy**

**ARTICLE I: PROCUREMENT**

**1. PURPOSE**

The purpose of this Procurement Policy (hereinafter the District’s “Procurement Policy”) is to provide for the fair and equitable treatment of all persons involved in public purchasing by the North Central Regional Transit District (hereinafter referred as the “District”), to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity. The District has independent statutory authority pursuant to NMSA 1978, Section 73-25-6 (A) (3) and (7) to purchase property and therefore the District’s purchases are generally “exempt from the Procurement Code as otherwise provided by law” pursuant to NMSA 1978, Section 13-1-98 (HH). Pursuant to NMSA 1978, Section 73-25-5 (G) has limited authority to adopt procurement policies regarding methods for handling claims and demands regarding procurement disputes but no such similar restriction has been imposed on the District’s general procurement authority.<sup>1</sup> To that end, this article shall govern all purchasing transactions of the District and shall serve to exempt the District from all provisions of the New Mexico Procurement Code, Secs. 13-1-28 through -199 NMSA 1978 excepting only the provisions relating to bid protests. Notwithstanding the District’s general exemption, this Procurement Policy is intended to be, and shall be interpreted in a manner consistent with, all relevant state and federal procurement statutes, rules and regulations and their common goals and objectives regarding the efficient and judicious use of tax-payer money. The District wishes to engage in best practices at both the state and federal level and shall seek to comply with both state and federal best practices wherever, in the Chief Procurement Officer’s opinion, compliance can be achieved with the highest standards for public procurements.

**2. APPLICABILITY OF PROCUREMENT REQUIREMENTS**

This Procurement Policy applies to the procurement of goods, services or construction, by the District after the effective date of the adopting resolution. They shall apply to the expenditure of public funds for public purchasing irrespective of the source of the funds.

Notwithstanding any other provision of this Procurement Policy to the contrary, all purchases with federal funds shall be subject to all relevant federal restrictions including but not limited to the federal practices and restriction listed in Article 11-13 . When the procurement requires federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations. When the funding source for the procurement requires that

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<sup>1</sup> The full text of NMSA 1978, Section 73-25-5 (G) (7) is as follows: “ the board may ... (7) prescribe, in accordance with the Procurement Code [13-1-28 NMSA 1978], methods for auditing and allowing or rejecting claims and demands for: (a) the awarding of contracts for the construction of improvements, works or structures; (b) the acquisition of equipment; or (c) the performance or furnishing of labor, materials or supplies as may be required for carrying out the purposes of the Regional Transit District Act [73-25-1 to 73-25-18 NMSA 1978]”

the State Procurement Code and other State purchasing requirements be followed, then the District will follow such regulations as required.

In the event of any inconsistency between the terms and conditions of this Procurement Policy and those of a valid and enforceable governmental contract, the latter will govern. The District may comply with the terms and conditions of any grant, gift or bequest that is consistent with law. The provisions of this Procurement Policy shall apply to all employees or other users authorized to make purchases on behalf of the District and all parties whose bid, offer or contract subjects them to these provisions. Purchasing for private or personal use, or use of the procurement process for such purpose, is prohibited.

All managers, authorized users, and their supervisors are responsible for knowing, understanding, and adhering to the provisions of this Procurement Policy.

Any person having knowledge of a deviation from these provisions shall report such to the Executive Director.

Criminal violations can result in prosecution or penalties.

### **3. DEFINITIONS**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Nothing herein shall prohibit the Chief Procurement Officer from defining terms in solicitation documents and the defined terms therein may vary based upon the solicitation.

***Architectural services*** means services which require a valid state license related to the art and science of designing and building structures for human habitation or use including planning, providing preliminary studies, design, specifications, working drawings and providing for general administration of construction contracts.

***Authorized User*** means an employee who has been approved by management, and has received mandatory training in procurement, to conduct departmental purchasing.

***Bid*** means a formal quote with a pre-determined set of specifications to which a bidder must answer or comply, it details the goods or construction, and the price of the items solicited.

***Bidder*** means a person/entity who submits a proposal in response to a Request for Proposals (RFP) or Bid. One who makes an offer in response to a solicitation also known as Bidder.

***Brand name or equal specification*** means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance and other significant characteristics needed to meet District requirements, and which provides for the submission of equivalent products.

**Brand name specification** means a specification limited to one or more items by manufacturers' name or catalogue number.

**Change order** means a written order to the contractor authorizing an addition, deletion or revision in the work within the scope of the contract documents; or authorizing an adjustment in the contract price or contract time.

**Chief Procurement Officer** means the District staff member duly trained, qualified and assigned to oversee all procurements on behalf of the District.

**Competitive Sealed Bid** means the process for solicitation of goods and not services unless required by the Executive Director or by law.

**Confidential information** means any information which is available to an employee only because of the employee's status as an employee of the District and is not a matter of public knowledge or available to the public on request.

**Construction** means the process of building, altering, repairing, installing, improving or demolishing any public structure or building, or other public or private improvements of any kind to any public real property. It does not include the routine operation or routine maintenance of existing structures, buildings or real property.

**Construction management services** means services related to the process of management applied to a construction project for any duration, from conception to completion of the project, to controlling the time, cost and quality of such.

**Construction manager** a person who functions as the owner's representative and whose activities include but are not limited to: monitoring and coordinating the work, schedules, personnel, equipment and materials of contractors; developing and monitoring project costs, change orders and pay requests; insuring compliance with all contract documents and applicable laws, rules and regulations.

**Contract** means any type of District agreement, regardless of its title, for the procurement of goods, services, or construction. This term shall not include employment agreements or collective bargaining agreements.

**Contract modification (bilateral change)** means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.

**Contractor** means any person as defined below who has a contract with the District.

**Cooperative purchasing** means the use of a properly executed purchasing agreement with one or more additional public agencies to execute procurement.



**Cost or Price analysis** means the evaluation of factual information concerning the cost of labor, material, overhead and other cost elements including profit which are expected to be incurred or which have been incurred by the contractor in performing the contract.

**Cost-reimbursement contract** means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of the procurement code, and a fee or profit, other than a fee based upon a percentage of cost, if any.

**District** means the North Central Regional Transit District.

**Definite quantity contract** means a contract which requires the contractor to furnish a specified quantity of goods, services, or construction at or within specified time.

**Employee** means an individual drawing a salary or wages from the District, whether appointed or not; any non-compensated individual performing services for the District or any department, or entity established by the executive or legislative branch of the District; any non-compensated individual serving as a Director or Official Designee of the District.

**Engineering services** means any service or creative work, the adequate performance of which requires a valid state license and engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Such practice may include but is not limited to the performance of architectural work incidental to the practice of engineering. Engineering services does not include responsibility for construction management services, site conditions, operations, equipment, personnel or the maintenance of safety in the work place.

**Evaluation committee** means a committee appointed for the purpose of evaluating responses to bids or proposals and to determine, in writing, which is the most advantageous to the District based on the evaluation factors set forth. The evaluation committee members will remain constant through award. The evaluation committee shall be appointed by the Executive Director in consultation with the Chief Procurement Officer.

**Financial interest** means (1) holding a position in a business as officer, director, trustee, or partner, or holding any position in management, or ownership of more than five percent interest in a business; or (2) any interest which may yield, directly or indirectly, any material benefit to an employee or to the employee's immediate family any interest other than an interest in a mutual fund or one held in a blind trust.

**Goods** means all tangible items, other than real property or construction, having a physical existence including, but not limited to, supplies, parts, equipment, materials, and printed materials.

**Gratuity or Kickback** means a payment, loan, subscription, advance, and deposit of money, service or anything of more than a nominal value, present or promised, unless consideration of substantially equal or greater value is received.

**Indefinite delivery/Indefinite quantity (IDIQ)** contract means a contract which requires the contractor to furnish an indeterminate quantity of specified goods, services, or construction during a prescribed period of time at a definite unit price or at a specified discount or similar pricing structure from list or catalog prices.

**Inventory** means goods purchased, accepted, stored, issued, and to ready use by users of the District.

**Invitation for bids (IFB)** means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed bids.

**Multiple source award** means an award to more than one bidder or offeror of a contract for one or more similar goods, services, or construction.

**Multi-Step Procurement** means a process where the initial Offerors qualifications are evaluated prior to invitation to submit a bid or proposal.

**New Mexico Gross Tax Receipts (NMGRT)** means the total amount of money or other consideration received from selling, leasing or licensing property, granting a right to use a franchise, performing services or selling research and development services in New Mexico. The gross receipts tax rate varies throughout the state from 5.125% to 8.6875% depending on the location of the business.

**Non-Responsible (Bid/offeror)** means a response to a bid or offer from a contractor, business entity or individual that does not have the ability or capability to fully perform the requirements of the bid or is unable to ensure reliable contractual performance.

**Non-Responsive (Bid/offeror)** means a response to a bid or offer that does not conform to the mandatory or essential requirements contained in the Invitation for Bids (IFB).

**Offer** means a response to a solicitation that, if accepted, would bind the offeror to perform the resulting contract.

**Offeror** means any person corporation or partnership who chooses to submit a proposal through the District's Procurement process also known as bidder.

**Person** means any natural person, corporation, partnership, sole proprietorship, joint stock company, joint venture, private legal entity, or any federal, state or local political subdivision or entity thereof.

**Price or Pricing structure** means a pre-determined method, such as percentage charged for a category of items; or dollar amount as an itemized price listing, or as related to quantity, unit pack, or similar distinction, for which a vendor is willing to provide the District goods, services, or construction.

**Price agreement** means a form of IDIQ contract which requires the contractor to furnish specified items/services within the limitations of the contract, if any.

**Pricing data** means factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

**Procurement** means (1) the buying, purchasing, renting, leasing, or otherwise acquisition of any goods, licenses, services or construction; or (2) all functions that pertain to the procurement process, including description of requirement, solicitation of sources, qualification or disqualification of sources, preparation and award of contract and/or contract administration.

**Professional services** means the services of practitioners in a field requiring a state license, or an advanced degree, or a highly specialized education, or a nationally recognized certification; or person providing such services. This term shall not include services provided by an employment agreements or contracts or collective bargaining agreements or contracts.

**Project** means an activity with an explicit goal, that has a defined beginning and an end, with at least one concrete deliverable, logical sequence of activities, deliverable(s), and that is not a repetition of an activity that has been previously planned and performed.

**Project Manager** means the person assigned the responsibility for overall supervision of a Project. The responsibility includes, but is not limited to, budget monitoring, change order control, project schedule, quality control, approving progress payments, and insuring that work progresses in accordance with requirements set forth in the contract documents.

**Proposal** means a quote which may include open-ended, substantially bidder-determined specifications for how the bidder will provide the item(s), or different weights on different factors for evaluation; which details the goods, services, or construction, and the price of the items solicited.

**Protest** means a written objection by a potential interested party to a solicitation or award of a contract, with the intention of receiving a remedial result.

**Public agency or entity** means a public entity subject to or created by any federal, state, or local governmental body.



***Purchase order (PO)*** means the legally binding document issued by the Finance Office, which has been appropriately approved before submission to a vendor, that authorizes a contractor or vendor to deliver goods, services or construction.

***Open or blanket purchase order*** means a purchase order which is used for anticipated numerous or recurring small purchases at a predetermined price or pricing structure for up to one year. It is a type of IDIQ contract.

***Qualified products list*** means an approved list of goods, services or construction items described by model or catalogue numbers which, prior to competitive solicitation, the Chief Procurement Officer has determined will meet the applicable specification requirements.

***Quote*** means a binding, good-faith statement of the price at which a vendor is willing to provide to the District required goods, services, or construction.

***Request for Proposals (RFP)*** means all documents, whether attached or incorporated by reference, utilized for soliciting proposals for goods, services or construction.

***Request for Qualifications (RFQ)*** means all documents, whether attached or incorporated by reference, utilized for soliciting qualifications for professional services.

***Responsible bidder or offeror*** means a person or bidder who has been determined by the Chief Procurement Officer or evaluating committee to have the capability in all respects to perform fully the contract requirements, including financial resources, personnel, service reputation and experience, capacity, production or service facilities, equipment and credit which will ensure satisfactory delivery of the goods, services or construction described in the IFB or the RFP.

***Responsive bid*** means a bid that conforms in all material respects to the requirements set forth in the IFB. Material respects of a bid may include but are not limited to, price, quality, quantity, and delivery requirements.

***Responsive offeror*** means a person who has submitted an offer that conforms in all material respects to the requirements set forth in the RFP.

***Scope of Work*** means a detailed, written description of the conceptual requirements for the project contained within a Request for Proposal or Bid. The scope of work should establish a clear understanding of what is required by the District.

***Services*** means the furnishing of labor, time or effort, by contractors other than those providing professional services, services of employees of a state agency or local public body, or construction.

***Software or firmware update or upgrade*** means new software or an improvement to the functionality or security of existing computer software.

**Specification** means any description of the physical or functional characteristics or of the nature of a good, service or construction item. It may include a description, any requirement for inspecting, testing or preparing a good, service or construction item for delivery.

Statement of Qualifications (SOQ) means all documents, whether attached or incorporated by reference, utilized for soliciting qualifications in conjunction with a multi-step procurement.

**Task order or Job order** means a discrete assignment of a specific set of tasks under an Indefinite Delivery/Indefinite Quantity contract, each order capped at a not-to-exceed amount.

#### **4. EXEMPTIONS**

(a) No provisions of the Procurement Policy except Article II, Section 9, Article IX and Article X shall apply to the following purchases:

(1) Advertising;

(2) Financial Services including but not limited to checking and saving accounts; investment portfolios and other security investment method including broker services; asset safekeeping and/or custodial services; treasury management; and/or treasury and investment consulting services including contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act [Chapter [10](#), Article [11](#) NMSA 1978];

(3) Bond payments and debt service fees along with the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, except for bond attorneys and general financial consultants;

(4) Books, periodicals, publications and subscriptions including purchases not exceeding ten thousand dollars (\$10,000) consisting of magazine subscriptions, web-based or electronic subscriptions, conference registration fees and other similar purchases where prepayments are required;

(5) Credit or procurement card (“p-card”) purchases covered under a separate policy;

(6) Employee work-related travel allowances and expenses;

(7) Freight and delivery charges;

(8) Instruction/education/training, and any or all related fees;

(9) Insurance premiums;

- (10) Legal and related costs incurred by the District, including expert witness costs and interpreters' fees, printing/duplicating costs, arbitrator/mediator, process server, court reporter, transcriptions, settlements, and hearing officer(s), but not attorney contracts;
- (11) Medical and emergency/incidental medical services utilizing licensed medical professionals, including routine medical and psychological exams or lab tests pursuant to drug testing, pre-hire examinations or examinations related to reasonable accommodation;
- (12) Memberships and dues;
- (13) Travel or shipping by common carrier or by private conveyance or to meals and lodging;
- (14) Office supply, equipment repairs and maintenance contracts;
- (15) Postage or meter refills;
- (16) Real property;
- (17) Information Technology Maintenance Services;
- (18) Employment Agreements or Contracts;
- (19) Collective Bargaining Agreements or Contracts;
- (20) Software and firmware acquisitions, updates and/or upgrades;
- (21) Purchases of parts and labor for equipment or machinery where a breakdown of this equipment or machinery could cause an emergency or costly condition to exist and where the machinery or equipment is in immediate danger of failure;
- (22) Purchases of parts and labor or maintenance agreements to repair disabled equipment or machinery if the equipment or machinery is repaired by a franchised dealer or by a factory authorized repair shop;
- (23) Agreements for the services of lobbyists;
- (24) Taxes, licenses and filing fees;
- (25) Purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection systems, cable television, radio, internet and telecommunications services;
- (26) Intergovernmental agreements;



(27) Procurement of items of goods or services from a federal or state agency or other public entity including procurement of items of tangible personal property or services from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through [13-1-137](#) NMSA 1978;

(28) Procurement of goods, services, or construction items under existing contracts and that are procured under any of the following conditions:

- i. At a price equal to or less than the contractor's current federal contract price (GSA, FSS), providing the contractor has indicated in writing a willingness to extend such contractor pricing, terms and conditions to the District; or
- ii. With a person that has a current contract with the state Chief Procurement Officer or any other New Mexico governmental entity, for the item, services or construction meeting the same standards and specifications as the items to be procured; or
- iii. With a person that has a current contract issued under a cooperative purchasing agreement with another public entity; or
- iv. With a person that has an existing contract, that was subject to competitive solicitation, with another government or agency thereof including state price agreements of states other than the state of New Mexico;

(29) Purchases of motor fuels and compressed fuel gases where deemed necessary prudent and authorized by the Chief Procurement Officer;

(30) Works of art for public display;

(31) Goods for resale;

(32) Unscheduled repairs which necessitate disassembly diagnostics;

(33) Contracts for televising or documenting public meetings;

(34) Contracts for retirement and other benefits including contracts for retirement and other benefits pursuant to Sections 22-11-47 through [22-11-52](#) NMSA 1978;

(35) Contracts and purchases for towing services to move disabled District vehicles;

(36) Any other purchases exempted under relevant state or federal laws.

- (b) The Chief Procurement Officer shall retain the documentation relied upon to procure goods, services or construction without seeking competitive bids or proposals for public inspection and auditing purposes in accordance with established District records retention standards.

## **ARTICLE II: ROLES AND AUTHORITY OF THE CHIEF PROCUREMENT OFFICER AND EXECUTIVE DIRECTOR**

### **5. ESTABLISHMENT**

The responsibility for administration of the provisions of this policy shall be under the Executive Director but all responsibilities may be delegated to a Chief Procurement Officer who is duly trained and qualified to perform purchasing functions on behalf of the District. The Chief Procurement Officer shall have the responsibility and authority to ensure that all provisions of law and this Procurement Policy are followed and shall be authorized to issue any supplemental regulations consistent with this policy deemed necessary to administer, manage or clarify this policy. Supplements issued by the Chief Procurement Officer shall require prior written approval of the Executive Director and shall be attached to and made a part of this Policy. The Chief Procurement Officer shall be responsible for having the knowledge to ensure that all provisions of this Policy and all other purchasing concerns and activities of the District are appropriate and consistent with the most current, generally accepted purchasing techniques, and all provisions of the law.

### **6. CHIEF PROCUREMENT OFFICER AUTHORITY AND DUTIES**

- (a) *Principal public purchasing official.* Except as otherwise provided in this Article, the Chief Procurement Officer shall serve as the principal public purchasing official for the District and shall be responsible for conducting or supervising the procurement of goods, services or construction in accordance with this Article, as well as the disposal of surplus goods.
- (b) *Duties.* In accordance with this article, and subject to the supervision of the Executive Director or his designee, the Chief Procurement Officer shall:
  - (1) Award purchase orders for procurement of all goods, services or construction needed by the District, upon approval of departments or the Executive Director as required consistent with operational procedures;
  - (2) Develop procedures to sell, trade, or otherwise dispose of surplus goods belonging to the District;
  - (3) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the goods, services or construction;
  - (4) Conduct mandatory training sessions for new authorized users, and periodic training for all current authorized users;
  - (5) Review all procurement requests for correctness, appropriateness, and compliance with this Policy; and

(6) Establish and administer a District procurement card program.

(c) Operational procedures. Consistent with this article, the Chief Procurement Officer may adopt operational procedures relating to the execution of his or her duties.

## **7. DELEGATIONS TO OTHER DISTRICT OFFICIALS**

The Chief Procurement Officer may delegate authority to purchase certain goods, services or construction items to other District officials, if he or she deems such delegation necessary for the effective procurement of those items. This delegation will be in writing describing the authority granted. Notwithstanding the provisions of Section 6, procurement authority with respect to certain goods, services or construction may be delegated to other District officials by the Executive Director. This delegation will be in writing describing the authority granted.

## **8. ROLE OF EVALUATION COMMITTEE**

The Evaluation Committee shall be charged with scoring bids and proposals according to the methodology and evaluation factors included in the solicitation. Members of the Evaluation Committee are responsible for being objective, impartial, unbiased and fair in all aspects of the evaluation process and must adhere to the District's Procurement Policies and Procedures, New Mexico State and Federal laws, regulations and policies governing public procurement.

The Evaluation Committee is formed prior to the pre-bid meeting and/or prior to the receipt of bid or proposals. This is done to ensure that there is no perception that the Evaluation Committee was formed to favor a particular bidder or offeror. The Evaluation Committee generally includes individuals that bring together the expertise necessary to evaluate the bid-proposals received.

All individuals on the Evaluation Committee shall complete a conflict of interest form indicating that they do not have a conflict of interest. Individuals who have a known or perceived conflict of interest with any potential bidder, or with any potential subcontractor of a potential bidder, should not serve on the Evaluation Committee. Individuals who become aware of an actual, perceived or possible conflict of interest during their service on the Committee should immediately notify the Chief Procurement Officer. The Evaluation Committee ordinarily consists of from three (3) to six (6) members.

The evaluation may use a phased approach and combined or average scoring across multiple phases on a case by case basis as determined by the CPO.

## **9. AUTHORITY TO EXECUTE CONTRACTS**

(a) *Purchase orders.* The District Board hereby delegates to the Executive Director the authority to execute purchase orders and bind the District in contracts as follows.

(b) *Contracts.*

- (1) For contracts the District Board hereby delegates to the Executive Director or designee the authority to execute the following contracts and bind the District:
  - i. Contracts other than purchase orders as provided in this Section, in the aggregate amount of \$100,000.00 or less;
  - ii. Any contract for the purchase of goods or construction in any amount less than or equal to the funding budgeted and specifically appropriated by the District Board for the acquisition or project;
  - iii. Change orders or contract modifications to existing contracts, provided that the total amount after execution of the change order or contract modification does not exceed the funds budgeted or the adjusted budget and specifically appropriated for the project.
- (2) The authority granted in Subsections (b) (1) is subject to the following conditions:
  - i. The goods, services, or construction was procured in accordance with this Procurement Policy as determined by the Chief Procurement Officer;
  - ii. The contract is in a form acceptable to the District's Legal Counsel;
  - iii. There is no local, state or federal requirement that the chief elected official or other official must sign the contract;
  - iv. Approval by the District Board for purchases in excess of \$100,000.00.
- (3) The Executive Directors power to delegate authority to execute contracts is limited to the contract amount of \$100,000.00, exclusive of NMGR, or less.
- (4) All other contracts must be approved by the District Board prior to execution by the Executive Director, as appropriate.
- (5) Multiple signatures, verifications, and other fiscal controls may be required to ensure all District contracts receive proper review and approval prior to the expenditure or commitment of District funds. Supplemental policies to this Procurement Policy regarding the form, execution, and limits on signature authority of the District staff are hereby authorized and integrated by reference.

### **ARTICLE III: SOURCE SELECTION METHODS**

The Chief Procurement Officer shall be responsible for developing procedures for processing, recording and securing all documents for bids and proposals. Confidential information shall be identified as such by the bidder, and subject to state laws regarding its handling. The Chief Procurement Officer shall confer with the Executive Director and determine which of the following Source Selection Methods is most advantageous for the District. Non-exempt

Procurements shall use the following Source Selection Methods: Competitive Sealed Bids, Request for Qualifications, Requests for Proposals, Multi-step Procurement, Sole-source, Small Purchase, Emergency, and E-Commerce Procurement.

## **10. SEQUENCE OF EVENTS**

For Non-exempt Procurements Competitive Sealed Bids, Request for Qualifications, Requests for Proposals, Multi-step Procurement, and some E-Commerce Procurements the following sequence of events shall be utilized to Procure goods and services:

(a) Issuance of RFP

(b) Question Submittals

Potential Offeror(s) are encouraged to submit written questions. Potential offerors shall be given enough time to complete a responsive and responsible offer. Potential Offerors may submit written questions to the CPO as to the intent to provide clarification of this RFP until close of business the day indicated in the solicitation. All written questions must be addressed to the CPO and will be responded to by the CPO. Questions emailed shall be clearly labeled "IMPORTANT- [NAME OF OFFEROR] [RFP/RFQ/IFB] # \_\_\_\_\_. All written questions will be addressed in writing in the Districts website by the date listed in the solicitation documents. The submission of questions is not a prerequisite for submission of a proposal.

(c) Response to Written Questions

Written responses to questions received will be answered by the CPO and posted on the District's website at [www.ncrtd.org/requests.aspx](http://www.ncrtd.org/requests.aspx). Responses shall be posted within a week of the CPO receiving the question.

(d) Submission of Responses

All responses must be received for review and evaluation by the CPO or designee no later than 5:00 pm mountain time, or the time indicated in the solicitation on the date indicated in the solicitation documents. Responses received after these deadlines will not be accepted. The date and time of receipt will be recorded on each response.

Documents must be addressed and delivered to the CPO at the address listed in the solicitation and must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the solicitation. Proposals submitted by facsimile, or other electronic means, will not be accepted.

A public log will be kept of the names of all Offeror organizations that submitted responses. Pursuant to NMSA 1978, § 13-1-116, the contents of responses shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to solicitation. Awarded in this

context means the final required signature on the contracts resulting from the Procurement has been obtained.

(e) Proposal Evaluation (for RFQs Multi-step Procurements and RFPs)

An Evaluation Committee will perform the evaluation of responses. This process will take place as indicated in the sequence of events in the solicitation. During this time, the CPO may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Offerors. The District and the Evaluation Committee reserve the right to reject any and/or all submissions as it deems in its best interests or that do not comply with the parameters or requirements set forth in this SOQ and RFP. In the same manner the District and the Evaluation Committee reserve the right to waive any irregularities or technicalities when it deems the public interest will be served. Thereby the Evaluation Committee will select, and the CPO notify the finalist Offerors by the deadline of Sequence of Events or earlier when possible. Responses will be evaluated using the Evaluation Criteria presented within the solicitation documents. An Evaluation Committee will review and rank the proposals from most qualified to least qualified to perform the scope of services based on the number of points accumulated on the score cards.

(f) Optional Review of Finalists (for RFQs and RFPs)

If necessary, interviews the highest ranked firms may be scheduled and conducted by the Evaluation Committee to further differentiate among Respondents' qualifications to further inform final rankings. Each firm will be responsible for all costs (e.g., travel, staff time, and presentation materials) related to any interviews conducted.

(g) Selection of Finalist/Recommended Award

CPO will send an e-mail informing the final selected offeror that they have been deemed the most responsive and responsible offeror and that they will be recommended for award subject to Board approval and any protest.

(h) Negotiations. (RFPs and RFQs)

Negotiation of unresolved terms and conditions shall be conducted with the selected Offeror to resolve any unresolved matters prior to finalizing the contract form and presented to the Board of Directors of the District. Contractual agreements will be finalized with the most advantageous Offeror(s) per the Sequence of Events in the solicitation or as soon as possible thereafter. This date is subject to change at the discretion of the CPO. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the District reserves the right to negotiate to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

(i) Contract Awards

If, and when the District and the selected firm arrive at a mutually acceptable scope and commensurate fee, the District will present the selected firm and proposed final contract to the Board of Directors for approval. The Board may authorize the staff to make non-substantial and formatting changes to the final agreement.

(j) Protest Deadline

Any protest by an Offeror must be timely and in conformance with the law. Only protests delivered directly to the CPO in writing and in a timely fashion will be considered to have been submitted properly and in accordance with statute, rule and this Request for Proposals. The 15-calendar day protest period shall begin on the day the approval to award of contracts is received by the Board. Protests must be written and shall include the name and address of the protestor, the request for proposal number, a statement of the grounds for protest including appropriate supporting exhibits and specify the ruling requested from the party listed below. The protest must be delivered to CPO before the deadline. Protests received after the deadline will not be accepted. E-mails are permitted for protests but shall be required to meet the same deadlines as other written protests.

## **11. COMPETITIVE SEALED BIDS (IFBs)**

- (a) *Conditions for use.* Contracts of the District may be awarded by competitive sealed bidding if the Chief Procurement Officer determines that other means of source selection are not in the best interest of the District.
- (b) *Invitation for bids.* An IFB may be issued and, if used, shall include specifications and a sample of the standard contractual terms and conditions applicable to the procurement.
- (c) *Multistep sealed bidding.* When it is considered disadvantageous to the District to prepare solicitation documents that support an award based on price, an IFB may be issued requesting the submission of unpriced offers, which may include a separate sealed price proposal, or may be followed by an IFB limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (d) *Public notice.* the District shall give adequate public notice of the IFB to ensure sufficient time for Offerors to respond. A reasonable time may exceed, but shall not be less than 15 calendar days prior to the date set for opening of the bids. Re-solicitations shall be given public notice for a minimum of 10 days prior to the date set for opening of the bids. The publication of such notice shall be in a manner calculated to solicit the most competitive bidding process. Such public notice shall state the title, place, date and time of bid opening. Nothing herein shall prohibit the District from using other or additional means of notifying potential bidders of the solicitation.
- (e) *Bidders list.* The Chief Procurement Officer shall send copies of the IFBs to persons and business who may be interested in submitting a bid, including, but not be limited to, those persons that have formally requested from the District the IFB documents for submitting



bids for particular categories of goods, or construction. The Chief Procurement Officer may set fees or deposits for different IFBs. The District and its agents may provide electronic copies of documents, free of charge in its sole discretion, but may charge fees for copies of plat and plan documents and hard copies of all other documents in the discretion of the Chief Procurement Officer.

- (f) *Bid opening.* Bids shall be opened publicly in the presence of two or more District employees and any public who wish to attend the bid opening including bidders. The bid opening shall be, at the time and place designated in the IFB or in such supplemental notices as the Chief Procurement Officer deems appropriate. The names of the witnesses will be made a part of the record, and any public presence, including bidders or offerors, will be given the option to record their names. The amount of each bid and such other relevant information as the Chief Procurement Officer deems appropriate consistent with the Inspection of Public Records Act, § 14-2-1 et seq., NMSA 1978, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection in accordance with the Inspection of Public Records Act.
- (g) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Article. Bids shall be evaluated based on the requirements set forth in the IFB and these Procurement Rules. Criteria that affect the bid price shall be objectively measurable, such as discounts, transportation costs, and total of life cycle costs. The IFB shall set forth the evaluation criteria to be used. Only criteria that are set forth in the IFB and these Procurement Rules may be used in bid evaluation. Interviews are to be used only for the purpose of clarification. The final evaluation results shall be forwarded to the Chief Procurement Officer.
- (h) *Withdrawal of bids and cancellation of awards.* Bidders may withdraw their bid by written notice as long as the notice is received by Chief Procurement Officer prior to bid opening. After bid opening, no changes in bid prices or other provisions of bids, prejudicial to the interests of the District or fair competition, shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if: (1) The mistake is clearly evident on the face of the bid document; or (2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. Any decision to permit correction before withdrawal of bid or to cancellation of awards or contracts based on bid mistakes shall be supported by a written determination made by the Chief Procurement Officer including the grounds upon which the determination was made.
- (i) *Award.* The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid was timely submitted and meets the requirements and criteria set forth in the IFB. An award may be made on an all-or-nothing or multiple source basis whichever is the most advantageous to the District.
- (j) *Identical bids.* When competitive sealed bids are used and two or more of the bids submitted are identical in price and are the low bid, the Chief Procurement Officer may:
  - (1) Award pursuant to the multiple source award provision;

- (2) Award by lottery or game of chance of the Chief Procurement Officer's choosing to one of the identical low bidders; or
- (3) Reject all bids and re-solicit bids for the required goods, services, or construction.

## 12. REQUESTS FOR PROPOSALS (RFPs)

When the Chief Procurement Officer determines that, the use of competitive sealed bidding is either not practical or not advantageous in seeking the best value to the District, a contract may be entered into by use of RFPs.

- (a) *Issuing the RFP.* Proposals shall be solicited through an RFP which shall be issued and shall include the specifications for the goods, services or construction, a sample copy of the proposed contract terms applicable to the procurement unless waived by the Chief Procurement Officer, additional requirements specific to a particular procurement as may be in the best interest of the District, the location where proposals are to be received, the date and time where proposals are to be received.
- (b) *Public notice.* Adequate public notice of the RFP shall be given in the same manner as provided for Competitive Sealed Bid procurements.
- (c) *Offerors list.* The Chief Procurement Officer shall send copies of each RFP to those persons that have formally requested from the purchasing office the documents for submitting a proposal and such other persons as the Chief Procurement Officer deems advantageous to the District. Registration fees or deposits may be required.
- (d) *Receipt of proposals.* Proposals shall be handled so as to prevent disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of solicitation of bids. A register of proposals shall be prepared containing the name of each Offeror, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.
- (e) *Multistep Proposals.* When it is considered disadvantageous to the District to prepare solicitation documents that support an award based on price, an RFP may be issued requesting the submission of unpriced offers, which may include a separate sealed price proposal, or may be followed by a procurement limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
- (f) *Discussion with responsible offerors and revisions to proposals.* As provided in the RFP, discussions may be conducted with responsible Offerors who submit proposals determined to be reasonably likely to be selected for award. Discussion shall be limited to contact by Offerors with the Chief Procurement Officer and shall only be permitted to ensure that the District and Offerors have a clear and mutual understanding of the solicitation and the responses.. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by other Offerors.
- (g) *Evaluation factors.* The RFP shall state the relative weight of price and other evaluation factors.

- (h) *Initial Review of Responses.* Following receipt of responses to the RFP the Chief Procurement Officer shall review the responses and eliminate from consideration those Offerors who are deemed non-responsive or non-responsible. Nothing herein shall limit the subsequent ability of the Evaluation Committee to limit the number of Offerors to a list of "finalists" who are deemed most advantageous to the District so long as the evaluation of all Offerors is consistent with the criteria for evaluation set forth in the RFP.
- (i) *Interviews.* Interviews may be used for the purpose of clarification, to assess the quality of the goods, services, training and support provided by the Offeror and may be used to rank, score, pre-qualify or qualify the Offerors prior to an award.. The final evaluation results shall be forwarded to the Chief Procurement Officer.
- (j) *Evaluation Committee.* The District shall generally use an Evaluation Committee to rank and score responses to RFPs. The Evaluation Committee shall remain fair and unbiased in the review of responses.
- (k) *Negotiation with Finalists.* Once one or more Offerors have been selected by the Evaluation Committee for the potential award of a contract the District shall enter into negotiations with the Offeror on final contract terms and conditions. If the District is not able to agree to final terms with the highest ranked Offeror it shall proceed to negotiate terms with the next highest ranked Offeror until an award of the contract is achieved or the District determines to reject all responses.
- (l) *Award* shall be made to the responsible offeror whose proposal is determined in writing by the evaluating committee to be the most advantageous to the District, taking into consideration the evaluation factors set forth in the request for proposals and the resolution of any contract negotiations. No other factors or criteria shall be used in the evaluation. The contract file shall contain the written basis on which the award is made.

### **13. REQUESTS FOR QUALIFICATIONS (RFQs)**

When the Chief Procurement Officer determines in writing, that the use of an IFB or RFP is either not practical or not advantageous to the District in soliciting professional services, a contract may be entered into by use of RFQs. The Chief Procurement Officer shall publicly issue an RFQ for professional service providers to submit a response to the RFQ and to negotiate such contracts on the basis of demonstrated competence and qualifications, performance dates, and such other contract terms and conditions as the District deems appropriate and includes in the RFQ solicitation documents.

- (a) *Issuing and processing* the RFQ. The RFQ will be handled in the same manner as and RFP except that price shall not be an evaluation factor for RFQs.
- (b) *Multistep Proposals.* When it is considered disadvantageous to the District to prepare solicitation documents that only evaluate qualifications without regards to the Offerors proposal for implementation of the project requiring professional services, the RFQ may be issued requesting the submission of qualification which may be followed by a Request

for Proposals limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

- (c) *Selection process.* The Evaluation Committee shall select, ranked in the order of their qualifications, the person(s) deemed to be the most highly qualified to perform the required services, after considering the criteria in the RFQ solicitation documents and the following criteria:
- (1) Specialized design or technical competence of the person regarding the type of services required;
  - (2) Capacity and capability of the person, including any consultants, their representatives, qualifications, and locations, to perform the work, within the time limitations;
  - (3) Past record of performance on contract with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules; and/or
  - (4) Any other criteria as deemed necessary and included in the RFQ solicitation documents.
- (d) *Negotiation.* Upon selection of the finalist(s), the Chief Procurement Officer or designee shall negotiate a contract with the person considered to be the most qualified for the required services at compensation which the Chief Procurement Officer or designee determines in writing to be fair and reasonable to the District. In making this decision, the Chief Procurement Officer or designee shall consider the estimated value, the scope, the complexity and the professional nature of the services to be rendered. Should the Chief Procurement Officer or designee be unable to negotiate a contract at a fair and reasonable price with the selected person, the valuation committee shall select additional persons in order of their competence and qualifications, and the Chief Procurement Officer or designee shall continue negotiations with the additional persons in the order of their competence and qualifications in accordance with this section until an agreement is reached.

## **14. MULTI-STEP PROCUREMENTS**

Notwithstanding any provision of these Procurement Rules to the Contrary the Chief Procurement Officer may elect to use Multi-Step Procurements wherever such process is deemed to be in the best interest of the District. Multi-Step Procurements shall be utilized in order to integrate qualification based selection of Offerors by means of a Statement of Qualifications prior to the selection and award of a contract based upon the bid or proposal.

## **15. SMALL PURCHASES**

- (a) *Generally-* Any purchase may be made in accordance with the small purchase procedures authorized in this section if the total amount of the contract to be awarded, calculated over

the full term of the contract, does not exceed \$250,000.00. A purchase shall not be artificially divided so as to constitute a small purchase under this section. Professional services not exceeding \$250,000.00 may be, but are not required to be, conducted by competitive written proposal.

- (b) *Federally funded purchases* may utilize the micro and simplified acquisition thresholds permitted under federal law (\$10,000.00 and 250,000.00 respectively).
- (c) *Purchases under \$20,000.00, exclusive of applicable gross receipts tax* – Small purchase under \$20,000 shall only be required to meet the minimum standards established by the State of New Mexico or the District for small purchases.
- (d) *Purchases exceeding \$20,000.00, exclusive of applicable gross receipts tax* – Small purchases of \$20,001 to \$250,000 shall comply with minimum standards established by the State of New Mexico or the District.

## **16. SOLE SOURCE PROCUREMENT**

*Sole Source Procurement* means a one-time procurement contract that does not go through the competitive bids or proposals process after the Chief Procurement Officer has determined in writing that:

- (a) There is only one source for the required service, construction or item of tangible property;  
or
- (b) Other Services, goods, items cannot meet the intended purpose; and
- (c) A good-faith review and a Letter or Memo of Justification is provided to the Chief Procurement Officer and Executive Director stating that an analysis of available sources has been conducted, and
- (d) Documentation detailing the reason(s) why the source is the only one that provides the good(s) or service(s).

A contract may be awarded without competition when the Chief Procurement Officer determines in writing, after conducting a good faith review of available sources, that there is only one source for the required goods, service or construction item. A record of these procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, a letter or memo of justification documenting the reason for the selection of the source, and the identification number of each contract file. Notice publication of proposed sole source contracts shall be listed on the District's website for 30 days prior to award of any sole source contract exceeding \$20,000 in value.

## **17. E-COMMERCE**

E-commerce is an allowable mean to conduct procurements, when utilized, full and open competition must be addressed. A written explanation must be provide by the person selecting E-commerce and documented when using of E-Commerce. Please call the Chief Procurement Officer prior to use of this alternative.

## **18. EMERGENCY PROCUREMENTS**

The Chief Procurement Officer may make or authorize others to make emergency procurements of goods, services or construction items when there exists a threat to public health, welfare or safety, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the items procured under the contract and the identification number of the contract file.

## **ARTICLE IV: ACTIONS PRIOR TO AWARDING CONTRACTS**

### **19. CANCELLATION OF SOLICITATIONS**

An IFB, an RFP or other solicitation may be canceled, or any or all bids or proposals may be rejected without penalty when it is in the best interests of the District. The reasons therefore shall be made part of the file. Each solicitation issued by the District shall state that the solicitation may be canceled without penalty and that any bid or proposal may be rejected in whole or in part when in the best interest of the District. Notice of cancellation shall be sent to all respondents. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

### **20. RESPONSIBILITY OF BIDDERS AND OFFERORS**

Determination of non-responsibility. If a bidder or offeror is found to be non-responsible, the Chief Procurement Officer shall prepare a written determination of non-responsibility setting forth the basis of the finding. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror. The final determination shall be made part of the contract file and be made public record.

The Chief Procurement Officer shall verify the responsibility of bidders and offers to the extent reasonably practicable and necessary. Criteria for determining the responsibility of bidders and proposers shall include but not be limited to the following:

- (a) For federally funded procurements over \$25,000.00 the Chief Procurement Officer will search SAM.gov;
- (b) The business has not been debarred or suspended under New Mexico laws (NMSA 1978, Section 13-1-179 and 180);
- (c) The business is solvent;
- (d) The business is duly incorporated;
- (e) The business is authorized to conduct business and in good standing with all state and local registration requirements including current business registrations, and business licenses;
- (f) The business has or will obtain applicable insurance;
- (g) The business meets any relevant bonding requirements;
- (h) The business principle officers are not currently under indictment or investigation for fraud, breach of fiduciary duty or similar crimes that would potentially subject the District to unnecessary financial risks.

## **21. MINOR IRREGULARITIES IN BIDS, PROPOSALS AND OFFERS**

The Chief Procurement Officer shall be responsible for reviewing bids and proposals and determining if any portion of a bid or proposal contains minor irregularities, typographical errors, or ambiguous words, terms and phrases that require clarification prior to the award of a contract. If the Chief Procurement Officer deems material in question to be minor, immaterial, typographical or otherwise not detrimental to the interests of the District or the fairness of the award process he/she shall be authorized to proceed with the selection and award of the procurement without further action.

If the Chief Procurement Officer receives a written request for clarification regarding any portion of a bid, proposal or other submission the Chief Procurement Officer shall give a written determination to any interested party including competing bidders or offerors of his/her determination regarding the materiality of the irregularities, errors or ambiguous language. If the Chief Procurement Officer deems the material in question to be substantial to the determination of responsibility or to be potentially detrimental to the interests of the District or the fairness of the award process the Chief Procurement Officer may elect to deem the bid, proposal or offer non-responsive to the solicitation and shall give written notice to all interested persons or businesses of his/her determination.

## **22. COST OR PRICING DATA**

- (a) *Required submissions relating to the award of contracts.* A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$500,000.00 and is to



be awarded by competitive sealed proposals or by sole source procurement. The submission of cost or pricing data relating to the award of a contract is not required when:

- (1) The contract price is based on competitive bid;
- (2) The contract price is based on established catalog prices or market prices;
- (3) The contract price is set by law or regulations;
- (4) The contract is for professional services;
- (5) The contract is awarded pursuant to the Public Building Energy Efficiency Act;
- (6) The Chief Procurement Officer determines in writing that the requirements of this section may be waived, and the determination states the reasons for such waiver.

(b) *Required submissions relating to change orders or contract modifications.* A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustment to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in cost, plus applicable profits, that are expected to exceed ten percent (10%) of original contract price. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

- (1) An unrelated and separately priced adjustment for which cost, or pricing data would not be required are consolidated for administrative convenience; or
- (2) The Chief Procurement Officer determines in writing that the requirements of this section may be waived, and the determination states the reasons for such waiver.

(c) *Certification requirements.* A contractor, actual or prospective, required to submit cost or pricing data in accordance with this section, shall certify that, to the best of his or her knowledge and belief, the cost or pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

(d) *Price adjustment provision required.* Any contract award, change order or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the District, including profit or fee, shall be adjusted to exclude any significant sums by which the District finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the District and the contractor.

## **23. COST OR PRICE ANALYSIS**

A cost analysis or price analysis, as appropriate, shall be conducted the Project Manager prior to issuing any solicitation that would expend more than \$250,000. A written record of such analysis shall be made part of the contract file.

(a) *Cost analysis*: includes the appropriate verification of cost or pricing data, and the use of this data, as well as any available historical comparative data, to evaluate:

- (1) Specific elements of costs;
- (2) The necessity of certain costs;
- (3) The reasonableness of amounts estimated for the necessary cost;
- (4) The reasonableness of allowances for contingencies;
- (5) The basis used for allocation of indirect costs;
- (6) The appropriateness of particular indirect costs to the proposed contract; and
- (7) The reasonableness of the total cost or price.

(b) *Price analysis*: shall be made upon the following criteria for the same or similar items or services:

- (1) Price submissions of prospective bidders or offerors in the current procurement;
- (2) Prior price quotations and contract prices charged by the bidder, offeror or contractor;
- (3) Prices published in catalogues or price list;
- (4) Prices available on the open market; or
- (5) In-house estimates of cost.

## **24. BID AND PERFORMANCE BONDS ON GOODS OR SERVICE CONTRACTS**

Bid performance and payment bonds or other security may be requested for goods and/or service contracts as the CPO or department manager deems advisable to protect the District's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for determination of a bidder's or offeror's responsibility. The District shall not require bid or performance bonds where the cost of said bonds would, in the opinion of the Chief Procurement Officer, drive up the cost of the goods or services to be procured in an amount that exceeds the District's risk from not having a bond. The CPO shall make a case by case determination as to whether Bonds shall be required.

## ARTICLE V: CONTRACTS

### 25. TYPES OF CONTRACTS

Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the District will be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made by the Chief Procurement Officer that such a contract is likely to be less costly to the District than any other type or that it is impracticable to obtain the goods, service or construction item required except under such a contract.

(a) *Multi-term contracts.*

- (1) Specified period. A contract can be for multiple fiscal periods, as needed. Unless otherwise provided by law, a contract for goods or services may be entered into for any period that the CPO deems necessary, subject to the following provisions:
  - i. That the term of the contract and conditions of renewal or extension, if any, are included in the solicitation;
  - ii. Renewals or extensions are found to be necessary by the CPO;
  - iii. Funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof;
  - iv. A multi-term contract that exceeds the Executive Director's purchasing authority as provided in Section 8 of these regulations over the cumulative time period of a multi-year contract shall be brought to the District Board for approval;
  - v. Construction contracts are exempt from the limit.
- (2) Determination prior to use. Prior to the utilization of a multiterm contract, the Chief Procurement Officer shall determine that:
  - i. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and
  - ii. Such a contract will serve the best interests of the District by encouraging effective competition or otherwise promoting economies in District procurement.
- (3) Cancellation due to unavailability of funds in succeeding fiscal periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled, and the contractor shall be reimbursed for the reasonable value of any nonrecurring cost

incurred but not amortized in the price of the goods or services delivered under the contract. Such cost of cancellation may be paid only from any appropriations available for such purposes.

(b) *Multiple source contracting.*

- (1) Generally. A multiple source award is an award of a contract for one or more similar goods or services to more than one bidder or offeror. The obligation to order the District's actual requirements is limited by the provision of the Uniform Commercial Code, NMSA 1978, § 55-1-101 et seq.
- (2) Limitations on use. A multiple source award may be made when an award to two or more bidders or offerors for similar products is necessary for adequate delivery, service or product compatibility. Any multiple source awards shall be made in accordance with the provisions of Sections 9 through 12, and 13, as applicable. Multiple source awards shall not be made when a single award will meet the District's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of the bids. Any such awards shall be limited to the least number of suppliers necessary to meet valid requirements.
- (3) Contract and solicitation provisions. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract; provided, however, that:
  - i. The District shall reserve the right to take bids separately if a particular quantity exceeds its normal requirement or an amount specified in the contract; or
  - ii. The District shall reserve the right to take bids separately if the Chief Procurement Officer approves a finding that the goods or service available under the contract will not meet a special need of the District.
- (1) Intent to use. The District shall, in the solicitation document, reserve the right to make such an award.
- (2) Determination required. The Chief Procurement Officer shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

(c) *Price agreements.*

- (1) Generally. A price agreement is an award of an Indefinite Delivery/Indefinite Quantity contract for one or more similar goods or services to one or more bidder(s) or offeror(s). It is used for anticipated numerous or recurring purchases at a predetermined price or pricing structure over an extended time period. Task orders, once initiated within the

contract term, will continue until the completion of the specific task without regard to term of the basic contract unless otherwise stipulated. Since a Price Agreement does not have specific delivery of goods or services required at inception, individual task orders or purchases shall be approved by the appropriate person in accordance with the approval levels in Section 8.

- i. Limitations on Use. A price agreement may be awarded or utilized subject to the provisions in Sections 9 through 13 and 20(b).
- ii. Intent to use. The District shall, in the solicitation document, reserve the right to make such an award.

(d) *Administrative Grouping of Requirements for Inventory.*

(1) Generally. Administrative grouping of requirements for inventory recognizes that inventory replenishments or purchases are actually an aggregate of multiple discreet requirements. With this administrative grouping, each purchase order line stands on its own with respect to approval levels in Section 8.

(2) Limitations on use. This method only pertains to items of inventory.

## 26. PAYMENT FOR PURCHASES

- (a) No warrant, check, electronic transfer of funds or other negotiable instrument shall be issued in payment for any purchase of services, construction or items of tangible personal property unless the chief purchasing officer or the using division certifies that the services, construction or items of tangible personal property have been received and meet specifications or unless prepayment is permitted by exclusion of the purchase from the Procurement Code. Receipt of the goods or services shall be indicated in writing by the person having knowledge of the goods or services delivered and may generally be verified by printing a copy of the invoice or bill for the goods or services and indicating “OK to Pay” on the hard copy of the invoice or bill.
- (b) Unless otherwise agreed upon by the parties or unless otherwise specified in the invitation for bids, request for proposals or other solicitation, within fifteen days from the date the chief purchasing officer or using agency receives written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site and received, the district shall issue a written determination of complete or partial acceptance or rejection of the services, construction or items of tangible personal property.
- (c) Except as provided in Subsection (d) of this section, upon verification that the services, construction or items of tangible personal property have been received and accepted, payment shall be tendered to the contractor **within thirty days** of the date of verification. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. After the thirtieth late payment charges shall be paid on the unpaid balance due on the contract to the contractor at the rate of one and one-half percent per month. For

purchases funded by state or federal grants to local public bodies, if the local public body has not received the funds from the federal or state funding agency, payments shall be tendered to the contractor within five working days of receipt of funds from that funding agency.

- (d) If the central purchasing office or the using agency finds that the services, construction or items of tangible personal property are not acceptable, it shall, **within thirty days** of the date of receipt of written notice from the contractor that payment is requested for services or construction completed or items of tangible personal property delivered on site, provide to the contractor a letter of exception explaining the defect or objection to the services, construction or delivered tangible personal property along with details of how the contractor may proceed to provide remedial action.
- (e) Late payment charges that differ from the provisions of Subsection ( c ) of this section may be assessed if specifically provided for by contract or pursuant to tariffs approved by the New Mexico public utility commission or the state corporation commission [public regulation commission].

## **27. COST REIMBURSEMENT PROVISIONS**

Cost reimbursement contracts funded by federal agencies shall satisfy the requirements of 41 CFR 1-15.

## **28. RIGHT TO INSPECT PLANT**

The District may, at reasonable times, inspect the part of the plant, place of business or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the District.

## **29. RIGHT TO AUDIT RECORDS**

- (a) *Audit of cost or pricing data.* The District may, at reasonable times and places, with written notice, audit the records of any contractor who has submitted cost or pricing data, to the extent that such records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such records that are pertinent to such cost or pricing data for six years from the date of final payment under the contract.
- (b) *Contract audit.* The District shall be entitled to audit the records of a contractor or a subcontractor at any tier under negotiated contract or subcontract to the extent that such records are pertinent to the performance of such contract or subcontract. Such records shall be maintained by the contractor and subcontractor(s) for a period of six years from the date of final payment under the prime contract.

## **30. REPORTING OF ANTI-COMPETITIVE PRACTICES**

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the District's Legal Counsel for forwarding to the state attorney general.

### **31. DISTRICT PROCUREMENT RECORDS**

- (a) Public access to procurement information. Procurement information shall be public record to the extent provided in the Inspection of Public Records Act.
- (b) Contract file. All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the District in a contract file by the Chief Procurement Officer. The documents attached to this policy are illustrative only and are subject to modification and change at the discretion of the Chief Procurement Officer.
- (c) Retention of procurement records. All procurement records shall be recorded and maintained in accordance with established District records retention standards. All federal contracts shall be maintained for three years after the closeout date of the contract.

## **ARTICLE VI: SPECIFICATIONS**

### **32. MAXIMUM PRACTICABLE COMPETITION**

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the District's needs and shall not be unduly restrictive. The policy enunciated in this section applies to all specifications including, but not limited to, those prepared for the District by architects, engineers, designers and draftsmen.

### **33. QUALIFIED PRODUCTS LIST**

The Chief Procurement Officer may develop a qualified products list, in accordance with Article V of this Chapter. Should any product be available only from a sole source, the using department and purchasing office must review specifications at least annually and make a written determination as to the sole source status. The qualified products list status shall in no way be used to limit competition.

### **34. BRAND NAME OR EQUAL SPECIFICATIONS**

- (a) *Use.* Brand name or equal specifications may be used when the Chief Procurement Officer determines in writing that:
  - (1) No other design or performance specification or qualified products list is available;
  - (2) Time does not permit the preparation of another form or purchase description not including a brand name specification;
  - (3) The nature of the product or the nature of the District 's requirements makes use of a brand name or equal specification suitable for the procurement; or
  - (4) Use of a brand name or equal specifications is in the District's best interests.



- (b) *Designation of several brand names.* Brand name or equal specifications shall seek to designate brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.
- (c) *Required characteristics.* Unless the Chief Procurement Officer determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specification shall include a description of the particular design, functional or performance characteristics which are required.
- (d) *Nonrestrictive use of brand name or equal specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard quality, performance and characteristics desired and is not intended to limit or restrict competition.
- (e) *Exemption.* Small purchases described in Section 13 are exempt from this provision.

### **35. BRAND NAME SPECIFICATION**

- (a) *Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when justified, a written determination and explaining why only the identified brand name item will satisfy the District 's needs must be made and documented by the Chief Procurement Officer.
- (b) *Competition.* The Chief Procurement Officer shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 14.
- (c) *Exemption.* Small purchases as defined by this policy are exempt from this provision.

### **36. ITEM LIFE-CYCLE SPECIFICATIONS**

The District may use item life-cycle specifications in evaluating bids if such method is required in the IFB. Life-cycle specifications shall use criteria to take into consideration the initial purchase price, life, output, maintenance or consumption, disposal value, complexity of operation, required training and other factors contributing to the overall cost of an item.

### **37. TOTAL COST SPECIFICATIONS**

The District may use total cost specifications in evaluating bids if such method is required in the IFB. Total cost specifications criteria is the life-cycle specifications, except the disposal value has been predetermined and is included in the contract as an option. This option is to trade in at this predetermined fixed price or sell at the District's option.

### **38. REQUEST FOR INFORMATION**

In the event a department develops a need for goods, service or construction with a complex set of specifications or scope of work a Request for Information (RFI) might be issued. A RFI is used to collect additional information about features and specifications of a product or service. The RFI process adds time to the overall solicitation but can be valuable in situations where:

- (a) Additional information about a product or service is necessary before a scope of work can be developed for a project; or
- (b) Potential suppliers for the goods or services need to be identified.

The process to issue a Request for information is as follows:

- (a) The decision to use the RFI process is made by the Chief Procurement Officer through discussions with the requesting department. Since the RFI process does not conclude with a contract award, suppliers are not asked to provide pricing and delivery information.
- (b) The Chief Procurement Officer and the department develop a general description of the product or service that is required.
- (c) Suppliers are asked to submit full descriptions and specifications of the goods or services they provide.
- (d) The RFI is posted for a minimum of two (2) weeks in the District's website.
- (e) The department and Chief Procurement Officer review supplier submissions. RFIs are not scored and evaluation team members are not required to sign Non-Disclosure/Conflict of Interest statements.
- (f) Once the submissions are reviewed the Chief Financial Officer and requesting department use the information to develop a scope of work for the subsequent solicitation.
- (g) When the RFI process is concluded, the District may or may not issue a solicitation.

## **ARTICLE VII: PROCUREMENT OF CONSTRUCTION MANAGEMENT AND CONSTRUCTION SERVICES**

### **39. SELECTION OF CONSTRUCTION MANAGEMENT**

The Project Manager shall have discretion to:

- (a) Select the appropriate method of construction management for a particular project. In determining which method to use, the Project Manager shall consider the District 's requirements, its resources, and the potential contractor's capabilities;

- (b) Select which method of solicitation for construction management applies for a particular project, either as a single-step or multi-step RFP as in Section 11, or as an RFQ in Section 12.

#### **40. BID SECURITY**

- (a) *Requirement.* Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the using agency to exceed \$250,000.00. Bid security shall be a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the District. Such bonds on construction contracts under \$250,000.00 may be required by the Chief Procurement Officer when the circumstances warrant.
- (b) *Amount.* Bid security shall be in an amount equal to at least five percent (5%) of the total amount of the bid including all options.
- (c) *Rejection of bids for noncompliance with bid security requirements.* When the IFB requires security, noncompliance requires that the bid be rejected unless it is determined the bid fails to comply only in a non-substantial manner with the security requirements.
- (d) *Withdrawal of bids.* If a bidder is permitted to withdraw its bid before award as provided in Article III Section 9 (g) no action shall be taken against the bidder or the bid security.

#### **41. CONTRACT PERFORMANCE AND PAYMENT BONDS**

- (a) *When required; amounts.* When a construction contract is awarded in excess of \$250,000.00, the following bonds or security shall be delivered to the District and shall become binding on the parties upon the execution of the contract:
  - (1) A performance bond satisfactory to the District, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the District, in an amount equal to one hundred percent (100%) of the price specified in the contract; and
  - (2) A payment bond satisfactory to the District, executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the District, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract.
- (b) *Authority to require additional bonds.* The District retains the authority to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (a) of this section.
- (c) *Suits on payment bonds; right to institute.* Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors, whether in an expressed or implied contract, for the work provided in the contract, for which a payment

bond is furnished under this section, and who has not been paid in full within 90 days from the date on which that person last performed the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted upon giving written notice to the contractor within 90 days from the date on which that person last performed the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

- (d) *Suits on payment bonds*; where and when brought. Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction within the District's boundaries.

## **42. COPIES OF BONDS FORMS**

Any person may request and obtain from the District a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

## **43. ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES**

- (a) *Source selection*. The Chief Procurement Officer shall publicly issue either a multi-step RFP as in Section 10(b) or an RFQ as in Section 11 of Article III for the procurement of architect- engineer and land surveying services.
- (b) *Selection process*. An evaluation committee will be appointed by the Executive Director or his designee for general District departments, requiring architect-engineer or land survey services. The committee shall select, ranked in the order of their qualifications, those firms submitting SOQs deemed to be the most highly qualified to perform the required services, after considering the following criteria:
  - (1) Specialized design and technical competence of the business regarding the type of services required;
  - (2) Capacity and capability of the person, including any consultants, their representatives, qualifications, and locations, to perform the work, including any specialized services, within the time limitations;
  - (3) Past record of performance on contract with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;
  - (4) Proximity to or familiarity with the area in which the project is located; and
  - (5) Price may be considered in connection with construction management contracts.

- (c) *Negotiation.* The Chief Procurement Officer or designee shall negotiate a contract with the firm considered to be the most qualified for architect-engineer or land surveying services at compensation which the Chief Procurement Officer or designee determines in writing to be fair and reasonable to the District. In making this decision, the Chief Procurement Officer or designee shall consider the estimated value, the scope, the complexity and the professional nature of the services to be rendered. Should the Chief Procurement Officer or designee be unable to negotiate a contract at a fair and reasonable price with the selected firm, the selection committee shall select additional firms in order of their competence and qualifications, and the Chief Procurement Officer or designee shall continue negotiations with the additional firms in the order of their competence and qualifications in accordance with this section until an agreement is reached.

#### **44. NON-COMPETITIVE BIDS FOR CONSTRUCTION PROJECTS**

- (a) A company selected to perform architect-engineer or land surveying services according to Section 41(b) shall not be eligible for consideration for construction projects that result from the person's design or engineering services obtained separately from construction services.
- (b) The successful person is not precluded from providing project management or construction management services for the design or engineering services which it has provided.

#### **45. DESIGN-BUILD PROJECTS**

- (a) A design-build project delivery system may be authorized when the Chief Procurement Officer decides and documents what 's appropriate, and in the best interest of the District, to use the system on a specific project. The project may be construed to mean the initial desired outcome including any specific site for construction or alternate site that may be identified after a contract has been awarded. The determination shall be issued only after the Chief Procurement Officer has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design-build process:
- (1) The extent to which the project requirements and possible options have been, or can be, adequately defined;
  - (2) Time constraints for delivery of the project;
  - (3) The capability and experience of potential teams with the design-build process;
  - (4) The suitability of the project for use of the design-build process as concerns special expertise, time, schedule, costs and/or quality; and
  - (5) The capability of the District to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design-build process.

- (b) When a determination has been made by the Chief Procurement Officer that it is appropriate to use a design-build project delivery system, the design-build team shall include, as needed, a state licensed engineer or architect, and a contractor properly licensed in New Mexico for the type of work required.
- (c) For each proposed design-build project, a two-phase procedure for awarding design-build contracts shall be adopted and shall include at a minimum the following:
  - (1) During phase one, an RFQ shall be prepared for an engineer or architect teamed with a New Mexico licensed contractor in accordance with Section 41, the RFQ shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, and a description of the phase two requirements and subsequent management needed to bring the project to completion. The qualifications of responding persons shall be evaluated and a maximum of five firms shall be short listed in accordance with technical and qualifications-based criteria;
  - (2) During phase two, the short-listed persons shall be invited to submit proposals which include a “rough order of magnitude estimate”, concepts or solutions, and scheduling. Unsuccessful short-listed persons may be paid a stipend as described in a particular RFP. After evaluations of these submissions, selection may be made, and a contract awarded to the highest ranked team for the design and construction of the project upon the site identified in the solicitation or such other site as may be identified by District after award of the contract; and
  - (3) The requesting department will establish design-build specifications and requirements for each project that will strive for the delivery of a quality project on time and within budget.

## **ARTICLE VIII: SUSPENSION OR DEBARMENT**

### **46. AUTHORITY TO SUSPEND OR DEBAR**

- (a) *Suspension.* After consultation with the District’s Legal Counsel, the Chief Procurement Officer is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months.
- (b) *Debarment.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Procurement Officer, after consulting with the District’s Legal Counsel, and notice to the Executive Director, is authorized to debar for cause a person from consideration for award of contracts. The debarment shall be for a period of not more than three years. The causes for debarment include the following:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or the performance or such contract or subcontract;
- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a District contractor;
- (3) Conviction under state or federal antitrust statutes arising out of submission of bids or proposals;
- (4) Violation of contract provisions within the past three years, as set forth below, of a character which is regarded by the Chief Procurement Officer to be so serious as to justify debarment action.
  - i. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
  - ii. A recent record of preventable failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts.
- (5) Any other cause the Chief Procurement Officer determines to be so serious and compelling as to affect responsibility as a District contractor, including debarment by another governmental entity for any cause listed in this Article;
- (6) For violation of the ethical standards set forth in Article IX of this Chapter; and
- (7) Failure to disclose any of the causes listed above in a solicitation.

#### **47. DECISION TO SUSPEND OR DEBAR**

The Chief Procurement Officer shall issue a written decision to suspend or debar. The decision shall state the reasons for the action taken and inform the suspended or debarred person involved of his/her rights concerning judicial or administrative review.

#### **48. NOTICE OF DECISION**

A copy of the decision required by Section 45 shall be mailed, postage pre-paid certified mail return receipt requested or otherwise furnished immediately to the suspended or debarred person.

#### **49. FINALITY OF DECISION**

A decision under Section 44 shall be final and conclusive unless the suspended or debarred person within 15 calendar days after receipt of decision takes an appeal to the District Board.

## **50. APPEAL**

Any appeal to the District Board of an adverse decision shall be made by filing a notice of appeal with the Executive Director's office within 15 calendar days after the decision has been delivered to the aggrieved person. The proceeding before the District Board shall be de novo. The decision by the District Board under this subsection shall be final. The District Board's decision may be appealed pursuant to Section 39-3.1.1 and NMRA 1-074 to a court of competent jurisdiction within the District's boundaries.

## **ARTICLE IX: PROTESTS, APPEALS AND REMEDIES**

### **51. AUTHORITY TO RESOLVE PROTESTED SOLICITATIONS AND AWARDS**

All bid protests and appeals shall be performed in accordance with the New Mexico State Procurement Code. Pursuant to NMSA 1978, Section 73-25-5 (G) the District has limited authority to adopt procurement policies regarding "auditing allowing or rejecting" claims and demands in the context of procurement disputes. Therefore, the following policies are adopted pursuant to, and to the extent consistent with state laws on the topic. The Chief Procurement Officer is responsible to address, process, and exercise the following:

- (a) *Protests of bid or RFP specifications or scope of work.* Any vendor who is aggrieved in connection with the specifications or scope of work in a solicitation may protest to the Chief Procurement Officer. The protest shall be submitted in writing no later than 7 calendar days prior to the deadline for receipt of the bid or proposal. No protest bond will apply to such protest. The Chief Procurement Officer shall issue a determination in writing within 2 workdays of receipt of such protest, and either proceed with the solicitation, modify it, or cancel it.
- (b) *Right to protest; protest bond.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Procurement Officer. The protest shall contain all the requirements and must be submitted in writing within 15 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto, along with a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the District. The amount of the bond shall not exceed the estimated cost to the District of processing and defending a protest. Only one protest per person per solicitation is permitted.
- (c) *Authority to resolve protests.* The Chief Procurement Officer shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract.
- (d) *Decision.* If the protest is not resolved by mutual agreement, the Chief Procurement Officer shall promptly issue a decision in writing stating the reason for the action taken and informing the protestant of its right to appeal the decision to the District Board. A copy of



the decision of the Chief Procurement Officer shall be mailed, return receipt requested, or hand-delivered to the protestant or to the address provided in the protest.

- (e) *Appeal.* Any appeal to the District Board of an adverse decision shall be made by filing with the Executive Director's office within 15 calendar days after the decision has been delivered to the aggrieved person. The proceeding before the Board shall be de novo. The Board shall decide whether the solicitation or award was in accordance with this Policy, procedures, and the terms and conditions of the solicitation.
- (f) *Decisions final.* A decision of the District Board under this section shall be final and conclusive. The aggrieved person may seek judicial review in the state First Judicial District Court within 30 days of the receipt of notice of the decision of the District Board.
- (g) *Stay of procurements during protests.* In the event of a timely protest under subsection (a) of this section, the Chief Procurement Officer shall not proceed further with the solicitation or with the award of the contract unless the Chief Procurement Officer, after consultation with the Executive Director, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the District.
- (h) *Entitlement to costs.*
  - (1) When a protest is sustained, and the protesting bidder or offeror should have been awarded the contract under the solicitation but was not, then the protesting bidder or offeror shall be entitled, in addition to any other relief, to the reasonable costs incurred in connection with the protest or appeal costs other than attorney's fees.
  - (2) Should the protest be denied, the District shall be entitled to recover reasonable costs for processing and adjudicating the protest, and for costs associated with an unreasonable delay of the contract. Recovery of these costs shall not be limited to the proceeds from the protest bond. Excess bond proceeds shall be returned to the person.

## **52. CONTRACT CLAIMS**

Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission. Within 15 calendar days of the time the contractor knows or should have known of the facts and circumstances giving rise to a claim the following procedure shall apply:

- (a) *Notice of claim to the Chief Procurement Officer.* All claims by a contractor against the District relating to a contract except bid protests shall be submitted in writing to the Chief Procurement Officer for decision. The contractor may request a conference with the Chief Procurement Officer on the claim.
- (b) *Notice to the contractor of the Chief Procurement Officer's decision.* The decision of the Chief Procurement Officer shall be issued in writing within 15 calendar days of claim notice and immediately mailed, or otherwise furnished, to the contractor. The decision shall

state reasons for the decision reached and shall inform the contractor of its appeal rights under subsection (d) of this section.

- (c) *Failure to render timely decision.* If the Chief Procurement Officer does not issue a written decision regarding any contract controversy within 15 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.
- (d) *Appeal.* Any appeal to the District Board of an adverse decision shall be made by filing with the Executive Directors office within 15 calendar days after the decision has been received by the aggrieved person. The proceeding before the District Board shall be de novo.
- (e) *Decisions by Board final; exception.* A decision of the District Board under this section shall be final and conclusive unless a protestant seeks judicial review in the state First Judicial District Court within 30 days of the receipt of notice of the decision of the District Board.

### **53. REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW**

*Prior to bid opening or closing date for receipt of proposals.* If, prior to the bid opening or the closing date for receipt of proposals, the Chief Procurement Officer, after consultation with the District Attorney, determines that a solicitation is in violation of applicable law or regulation then the solicitation shall be canceled by the Chief Procurement Officer or revised to comply with applicable law.

*Prior to award.* If, after bid opening or the closing date for receipt of proposals, the Chief Procurement Officer, after consultation with the District Legal Counsel, determines that a solicitation or a proposed award of a contract is in violation of applicable law then the solicitation or proposed award shall be canceled by the Chief Procurement Officer.

*After award.* If, after an award, the Chief Procurement Officer, after consultation with the District Legal Counsel, determines that a solicitation or award of a contract was in violation of applicable law, then if neither the purchaser nor the person awarded the contract has acted fraudulently or in bad faith:

- (1) The contract or invoice may be ratified and affirmed or approved for payment by the Board for any amount or the Executive Director, as applicable, for amounts under \$100,000.00, provided that it is determined that doing so is in the best interests of the District; or
- (2) The contract may be cancelled and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

If either the purchaser or the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void by the Chief Procurement Officer, if such action is in the best interests of the District.

#### **54. PROCUREMENT VIOLATIONS**

Unauthorized Purchases. Any Purchase which is not legally and appropriately approved within the budget or by other action by the District, or which does not substantially comply with the provisions of this policy shall be considered an unauthorized purchase, and thereby not subject to payment by the District. The District hereby declares and establishes that it will assume no responsibility for payment of unauthorized purchases. Furthermore, any individual initiating or otherwise executing any unauthorized purchase is solely responsible for payment and may be subject to disciplinary action up to and including dismissal. All authorized purchases shall be legally budgeted or approved within an appropriate fund or agency account, or within an appropriate line item as approved by the Executive Director. All questionable purchases shall be submitted to the Executive Director for review and a determination shall be made by the Executive Director regarding the purchase being an authorized or unauthorized purchase under the provisions of this policy.

### **ARTICLE X: ETHICS IN PUBLIC CONTRACTING**

#### **55. EMPLOYEE CONFLICT OF INTEREST**

- (a) Unless waived under Section 57, it shall be unethical and unlawful for any District employee to participate directly or indirectly in any procurement when the District employee knows that:
  - (1) The District employee or any member of the District employee's immediate family has a financial interest pertaining to the procurement; or
  - (2) Any other person with whom the District employee or any member of a District employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- (b) A District employee or any member of a District employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial trust.

#### **56. GRATUITIES OR KICKBACKS**

- (a) *Generally.* It shall be unlawful for any person to offer, give or agree to give any District employee or former District employee, or for any District employee or former District employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with:

- (1) any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase requisition;
- (2) influencing or developing the content or any specifications or procurement standard, except as a result of a published Request for Information;
- (3) assisting in rendering of advice, investigation, auditing or in any other advisory capacity in proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal thereof; or
- (4) accepting any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

(b) *Contract and solicitation clause.* The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation.

## **57. PROHIBITION AGAINST CONTINGENT FEES**

It shall be unethical and unlawful for a person to be retained, or to retain a person, to solicit or secure a District contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

## **58. CONTEMPORANEOUS EMPLOYMENT**

It shall be unethical and unlawful for any District employee who is participating directly or indirectly in the procurement process to become or to be, while a District employee, the employee of any person contracting with the governmental body by which the employee is employed.

## **59. WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST**

The District Board may grant a waiver from the employee conflict of interest provision (Section 53) or the contemporaneous employment provision (Section 56) upon making a written determination that:

- (a) The contemporaneous employment or financial interest of the District employee has been publicly disclosed prior to solicitation;
- (b) The District employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and
- (c) The award will be in the best interests of the District.

## **60. USE OF CONFIDENTIAL INFORMATION**

It shall be unethical and unlawful for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

## **61. SANCTIONS**

In addition to any civil or criminal penalties or fines imposed by federal or state law, the following shall apply:

- (a) *Employees.* The Executive Director may impose any one or more of the following sanctions on a District employee for violation of the ethical standards set forth in this division:
  - (1) Oral or written warning or reprimands;
  - (2) with or without pay for specified periods of time; or
  - (3) Termination of employment.
- (b) *Other Persons.* The Chief Procurement Officer may impose any one or more of the following sanctions on a person for violations of the ethical standards:
  - (1) Written warnings or reprimands;
  - (2) Termination of contracts; or
  - (3) Suspension or debarment as provided in Section 45.

## **62. RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN VIOLATION OF THE CODE**

- (a) *Generally.* The District may use any and all legal and equitable remedies to recover the value of anything transferred or received in breach of the ethical standards of this Policy by a District employee or other person.
- (b) *Recovery of kickbacks by the District.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount was included in the price of the subcontract or order and ultimately borne by the District and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

## **ARTICLE XI: FEDERALLY FUNDED PROCUREMENT REQUIREMENTS**

### **63. FEDERAL TRANSIT ADMINISTRATION BEST PRACTICES**

The District shall generally follow current federal guidance on best practices.

With regards to the following types of purchases using federal money the District shall endeavor to engage in best practices using the most current guidance of the Federal Transit Administration.

- (a) Micro-Purchases;
- (b) Small Purchases;
- (c) Large Purchases;
- (d) Sole Source Purchases; and
- (e) Single-Bid Purchases.

The FTA compliant best practices do not apply to:

- (a) Employment Contracts;
- (b) Real Estate Contracts; and
- (c) Intergovernmental Agreements.

### **64. RELATIONSHIP TO FTA MASTER AGREEMENT**

These policies have been prepared in accordance with the Federal Transit Administration's (FTA) procurement policies. Please reference the FTA's Master Agreement for changes, assistance, and clarification. The Master Agreement contains standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Recipient, or supported through a loan, loan guarantee, or line of credit provided by FTA. Also, please refer to The FTA's Best Practices Procurement Manual for procurement assistance, contract clauses and provisions.

### **65. ENSURING MOST EFFICIENT AND ECONOMIC PURCHASE**

Departments, during their annual budget process, should determine the procurement actions necessary to sustain their operations through the fiscal year. A list of these procurement actions should be forwarded to the Chief Procurement Officer annually.

Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase and to avoid purchase of unnecessary or duplicative items. Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach. The District considers various

procurement sources to ensure economical purchases including, but not limited to GSA, State of New Mexico, and municipal cooperatives.

## **66. COST & PRICE ANALYSIS**

Departments must make independent estimates before receiving bids or proposals in connection with every procurement action exceeding \$250,000 in the aggregate, including contract modifications. These estimates may be obtained from published competitive prices, results of competitive procurements, historical prices and trends, or by Purchasing Department estimates or outside estimators. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation (FTA Circular 4420.1E Sec.10). The following are examples of instances when cost or price analysis must be conducted:

- (a) A cost analysis must be performed when the offeror is required to submit the elements (i.e., Labor Hours, Overhead, Materials, etc.) of the estimated cost, e.g., under professional consulting and architectural and engineering services contracts.
- (b) A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.
- (c) A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.
- (d) Departments will negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed.

To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

A "Price and Cost Analysis Form" must be submitted to the Chief Procurement Officer prior to issuing the solicitation. See Exhibit G.

## **67. FEDERAL COST PRINCIPLES**

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. The Chief Procurement Officer may reference their own cost principles that comply with applicable Federal cost principles.

## **68. FULL AND OPEN COMPETITION**

The principle of full and open competition has one primary and two secondary purposes. The primary purpose is to obtain the best quality and service at minimum cost. In other words, to get the best buy. The secondary purposes are to guard against favoritism and profiteering at public expense and to provide equal opportunities to participate in public business to every potential offeror.

Departments must conduct all procurement in a manner providing full and open competition. This policy assures that all responsible bidders are permitted to compete for the procurement. In the case of sole or single source procurement, justification for use of the source must be documented on the Noncompetitive Procurement Justification Form (Exhibit F). Also see Sole Source Contracting Section.

## **69. RESTRICTIVE COMPETITION**

Contracts with a value of more than \$250,000 shall be awarded by sealed bid or by the competitive and noncompetitive proposal process unless there is an explicit exception. Departments must refrain from the following practices, which are deemed restrictive of competition:

- (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;
- (f) Restrictive use of brand names;
- (g) Any arbitrary action in the procurement process; and
- (h) Geographic preferences.

## **70. PRE-QUALIFICATION OF BIDDERS**

The procuring department shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. In addition, the District shall not preclude potential bidders from qualifying during the solicitation period, which is from issuance of the solicitation to its closing date.



## **71. GEOGRAPHIC PREFERENCES**

Departments shall conduct procurements in a manner that prohibits the use of statutory 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.

## **ARTICLE XII: FEDERALLY FUNDED PROCUREMENT- METHODS**

## **72. WRITTEN RECORD OF PROCUREMENT HISTORY**

The District's Chief Procurement Officer shall maintain records detailing the history of each FTA associated procurement. These records shall be placed in the master file and include:

- (a) The rationale for the method of procurement (See Exhibit C - Decision Matrix);
- (b) Selection of contract type;
- (c) Reasons for contractor selection or rejection; and
- (d) The basis for the contract price.

## **73. PROCUREMENT DOCUMENTATION FILES**

Where appropriate, the file contains:

- (a) Purchase request, acquisition planning information, and other pre-solicitation documents;
- (b) Evidence of availability of funds;
- (c) Rationale for the method of procurement (negotiations, formal advertising);
- (d) List of sources solicited;
- (e) Independent cost estimate;
- (f) Description of work/scope of services;
- (g) Copies of published notices of proposed contract action;
- (h) Copy of the solicitation, all addenda, and all amendments;
- (i) Liquidated damages determination;

- (j) An abstract of each offer or quote;
- (k) Contractor's contingent fee representation and other certifications and representations;
- (l) Source selection documentation if applicable;
- (m) Contracting Officer's determination of contractor responsiveness and responsibility;
- (n) Cost or pricing data;
- (o) Determination that price is fair and reasonable including an analysis of the cost and price data, required internal approvals for award;
- (p) Purchase Requisition indicating availability of funding;
- (q) Notice of award;
- (r) Notice to unsuccessful bidders or offerors and record of any debriefing;
- (s) Record of any protest;
- (t) Bid, Performance, Payment, or other bond documents, and notices to sureties;
- (u) Required insurance documents; and
- (v) Notice to proceed

## **74. METHODS OF SOLICITATION AND SELECTION**

The methods of solicitation and selection allowed within the Federal contractual sphere<sup>1</sup> are listed in FTA Circular 4420.1F (2016 ) and other federal guidance documents.

The Chief Procurement Officer on behalf of the District may choose:

- (a) Micro purchases only for contract amounts less than \$10,000; or
- (b) Small purchase procedures only for contract amounts less than the simplified acquisition threshold (currently \$250,000); or
- (c) Best value for contracts which indicate that the best value or the proposal which offers the greatest business value based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposals represents the “best value” to the District’s procurement; or
- (d) Brand Name or Equals; or

- (e) Non-competitive Proposals (Sole Source) procurement only if you can justify not soliciting additional competition in the manner explicitly defined in FTA Circular 4420.1E §9f.; or
- (f) Sealed Bids where:
  - (1) You have a complete, adequate, and realistic specification or purchase description;
  - (2) Two or more responsible bidders are willing and able to compete;
  - (3) The procurement lends itself to a firm fixed price contract and the selection can be made primarily on the basis of price;
  - (4) No discussion with bidders is needed after receipt of offers;
- (g) Competitive procurement that include proposals such as RFP or RFQ or multi-step procurements.

See Section Best Practices Procurement Manual § 1.3.2, "Federal Contractual Sphere."

FTA Circular 4220.1E §9, 49 CFR Geographic preference is permitted in certain narrow situations, including principally where part of a legal licensing requirement and for architects and engineers; FTA Circular 4220.1E, §8.b.

While the IFB requirements of § 9.c.(2) are good practices for both IFBs and RFPs, the evaluation criteria requirement of § 9.d.(1) is relevant only to RFPs and is discussed in Section 4.5.1, "Solicitation & Receipt of Proposals."

Departments must submit the attached Method of Procurement Decision Matrix Form to the Chief Procurement Officer to begin new procurement actions. The Decision Matrix will be placed in the master file. (Exhibit C)

## **75. MICRO-PURCHASES**

Procurement by micro-purchases are those purchases under \$10,000.00. Purchases below that threshold may be made without obtaining competitive quotations if the grantee determines that the price is fair and reasonable. Such purchases are exempt from Buy America requirements. There should be equitable distribution among qualified suppliers, and no splitting of procurements to avoid competition. The Davis-Bacon Act applies to construction contracts over \$2,000.

Minimum documentation required: A determination that the price is fair and reasonable and how this determination was derived must be submitted to the Chief Procurement Officer prior to the issuance of an award. This determination shall be placed in the master file. Please use the Price and Cost Analysis Form (Exhibit G).

## **76. SMALL PURCHASES**

For federal purchase small purchase procedures (AKA Simplified Acquisition Threshold) may be used if the services, supplies, or other property cost less than \$250,000.00. If small purchases procedures are used, price or rate quotations shall be obtained from at least three qualified sources and submitted to the Chief Procurement Officer prior to the issuance of an award. These price or rate quotations shall be placed in the master file. Please use the Price / Rate Quotation Form (Exhibit M).

## **77. BEST VALUE**

Best Value is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and /or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine the offer deemed most advantageous and of the greatest value to the District.

## **78. BRAND NAME OR EQUAL**

Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features unduly restricting competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used.

Departments shall use a "brand name or equal" description only when it cannot provide an adequate specification or more detailed description, without performing an inspection and analysis, in time for the acquisition under consideration. Further, a department wishing to use "brand name or equal" must carefully identify its minimum needs and clearly set forth those salient physical and functional characteristics of the brand name product in the solicitation.

## **79. NON-COMPETITIVE PROPOSALS (SOLE-SOURCE)**

Sole Source procurements are accomplished through solicitation or acceptance of a proposal from only one source, or when competition is determined inadequate or unfeasible. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement and it must comply with the requirements of the following subparagraph.

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and AT LEAST ONE of the following circumstances applies:

- (a) The item is available only from a single source;
- (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (c) FTA authorizes noncompetitive negotiations;
- (d) After solicitation of a number of sources, competition determined inadequate; or
- (e) The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the item to be replaced.

The grantee must first certify in writing to FTA that such manufacturer or supplier is the only source for such item and that the price of such item is not higher than the price paid for such item by like customers. Additionally, a cost analysis evaluating the specific elements of costs and profit is required.

## **80. SEALED/INVITATION FOR BID (IFB)**

Competitive proposals and sealed bid transactions will be conducted in a manner to provide maximum open and free competition consistent with FTA Circular 4220.1F "Third Party Contracting Guidance," and Department of Transportation 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments," or any other current federal guidance.

Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.

Note: Sealed bids are evaluated by the procuring department for compliance with bid specifications, responsible and responsive bidders, verification of pricing, fund availability, etc. The procuring department transmits an award recommendation to the Purchasing Department, which conditionally awards a contract.

The following conditions should be present for a sealed bid to be acceptable:

- (a) A complete, adequate, and realistic specification or purchase description is available;
- (b) Two or more responsible bidders are willing and able to compete effectively for the business;
- (c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and
- (d) No discussion with bidders is needed.

If this procurement method is used, the following requirements apply:

- (a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
- (b) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in for the bidder to properly respond;
- (c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (d) The Bid Summary Sheet, Bid Checklist, and Bid Cost Factors Forms (Exhibits K, D & E) will be completed by the procuring department and forwarded to the Purchasing Department for review to be placed in the master file;
- (e) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;
- (f) Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

The Chief Procurement Officer may reject any or all bids, or the procuring department requesting the procurement action, if there is a sound documented business reason. The Chief Procurement Officer or procuring department rejecting lower bids than the bid being accepted for award must provide a detailed written Determination of Findings outlining the reasons for rejection to the Purchasing Department for inclusion in the master file.

In determining which proposals is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposals offer the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the “best value” to the Procuring Agency as defined in Section 75. If the grantee elects to use the best value selection method as the basis for award, however, the solicitation must contain language which establishes that an award will be made on a “best value” basis.

## **81. COMPETITIVE PROPOSAL/REQUEST FOR PROPOSALS (RFP)**

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids (i.e. when descriptions of experience, education, expertise, availability of services, etc., are necessary for evaluation). If this procurement method is used the following requirements apply:

- (a) Requests for proposals will be publicized;
- (b) All evaluation factors will be identified and included along with their relative importance in the RFP. If scores are based on a uniform scale (i.e. 1-10, or 1-100), it is best to define in advance levels of compliance, skills, or proximity to the ideal that each step of the scale represents. (i.e. a bachelor's degree is worth 25 points, a master's degree is worth 50 points, and a doctorate is worth 100 points);
- (c) Proposals will be solicited from an adequate number of qualified sources;
- (d) Departments must have a written method in place for conducting technical evaluations of the proposals received and for selecting awardees. This documentation must be submitted to the Chief Procurement Officer for approval and inclusion in the master file;
- (e) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered. Other factors may include labor rates, specifications, labor hours, and delivery schedule. Documentation of the award justification should clearly identify key determination factors. Please use the Award Justification Form. (Exhibit L)

## **82. ARCHITECTURAL AND ENGINEERING SERVICES (A&E)**

The District shall use competitive proposal procedures based on the Brooks Act, paragraph 9-5e, when contracting for A&E services as defined in 40 U.S.C. §541 and 40 U.S.C. §5325(d). The Brooks Act applies to the selection of firms/individuals to perform architectural, engineering, and related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer. Qualifications-based competitive proposal procedures require requires that:

- (a) An offeror's qualifications are evaluated;
- (b) Price is *NOT* an evaluation factor;
- (c) Negotiations be conducted with only the most qualified offeror; and
- (d) If an agreement on price fails, negotiations with the next most qualified offeror can be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

This qualifications-based procurement method can only be used for the procurement of A&E services and cannot be used to obtain other types of services even if such services are offered through an A&E firm.

### **83. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS**

When requesting services for transportation system architecture, the District must ensure all offerors/bidders agree to conform, to the extent applicable, to the Intelligent Transportation System Architecture and Standards under the FHWA final rule, and with FTA Notice, "FTA National (ITS) Architecture Policy on Transit Projects and other subsequent Federal directives that may be issued.

### **84. THE TRADITIONAL CONSTRUCTION PROCESS- DESIGN/BID/BUILDING**

It has been traditional in the construction industry to employ an architect/engineer (A&E) to complete a detailed design of the entire project before soliciting bids from construction contractors. This traditional approach is known as sequential design and construction. This sequential design/construction approach requires that a detailed design package of the entire project be complete before bids are solicited from construction contractors. Following award of the construction contract, the A&E is often retained by the owner for the construction phase, and acts as the owner's agent, to inspect the construction work to ensure that the structures are built according to the designs and specifications.

Advantages - A major advantage of the sequential design and construction approach is that complex or one- of- a- kind projects can be thoroughly planned and thought through before construction begins. The traditional approach thus produces, in the design phase of the project, the most accurate estimate of final project costs, and this is an advantage of the traditional technique. If problems are encountered with design aspects for the latter stages of the project, the earlier design features or phases can be modified before any construction work has been done, thus avoiding construction contractor claims and delays. Another advantage is that the Agency is given a fixed price for completion of the entire project before construction begins. There may also be advantages in obtaining the necessary financing and project approvals. Overall management of the project should also be simplified by this approach.

Disadvantages - Sequential design and construction requires a longer time to complete the project than phased design and construction ("fast tracking"). And since time pressures are often the most intense issues confronting the Agency, the sequential method may not be feasible. Alternative contracting approaches have arisen to shorten the project completion time. These include phased design and construction ("fast tracking"), which often involves the use of a construction manager, and turnkey (design-build) contracting.

The Noncompetitive Procurement Justification Form and the Sole Source Cost Analysis Form (Exhibit J) must be completed submitted to the Chief Procurement Officer prior to proceeding with this type of procurement.

### **85. COST PLUS PERCENTAGE OF COST PROHIBITED**

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



## **86. ADVERTISING AND PUBLICIZING SOLICITATION**

IFBs and RFPs must be publicly advertised and publicized (respectively) at least fourteen (14) days prior to the solicitation's due date. A longer time period is suggested for larger, more complex procurements. Outreach efforts must be made using diverse resources such as the Internet and mailing lists coupled with widely circulated publications.

IFBs must be issued with sufficient time to prepare bids prior to the date set for opening the bids. Further, the invitation for bids will include any specifications and pertinent attachments and shall properly define the items or services sought in order for the bidder to properly respond. RFPs must identify all evaluation factors along with their relative importance. The Chief Procurement Officer shall place copies of all advertising and publicized solicitation material in the related master file.

## **87. PRE-BID AND PRE-PROPOSAL CONFERENCES**

Pre-bid and pre-proposal conferences are generally used in complex acquisitions as a means of briefing prospective offerors and explaining complicated specifications and requirements to them as early as possible after the solicitation has been issued and before offers are received. This is also an open forum for potential respondents to address ambiguities in the solicitation documents that may require clarification. Notice of the conference is included in the solicitation at the time of issuance. Attendance at Pre-bid proposals and conferences shall not be mandatory.

## **ARTICLE XIII: FEDERALLY FUNDED PROCUREMENT- SELECTION**

### **88. WRITTEN SELECTION PROCEDURES**

To ensure all procurements are awarded in a fair and equitable manner, all solicitations shall:

- (a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use.
- (b) Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Evaluators and reviewers must follow the established criteria when rating the proposals.

### **89. CONFLICTS OF INTEREST**

Employees, officers, board members, or agents of the District are prohibited from participating in the selection, award, or administration of contracts or sub-agreements supported by federal funds if a real or apparent conflict of interest exists. (See Exhibit H – Disclosure Statement)

The following language must be included in all RFPs for design and evaluation services covered under this section. This statement prohibits contractors from bidding on follow-up (add on) construction work resulting from the design.

“In order to prevent real or apparent conflicts of interest, the District prohibits contractors that have participated in FTA-funded design or evaluation services from bidding on any resulting construction work, services, or capital equipment purchases. All specifications prepared by design consultants must be written in such a manner that any reasonable, competent contractor could understand the requirement and perform the work”

## **90. AWARDS TO RESPONSIBLE CONTRACTORS**

The District shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed agreement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The debarred and suspended list will also be checked.

Departments must submit the attached Responsibility Determination Form to the Chief Procurement Officer prior to the issuance of an award. (Exhibit B)

## **91. EVALUATION OF BID ALTERNATES**

When bid alternates are included in a bid or proposal document, these alternates must be evaluated as part of the overall bid. This evaluation must be in a written narrative detailing the contract award and takes the alternate into account in reaching a procurement decision. This evaluation must be submitted to the Purchasing Department prior to proceeding with the procurement.

## **92. EXERCISE OF BID ALTERNATES**

Bid Alternates may not be exercised unless it is in accordance with the terms and conditions stated in the initial contract. In addition, the requesting department must have determined that the alternate price is better than the market price or that the option price is more advantageous. Full written documentation supporting this determination must be submitted to the Purchasing Department.

## **93. BONDING REQUIREMENTS**

For those construction or facility improvement contracts or subcontracts exceeding \$100,000, FTA may accept the bonding policy and requirements of the grantee, provided FTA determined that the policy and requirements adequately protect the Federal interest. FTA has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest. Please refer to the FTA Bonding Requirements paragraph 11, as cited below.

- (a) A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall 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 his bid, execute such contractual documents as may be required within the time specified;

- (b) A performance bond on the part of the contractor for hundred (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; and
- (c) A payment bond on the part of the contractor. 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. Payment bond amounts determined to adequately protect the federal interest are as follows:
  - (1) Fifty (50) percent of the contract price if the contract price is not more than \$1 million;
  - (2) Forty (40) percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
  - (3) Two and a half million dollars (\$2.5 million) if the contract price is more than \$5 million.
- (d) A Grantee may seek FTA approval of its bonding policy and requirements if they do not comply with the criteria.

#### **94. PROTEST PROCEDURES**

- (a) The procedures established hereunder shall be available to contractors for the purpose of handling and resolving disputes relating to procurements hereunder. A protestor must exhaust all administrative remedies hereunder before pursuing a protest in any court of law. Where applicable, any information received under such procedures shall be disclosed to the Federal Transit Authority and a protestor must exhaust all administrative remedies before pursuing a protest with the FTA.
- (b) The term "contractor" means any person, firm, or corporation, which has contracted or seeks to contract (bidder or proposer) with the District.
- (c) The term "hearing officer" shall mean a person, appointed by the Executive Director, to hear and decide allegations made by any contractor relating to procurements hereunder.

#### **95. HEARING PROCEDURE**

- (a) Any contractor may file a written protest of the procurement procedures involved herein, with the District's Chief Procurement Officer, within ten (10) days of the date of the District's Decision regarding a selection of a contractor with respect to a Bid/RFP/RFQ.

- (b) A hearing shall be conducted in accordance with C.G.S. Section 4-176e through 4-18a, as amended, which are incorporated herein. The hearing officer shall issue a written decision within ninety (90) days of the last date of such hearing and state in the decision the reasons for the action taken.
- (c) Where applicable, review of protests by FTA will be limited to the District's failure to have or follow its procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation.

## **ARTICLE XIV: FEDERALLY FUNDED PROCUREMENT- CONTRACTS**

### **96. TYPES OF CONTRACTS**

*General* – All FTA related procurements must use the Contract/Purchase Order File Index Forms as provided in the appendix. These checklists will be used by the Chief Procurement Officer to ensure contract clauses and federal flow down language are included in each contract as required.

*Fixed Price v. Cost Reimbursement* – Procurement by the Sealed Bid/Invitation for Bids (IFB) method when certain conditions are present. Among those listed is the condition that:

- (a) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.
- (b) Paragraph 9.d of FTA Circular 4420.1E authorizes procurement by the Competitive Proposal/Request for Proposals (RFP) method and either a fixed price or cost reimbursement type contract may be awarded.
- (c) Paragraph 7.i of FTA Circular 4420.1E requires that departments must document their reasons for selecting the contract type as a part of the written record of procurement history.
- (d) Paragraph 10.e of FTA Circular 4420.1E prohibits the cost plus a percentage of cost method of contracting.

There are two broad categories of contract types: fixed-price contracts and cost-reimbursement contracts. Within these two families of contract types there are a number of subtypes offering differing degrees of incentives. At the extremes are the firm-fixed-price contract, in which the contractor has complete responsibility for the costs of performance and the resulting profit or loss, and the cost-plus-fixed-fee contract, in which the contractor has virtually no risk for performance costs and the fee (profit) is fixed. Between these two extremes are the various incentive-type contracts where the degree of cost risk and profit incentive can be tailored to meet almost any specific program situation.

*Fixed-price contracts* – These contracts are appropriate for acquiring commercial items, or for supplies or services which can be clearly defined with either performance/functional specifications

or design specifications, and where performance uncertainties do not impose unreasonably high risks upon the contractor.

*Cost-reimbursement contracts* – These contracts are one in which the District does not contract for the performance of a specified amount of work for a predetermined price, but agrees instead to pay the contractor's reasonable, allocable and allowable costs of performance regardless of whether the work is completed. The District/Department assumes a high risk of incurring cost overruns, while the contractor has almost no risk of financial losses. Cost-type contracts are suitable when (a) you are unable to accurately describe the work to be done, or (b) there is an inability to accurately estimate the costs of performance. If either of these conditions is present, the cost-reimbursement contract is the proper type of contract. Cost-type contracts are ideally suited to complex requirements because the parties can devote their attention to accomplishing the work rather than on the claims process, which will be significant on larger, complex projects.

*Time and Materials Contracts* – Departments will use time and materials contracts only:

- (a) After a determination that no other type of contract is suitable;
- (b) The contract specifies a ceiling price, and the contractor shall not exceed that price except at its own risk; and
- (c) The Method of Procurement Decision Matrix Form (Exhibit C) must be submitted to the Chief Procurement Officer and included with the file for this type of contract.

*Labor/Hour Contracts* – Labor/hour contracts are a variation of the time and materials contract, differing only in that materials are not supplied by the contractor. You should use this type of contract only when no other would be suitable, and you need to document your determination if you choose to use this type of contract.

*Cost Plus Percentage of Cost Contracts (CPPC)* – The FTA Circular 4420.1E clearly prohibits the use of this contracting method.

*Out of Scope Changes* – An “out of scope change” is a contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement. Please use the sole source policies for this type of action. FTA Circular 4220.1E, paragraph 9(f).

*Contract Term Limitation* – The District shall not enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etc.) will be based on sound business judgment. Length of contracts shall be for not more than the amount of time required to accomplish the purpose of the contract, and will also include consideration for competition, pricing, fairness, and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change, will require a sole source justification.

*Revenue Contract* – Revenue contracts are those third-party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the District.

*Tag on* – The use of tag-on, or the addition of work including supplies, equipment or services, that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals, is prohibited and applies to the original buyer as well as to others. In scope “tag-on” changes are not considered tag-on.

*Piggybacking* – Piggybacking is an assignment of existing contract rights to purchase supplies, equipment or services. Piggybacking is permissible when the solicitation document and resultant contract contain an assign ability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, completed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and a maximum quantity that represents the reasonably foreseeable needs of the party(s) to the solicitation and contract. If the District and another party jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.

*E-Commerce* – Ecommerce is an allowable means to conduct procurements, when utilized full and open competition must be addressed in compliance with the Federal Circular 4200.1E. A written procedure documentation must be required when using of E-Commerce, please call the Chief Procurement Officer prior to use of this alternative.

## **97. CONTRACT ADMINISTRATION FILE**

To ensure a sound and complete agreement, the Chief Procurement Officer will ensure the Contract/Purchase Order File Index is accurate, complete, and included in the master file (Exhibit A). Where appropriate, the file contains:

- (a) Purchasing Department Tracking Sheet;
- (b) Executed contract and notice of award;
- (c) Bond-related documents;
- (d) Insurance documentation;
- (e) Post-award correspondence;
- (f) Notice to proceed;
- (g) Approvals or disapprovals of waivers and deviations;

- (h) Modifications and changes in the terms or conditions of the contract, including a rationale for the change, determinations regarding their scope, and cost/price analysis of any price increases or decreases.

## **98. NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS**

If the District contract is being funded in whole or in part by assistance from a federal agency, and the contract is subject to one or more federal public policy requirements, such as:

- (a) Equal employment opportunity;
- (b) Fair labor standards;
- (c) Energy conservation;
- (d) Environmental protection; or
- (e) Other similar socioeconomic programs.

The Chief Procurement Officer shall include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

## **99. CONTRACT PROVISIONS**

All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

- (a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold)
- (b) Termination for cause and for convenience by the District or sub grantee including the manner by which it will be executed and the basis for settlement. (All contracts in excess of \$10,000)

*Liquidated Damages Provisions* – The District may use liquidated damages if it may reasonably expect to suffer damages (increased costs on project involved) from late completion and the extent or amount of such damages would be difficult or impossible to determine. In order to obtain liquidated damages, the District must suffer an actual loss. The amount of liquidated damages must be reasonable in light of the loss suffered. The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third-party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

*Architectural and Engineering Services Conflicts of Interest* – The following language must be included in all RFPs for design and evaluation services covered under this section. This statement prohibits contractors from bidding on follow-up (add on) construction work resulting from the design.

“In order to prevent real or apparent conflicts of interest, the District prohibits contractors that have participated in FTA-funded design or evaluation services from bidding on any resulting construction work, services, or capital equipment purchases. All specifications prepared by design consultants must be written in such a manner that any reasonable, competent contractor could understand the requirement and perform the work.”

## **100. PATENTS IN CONTRACTS**

If a District contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions:

- (a) Giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of and rights to any discovery or invention arising out of the contract; and
- (b) Requiring a contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

## **101. COPYRIGHTS AND RIGHTS IN DATA ADDRESSED IN CONTRACTS**

If a District contract is being funded in whole or in part by assistance from a federal agency, the contract shall include a provision giving the contractor notice of the applicable regulations concerning the rights of the United States to any plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar work products developed and paid for under the contract.

## **102. BUY AMERICAN PRODUCTS CLAUSE**

If a District contract is being funded in whole or in part by assistance from a federal agency, the District shall adhere to the appropriate buy American requirements of the federal agency providing the assistance. Additionally, as a condition of responsiveness to bidding for procurements of rolling stock, iron, steel, or manufactured products greater than \$100,000 the bidder must submit with the bid or offer, a completed “Buy America Certificate” in accordance with Part 661.6 for steel, iron, and manufactured products, or Part 661.12 for rolling stock (including train control, traction power, and communication equipment).

Once submitted the bidder is bound by the certification provided. If the bidder does not submit a certification, the bid shall be considered non-responsive. If the bidder executes certification that it cannot comply but may be eligible for an exception, then the District shall review the circumstances and determine if it should request a waiver form the FTA. There are specific



instances included in the regulations for waiver of Buy America provisions including that it is in the public's best interest, that there are no U.S. products available, or there is a 25 percent price difference between the foreign and domestic products.

For additional information on requirements, please refer to FTA's Buy America web page:

<https://www.transit.dot.gov/buyamerica>

Certifications in compliance with Part 661.6 and 661.12 are provided in Exhibit N.

### **103. ENERGY CONSERVATION CLAUSE**

If a District contract is funded in whole or in part from a federal agency, the District's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

### **104. SMALL, WOMEN-OWNED, AND MINORITY BUSINESS ENTERPRISES CLAUSE**

If a District's contract is being funded in whole or in part by assistance from a federal agency, the Chief Procurement Officer shall take affirmative steps to ensure that small, women-owned, and minority businesses are utilized when possible as sources of supplies, services, and construction items. This requirement includes pass-through contracts to subcontractors; meaning a contractor awarded a federally funded contract shall take the affirmative steps in awarding its subcontracts. Examples of affirmative steps to be taken shall include the following:

- (a) Including qualified small, women-owned, and minority businesses on solicitation lists;
- (b) Ensuring that small, women-owned, and minority businesses are solicited whenever they are potential sources;
- (c) When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum small, women-owned, and minority business participation;
- (d) Where the requirement permits, establishing delivery schedules which will encourage participation by small, women-owned, and minority business; and
- (e) Using the services and assistance of the small business administration or the office of minority business enterprise of the department of commerce, as required.

### **105. LABOR SURPLUS AREA BUSINESS CLAUSE**

If a District contract is being funded in whole or in part by assistance from a federal agency, the Chief Procurement Officer is encouraged to procure supplies, services, and construction items from businesses located in labor surplus areas.

## **106. FLOW DOWN OF FTA CLAUSES**

Please see the attached FTA Contract Clauses as a guide to ensure the proper clauses are included in the procurement process. These clauses are required to be included in all FTA contracts and purchase orders. (See Exhibit I)

## **107. PAYMENTS**

*Advance Payments* – FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.

*Progress Payments* – Grantees may use progress payments provided the following requirements are followed:

- (a) Progress payments are only made to the contractor for costs incurred in the performance of the contract; and
- (b) The grantee must obtain adequate security for progress payments adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

## **108. LOBBYING**

Contractors who apply or bid for an award of \$100,000.00 or more must file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each level of FTA fund recipient certifies to the level above it that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each FTA fund recipient must also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that specific Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from each level of fund recipient to the next level of fund recipient until it reaches the grantor.

See "Lobbying" as provided in: <https://www.transit.dot.gov/funding/grantee-resources/certifications-and-assurances/certifications-and-disclosure-lobbying>.

Certifications attached as Exhibit O

FTA Federally Required and Other Model Contract Clauses – Exhibit P

## **109. CONTRACTOR RECORDS**

If a District contract is being funded in whole or in part by assistance from a federal agency, the contract shall include provisions requiring the contractor and subcontractors at any tier to:

- (a) Maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (b) Provide to the District, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

## **ARTICLE XV: IMPLEMENTATION OF AMENDMENTS**

## **110. SEVERABILITY**

If any provision or application of these regulations is held invalid, such invalidity shall not affect any other provision or application of these regulations which be given effect without the invalid provision or application.

## **111. EFFECTIVE DATE**

These policies shall be effective upon adoption.

# EXHIBITS



**North Central Regional Transit District  
Contract / Purchase Order File Index  
(For Sealed Bids Only)**

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

Section A - Solicitation Documents		
Tab #	Document(s)	Audit
1	Purchase Request	
2	Specifications & DBE Goals	
3	Requirement Justification	
4	Independent Cost Estimate	
5	Bidder's List	
6	Contractor Information Form	
7	Justification of Procurement Method	
8	Copy of IFB	
9	Proof of publication	
10	IFB Attachments / Modifications	
11	Pre-Bid Minutes & List of Attendees	
12	Correspondence with Bidders	
13	Protests Prior to Bid Opening	
14	Interoffice Correspondence	
15	Review of Responsiveness	

Sealed Bid No. \_\_\_\_\_  
Date: \_\_\_\_\_

Contract Administrator: \_\_\_\_\_



**North Central Regional Transit District  
Contract / Purchase Order File Index  
(For Sealed Bids Only)**

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

<b>Section B – Award Documents</b>		
<b>Tab #</b>	<b>Document(s)</b>	<b>Audit</b>
1	Rationale for Method of Procurement Copy of Each Bid	
2	Late Bid – Bid Errors	
3	Bid Analysis / Tabulation Sheet	
4	Technical Evaluation & Pre-Award Survey	
5	Affirmative Action Evaluation / DBE Plan	
6	Bidder’s Responsibility Determination	
7	Price Analysis	
8	Record of Negotiation for Single Bid	
9	Justification of Contract Type	
10	Award Recommendation Memo	
11	Board Resolution	
12	Notice of Award	
13	Notice to Unsuccessful Bidders (Bond, Check Returns)	
14	FTA Approval	
15	Legal Review of Contract Documents	
	Contract Document	
	Bond & Certificate of Insurance	
	Notice to Proceed	
	Purchase Order	



**North Central Regional Transit District  
Contract / Purchase Order File Index  
(For Sealed Bids Only)**

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<b>Section C – Contract Administration Documents</b>		
<b>Tab #</b>	<b>Document(s)</b>	<b>Audit</b>
1	Post Award Conference	
2	Status Reports	
3	Change Notices/Modifications /Change Orders	
4	Site Visit Reports	
5	Progress Meeting Minutes	
6	Quality Assurance Records	
7	Termination / Stop Work Notices or Resolution Plan	
8	Invoices and Check Requests	
9	Records of Payments	
10	Notice of Substantial Acceptance	
11	Notice of Claims	
12	Release of Claims / Bonds	
13	Assignments	
14	Notice of Final Payment	
15	Audit Reports	
16	Liquidated Damages	
17	Close Out Documentation	



**North Central Regional Transit District  
Contract / Purchase Order File Index  
(For RFP Only)**

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

<b>Section A - Solicitation Documents</b>		
<b>Tab #</b>	<b>Document(s)</b>	<b>Audit</b>
1	Purchase Request Rationale for Method of Procurement	
2	Specifications / Statement of Work	
3	Justification for Procurement	
4	Cost Estimate	
5	Set Aside Decision / DBE Goal	
6	Contractor Information Form	
7	Justification of Procurement Method	
8	List of Prospective Proposers	
9	Proof of publication	
10	Copy of RFP	
11	Addenda	
12	Pre-Proposal Minutes & List of Attendees	
13	Correspondence with Bidders	
14	Interoffice Correspondence	
15	Review of Responsiveness	

RFP No. \_\_\_\_\_ Contract Administrator: \_\_\_\_\_  
Date: \_\_\_\_\_





**North Central Regional Transit District  
Contract / Purchase Order File Index  
(For RFP Only)**

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

<b>Section B – Award Documents</b>		
<b>Tab #</b>	<b>Document(s)</b>	<b>Audit</b>
1	Copy of Each Proposal	
2	Proposal Tabulation Sheet	
3	Evaluation Team Notification	
4	Evaluation Sheet / Matrix	
5	Pre-Award Survey	
6	Determination of Zone of Consideration	
7	Late Proposers	
8	Invitations for Oral Interviews	
9	Notice of Rejection	
10	Minutes of Meetings	
11	Correspondence with Proposers	
12	Cost or Price Analysis	
13	Justification of Contract Type	
14	Negotiation Memorandum	
15	Copy of Each Best & Final Offer	
16	Award Recommendation Memo	
17	Board Resolution	
18	Legal Review of Contract Documents	
19	Notice of Award	
20	Notice to Unsuccessful Bidders	
21	Procurement Summary	
22	Determination and Findings	
23	Bonds & Certificates of Insurance	
24	Contract Document	
25	Notice to Proceed	
26	Purchase Order	



**North Central Regional Transit District  
Contract / Purchase Order File Index  
(For RFP Only)**

INSTRUCTIONS: Applicable items should be entered in chronological order by tab number. Documents maintained in the file will be numbered and filed consecutively in each section with the highest number on top. When an item is not applicable, it will be designated with “NA” in the Tab Column.

<b>Section C – Contract Administration Documents</b>		
<b>Tab #</b>	<b>Document(s)</b>	<b>Audit</b>
1	Post Award Conference	
2	Quality Assurance Records	
3	Change Notices / Modifications /Change Orders	
4	Periodic Status Reports	
5	Contractor Evaluation Form	
6	Site Visit Reports	
7	Termination / Stop Work Notices or Resolution Plan	
8	Invoices and Check Requests	
9	Records of Payments & Receipts	
10	Advance or Progress Payment Documents	
11	Notice of Substantial Acceptance	
12	Punch List Discrepancies	
13	Notice of Final Acceptance	
14	Notice of Claims	
15	Release of Claims / Bonds	
16	Assignments	
17	Notice of Final Payment	
18	Audit Reports	
19	Liquidated Damages	
20	Close Out Documentation	



**North Central Regional Transit District  
Responsibility Determination Form**

**BID / RFP No:** \_\_\_\_\_

**Supplier:** \_\_\_\_\_

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

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

<i><b>Acceptable</b></i>	<i><b>Comment</b></i>	
1. Appropriate financial, equipment, facility, and personnel.	Yes	No
		_____
		_____
		_____
2. Ability to meet the delivery schedule.	Yes	No
		_____
		_____
		_____
3. Satisfactory period of performance.	Yes	No
		_____
		_____
		_____
4. Satisfactory record of integrity, not on declined or suspend listings.	Yes	No
		_____
		_____
		_____
5. Receipt of all necessary data from supplier.	Yes	No
		_____
		_____
		_____
6. Debarred and Suspended List has been checked (supplier not listed)	Yes	No
		_____
		_____
		_____



**North Central Regional Transit District  
Method of Procurement  
Decision Matrix Form**

To best determine which method of procurement is suitable, classify your situation by checking off the appropriate boxes below. All elements must apply to use that method.

**Micro-purchase**

Amount &lt;\$2500

☐

Multiple sources

☐**Competitive Procurement**

Amount &gt;\$2500

☐

Multiple sources available

☐

Not an emergency purchase

☐**Sealed Bid (IFB)**

Complete &amp; adequate specs or purchase description

☐

Two or more responsible Bidders willing to compete

☐

Selection can be made on basis of price

☐

Procurement suitable for firm, fixed price

☐

No discussion with bidders needed after receipt of offers

☐**Competitive Proposals (RFP)**

Complete specifications not feasible

☐

Bidder input needed for specification

☐

Two or more responsible bidders willing to compete

☐

Discussion needed with bidders after receipt of proposals, prior to award.

☐

Fixed price can be set after discussions

☐**Time and Materials Contract**  
(subset of RFP)

Fixed price cannot be set for work

☐

Complete extent of work unknown, whether time, or material use, or both.

☐**Best Value**

Price and qualitative consideration/Greatest value to the District

☐**Sole Source**

OEM or custom item

☐

Only one source available

☐

Approved by FTA-sole source

☐

Public Exigency Issue/Emergency

☐

Competition is inadequate after public solicitation

☐**Emergency Procurement**  
(subset of sole source)

There is a health and safety issue that prohibits delay

☐



**North Central Regional Transit District  
Bid Checklist Form**

	<u>YES</u>	<u>NO</u>
1. Price is firm, fixed and definite	_____	_____
2. Bid is responsive to requirements of the solicitation	_____	_____
3. Exceptions taken to any material term or condition of the solicitation	_____	_____
4. Bid is ambiguous	_____	_____
5. All amendments to solicitation acknowledged	_____	_____
6. Bid signed	_____	_____
7. All material representations, bonds, guarantees and certifications completed.	_____	_____
8. All required information submitted.	_____	_____
9. Bid is not defective	_____	_____



Exhibit E

**North Central Regional Transit District  
Bid Cost Factors Form**

**Solicitation / Bid No:** \_\_\_\_\_

**Supplier Price Evaluation Factors:**

1. Purchase price: \$ \_\_\_\_\_

2. Payment discount terms: \_\_\_\_\_

3. Transportation costs: \_\_\_\_\_

4. Warranty: \_\_\_\_\_

5. Installation: \_\_\_\_\_

6. Training: \_\_\_\_\_

7. Technical assistance: \_\_\_\_\_

**Total bid:** \$ \_\_\_\_\_

**Evaluation:** \$ \_\_\_\_\_



Exhibit F

**North Central Regional Transit District  
NONCOMPETITIVE PROCUREMENT  
JUSTIFICATION FORM**

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

**Check one:**

- \_\_\_\_\_ The item is available only from a single source (sole source justification is attached).
- \_\_\_\_\_ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).
- \_\_\_\_\_ FTA authorizes noncompetitive negotiations (letter of authorization is attached).
- \_\_\_\_\_ After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).
- \_\_\_\_\_ The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments:

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\_\_\_\_\_ Cost Analysis is attached.

\_\_\_\_\_  
Chief Procurement Officer

\_\_\_\_\_  
Department Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



Exhibit G

**North Central Regional Transit District  
Cost and Price Analysis Form**

Comparisons with other competitive proposals: \_\_\_\_\_

Price quoted by vendor: \_\_\_\_\_

Competitive prices obtained from other vendors: \_\_\_\_\_  
(state name of vendor and price):

Previous Contracts: \_\_\_\_\_

Date of Contract: \_\_\_\_\_

Purchase Price: \_\_\_\_\_

Catalog/Market Prices: \_\_\_\_\_

Source: \_\_\_\_\_

Purchase Price: \_\_\_\_\_

Historical Prices: \_\_\_\_\_

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

Purchase Price: \_\_\_\_\_

Independent Cost Estimates: \_\_\_\_\_

Source: \_\_\_\_\_

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

Purchase Price: \_\_\_\_\_

Price/Performance Ratio (if applicable): \_\_\_\_\_

Market Data: \_\_\_\_\_

Source: \_\_\_\_\_

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

Purchase Price: \_\_\_\_\_





**North Central Regional Transit District  
Disclosure Statement**

The U.S. Department of Transportation Federal Transit Administration Master Agreement, Section 3a (1) prohibits the recipient's employees, officers, board members or agents from participating in the selection, award, or administration of a third-party contract or sub agreement supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award:

- a) an employee, officer, board member or agent;
- b) any member of his or her immediate family;
- c) his or her partner;
- d) an organization that employs or intends to employ any of the above.

It is the responsibility of the officers and employees of the North Central Regional Transit District, upon acquiring interests which conflict or might appear to conflict with the interests of the Federal Transit Administration and/or the North Central Regional Transit District, to bring them forth immediately for resolution.

I, the undersigned North Central Regional Transit District employee, acknowledge receipt, understanding and acceptance of the North Central Regional Transit District Code of Ethics and this Disclosure Statement, and certify that (1) I have not solicited or received any kickbacks or gratuities, and (2) I have no financial interest in any supplier with whom the North Central Regional Transit District does business. If any real or perceived conflict should arise in the discharge of my duties, I will report such conflict immediately to the Director of Human Resources in writing.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

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

*This statement will be renewed on an annual basis*

## Exhibit I

See the most current federal review guidance for current FTA contract clauses.



**North Central Regional Transit District  
Sole Source Cost Analysis Form**

Prior to proceeding with sole source procurements, including contract modifications, the requesting department must perform a cost analysis in order to demonstrate the proposed price is fair and reasonable. The cost analysis should examine the elements of cost (labor hours, material, overhead, and profit) for professional consulting and architectural and engineering type contracts.

Please note: It is not sufficient to list the last price paid and the percentage change of the newly quoted price. Actual analysis of the figures should be evident to explain why any increase or decrease in quoted costs is reasonable. All of the following elements must be completed for each proposed sole source procurement.

1. Verification of cost or pricing data and evaluation of cost elements:

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2. Comparison of cost proposed with independent or previous cost estimate, market indices, and other factors:

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3. Evaluation of suppliers' costs first hand and assessment for completeness and reasonableness, including evidence and rationale for determination.

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**North Central Regional Transit District  
Bid Summary Form**

Bid Opening: \_\_\_\_\_

Bid#: \_\_\_\_\_ Description: \_\_\_\_\_ Department: \_\_\_\_\_

Name of Bidder	Bid Deposit	Total Bid	Unit Price	Unit Price	Unit Price	Unit Price	Unit Price	Responsive Bid (Y/N)	Bid Rejected (Reason)

This Bid was opened at the time  
stated in the advertisement: \_\_\_\_\_  
Initials

Person opening Bids: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date/Time: \_\_\_\_\_



**North Central Regional Transit District  
Award Recommendation & Justification Form**

Department: \_\_\_\_\_

Procurement Number: \_\_\_\_\_

(RFP/BID #)

Subject: \_\_\_\_\_

Report	Number Bids /	Number of Bids /
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Date: _____	RFP'S Mailed: _____	RFP'S Received: _____
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Recommendation:

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Justification:

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Approvals:

\_\_\_\_\_  
PROCURING AGENT

\_\_\_\_\_  
DIRECTOR OF PURCHASING



**North Central Regional Transit District  
Price / Rate Quotation Form**

Department: \_\_\_\_\_  
Subject: \_\_\_\_\_  
Report \_\_\_\_\_ Number of  
Date: \_\_\_\_\_ Quotes Received: \_\_\_\_\_

Qty.	Qty/Ctn	Item	Vendor	Price	Amount

Recommendation:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Approvals:

\_\_\_\_\_  
PROCURING AGENT

\_\_\_\_\_  
DIRECTOR OF PURCHASING



## Buy America Form

### **Certification requirement for procurement of steel, iron, or manufactured products.**

#### *Certificate of Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

#### *Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_



## Buy America Form

### **Certification requirement for procurement of buses, other rolling stock and associated equipment.**

*Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_



**APPENDIX A, 49 CFR PART 20--CERTIFICATION REGARDING LOBBYING**

The undersigned [Contractor] 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 making lobbying contacts to 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 Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
- (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, sub grants, 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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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.

**[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]**

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

**CONTRACTOR INFORMATION FOR PROJECTS  
FUNDED BY THE U. S. DEPARTMENT OF TRANSPORTATION**

**BID/RFQ/RFP #** \_\_\_\_\_

The completion of this form(s) is a requirement of this bid. A completed form is required for each contractor who submits a Bid/RFQ/RFP in response to this solicitation and for **each** of the bidders' subcontractors. Copy and attach additional sheets as necessary. Please provide the following information:

**FIRM'S NAME:** \_\_\_\_\_

*PRIME CONTRACTOR* \_\_\_\_\_ *SUBCONTRACTOR* \_\_\_\_\_

**FIRM'S ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_

**AGE OF FIRM:** \_\_\_\_\_

**DISADVANTAGED BUSINESS ENTERPRISE?\*** \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, Certified by the State of New Mexico Department of Transportation?

\_\_\_\_\_ Yes \_\_\_\_\_ No

**ANNUAL GROSS RECEIPTS:**

_____ Under \$500,000	_____ \$500,000 - \$999,999	_____ \$1,000,000 - \$1,999,999
	_____ \$2,000,000 - \$4,999,999	_____ \$5,000,000 - \$9,999,999
	_____ \$10,000,000 - \$14,999,999	_____ \$15,000,000 - \$24,999,999

\* *Disadvantaged business enterprise* or *DBE* means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.



## REQUEST FOR PROPOSAL (RFP) AND STATEMENT OF QUALIFICATIONS (SOQ)

### CONFLICT OF INTEREST AND CONFIDENTIALITY DISCLOSURES

Your willingness to participate as an RFP evaluator is an integral part of the procurement process at the NCRTD. Your designation as an RFP evaluator requires that you fully understand the policies regarding potential conflicts of interest and the confidential nature of the proposals and all that is contained therein.

**Confidentiality.** The competitive procurement process and the obligations imposed by New Mexico State Law and the District's Procurement policies require the Finance Department to ensure that the competitive process operates in a fair and equitable manner. As an RFP evaluator, you have access to information not generally available to the public and are charged with special professional and ethical responsibilities. You may have access to information about proposers that is to be used only during the evaluation process, and for discussion only with other members of the Evaluation Committee. You shall not discuss the evaluation, scoring, or status of any proposal or business entity at any time prior to, during, or after the procurement process. You shall not use such information obtained as an RFP evaluator for any personal benefit, financial or otherwise, nor copy and/or disseminate any portion of any proposal at any time prior to, during, or after the procurement process.

**Confidentiality of Evaluators.** During the evaluation process, the Finance Department makes every effort to keep the identity of evaluators confidential and will maintain that confidentiality to the fullest extent provided by law. As an evaluator, you shall not discuss or reveal the names of evaluators to proposers or other individuals.

**Conflict of Interest and Ethical Considerations.** A conflict of interest or the appearance of a conflict of interest may occur if you are directly or indirectly involved with an organization that has submitted a proposal for evaluation. Prior to reviewing any proposals, you must inform the Chief Procurement Officer (CPO) of any potential conflicts of interest (real, potential or perceived). If you become aware of any potential conflict of interest as you review a proposal, you must immediately notify the CPO. You may be disqualified as an RFP evaluator if you conduct yourself in a way that could create the appearance of bias or unfair advantage with or on behalf of any competitive proposer, potential proposer, agent, subcontractor, or other business entity, whether through direct association with contract representatives, indirect associations, through recreational activities or otherwise. Examples of potential biasing affiliations or relations are listed below:

1. Your solicitation, acceptance, or agreement to accept from anyone any benefit, financial or otherwise, as consideration for your decision or recommendation as it pertains to your evaluation of any proposal.
2. Your affiliation with a bidding company or institution. For example, a conflict may exist when you:
  - (a) Are employed by or are being considered for employment with the company or institution submitting any bid or hold a consulting, advisory, or other similar position with said company or institution;
  - (b) Hold any current membership on a committee, board, or similar position with the company or institution;
  - (c) Hold ownership of the company or institution, securities, or other evidences of debt;
  - (d) Are currently a student or employee in the department or school submitting a request for proposal (RFP).
3. Your relationship with someone who has a personal interest in the proposal. This includes any affiliation or relationship by marriage or through family membership, any business or professional partnership, close personal friendship, or any other relationship that you think might tend to affect your objectivity or judgment or may give an appearance of impropriety to someone viewing it from outside the relationship.

To assure the integrity of the RFP and/or SOQ process, all evaluators are required to complete the RFP/SOQ Conflict of Interest/Confidentiality Statement.

## EVALUATOR CONFLICT OF INTEREST/CONFIDENTIALITY STATEMENT

I, the undersigned, a member of the Evaluation Committee for Statement of Qualifications (SOQ) and/or Request for Proposal (RFP) No. \_\_\_\_\_ for \_\_\_\_\_ will perform the evaluation under the guidelines, procedures and requirements provided by the RFP Coordinator.

Further, whether I am an employee of the NCRTD, or a consultant assisting in the valuation of the proposal, I represent as follows:

1. I have a professional interest in seeing that the scoring and evaluation of the proposer responses to this RFP can be supported and defended, and that the recommendation of the Evaluation Committee will lead to the selection of the proposal most advantageous to the NCRTD, taking into consideration the evaluation factors set forth in the SOQ/RFP.
2. Except as I have disclosed in detail, I neither have nor shall I during the evaluation acquire any financial interest, direct or indirect, in any proposer that would conflict in any manner or degree with my evaluation responsibilities. Members of my immediate family (spouse or children) and other family members who are in my household are subject to the same restriction and disclosure requirements. Otherwise, the nature and extent of such financial interests must be disclosed by me to the CPO for their evaluation of the significance of the financial interest on participation in this evaluation.
3. Notwithstanding my termination of employment or other later disassociation from this evaluation committee, I may not participate in the development of proposals in response to this solicitation.
4. I am aware that this evaluation will involve my knowledge of official information and possible proposer commercial information not publicly known. I agree not to disclose any information gained during the course of my service on this evaluation committee to any person, except to other District employees who may in the normal course of business have a need for such information.

I have read this document and understand my obligations as explained herein. I further understand that I must advise the CPO if a conflict currently exists and arises during my term of service as an RFP evaluator. I further understand that I must sign and deliver this statement to the CPO prior to participating in the evaluation process.

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

RFP #: \_\_\_\_\_

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

Evaluator Name (Printed): \_\_\_\_\_

Title: \_\_\_\_\_

# Appendix 1

## **WRITTEN PROTEST PROCEDURES**

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### **A. GENERAL – DEFINITIONS**

1. The procedures established hereunder shall be available to contractors for the purpose of handling and resolving disputes relating to procurements hereunder. A protestor must exhaust all administrative remedies hereunder before pursuing a protest in any court of law. Where applicable, any information received under such procedures shall be disclosed to the Federal Transit Authority (“FTA”) and a protestor must exhaust all administrative remedies before pursuing a protest with the FTA.
2. The term “contractor” means any person, firm, or corporation, which has contracted or seeks to contract with the North Central Regional Transit District.
3. The term “hearing officer” shall mean a person, appointed by the Executive Director, to hear and decide allegations made by any contractor relating to procurements hereunder.
4. A “pre-bid or solicitation phase protest” is a written protest received prior to the bid opening or proposal due date.
5. A “pre-award protest” is a protest against making an award and is received after receipt of proposals or bids, but before award of a contract.
6. A “post-award protest” is a protest received after award of a contract.

### **B. FILING OF PROTESTS**

#### **1. Pre-Bid Protest**

Any Contractor may file a written protest of the procurement procedures involved herein, with the District’s Chief Procurement Officer at least five (5) working days before the bid opening or proposal due date.

#### **2. Pre-Award Protest**

Any Contractor may file a written protest against the District’s making of an award after the District’s making of an award after the District’s receipt of bids or proposals, but at least five (5) working days before the conditional award of a contract by the District.

#### **3. Post-Award Protest**

Any contractor may file a written protest of the procurement procedures involved herein, with the District’s Chief Procurement Officer, at least five (5) working days after the date of the District’s Decision regarding a selection of a contractor with respect to any Bid/RFP/RFQ.

4. Each protest must clearly state:
  - a. The name, address, and telephone number of the protester;
  - b. The solicitation/contract number or description thereof.
  - c. A statement of the grounds upon which the protest is made.
5. Protests are to be filed by certified mail, return receipt requested or by personal delivery by 4:30 PM on or before the due date at:

Purchasing Department  
North Central Regional Transit District  
1327 N. Riverside Drive  
Española, NM 87532

If protests are filed by personal delivery, the protestor must obtain a time-stamped copy of the protest from the Purchasing Department as proof of the date and time of the filing of the protest. It is the Protester's sole responsibility to provide said copy at the time of filing.

#### C. HEARING PROCEDURE

1. A hearing shall be conducted in accordance with C.G.S. Section 4-176e through 4-18a, as amended, which are incorporated herein, provided that if there is a conflict between Section 4-176e and these Written Protest Procedures, the latter will prevail. The hearing officer shall issue a written decision within ten (10) days of the last date of such hearing and state in the decision the reasons for the action taken. The Hearing Officer, shall respond in detail, to each substantive issue raised in the protest.
2. The Hearing Officer shall be the responsible official who has the authority to make the final determination of the protest.
3. The Hearing Officer shall address, in his determination, each material issue raised in the protest.
4. The Hearing Officer's determination shall be final and binding upon all parties upon issuance.
5. Within (5) working days from its receipt of the decision of the Hearing Officer, a protester may request reconsideration of the decision, using the same procedure described in Section 5 above. The request for reconsideration shall be addressed to the Hearing Officer, in care of the Purchasing Department, North Central Regional Transit District, 1327 N. Riverside Drive, Espanola, NM 87532. The request for reconsideration shall set forth all of the grounds upon which the request is made.



6. The Hearing Officer shall issue a written decision on the request for recommendation within ten (10) days of receipt thereof and state in the decision the reasons for the granting or denial of the request.

#### D. REVIEW OF PROTEST BY FTA

1. Where applicable, review of protests by FTA will be limited to the District's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to FTA must be received by the cognizant FTA Regional or Headquarters Office within five (5) working days of the date the protestor knew or should have known of the violation and/or five (5) days after the protestor knows or has reason to know that the District has failed to render a final decision. Such appeal must be filed in accordance with all FTA rules and regulations, and Section 7(1) of FTA Circular 4220.1D., as periodically updated. The FTA may allow a request for reconsideration if data becomes available that was not previously known, or if there has been an error of law or regulation.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of state or local regulations will be under the jurisdiction of state or local authorities.

2. Post-determination protests may include allegations that the District failed to have or follow written protest procedures.



# Blue bus

**NORTH CENTRAL REGIONAL TRANSIT DISTRICT**  
**1327 N RIVERSIDE DR ESPANOLA, NM 87532**  
**505.629.4725 | NCRTD.ORG**

