

NORTHWEST REGIONAL PLANNING COMMISSION

PROCUREMENT PROCEDURES

1.0 Purpose and Authority:

The purpose of this document is to describe the process through which the Northwest Regional Planning Commission (NRPC) will purchase equipment and procure consultant services, including in its role as a Clean Water Service Provider (CWSP).

This document is intended to satisfy the requirements to self-certify NRPC procurement procedures as in compliance with applicable federal regulations (pursuant to 49 CFR 18.36(g)3.)

These policies and procedures have been developed in accordance with the following state and federal statutes and regulations as amended or updated:

24 VSA Chapter 117 - Vermont Municipal and Regional Planning and Development Act.

Environmental Protection Rule Chapter 39- Clean Water Service Provider (CWSP) Rule.

Vermont Agency of Administration Administrative Bulletin 3.5 - Contracting Procedures for Services.

2 CFR (Code of Federal Regulations) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

If provisions of these procurement policies conflict with provisions of federal or state statute or regulations, the most stringent shall apply.

2.0 General Procurement:

- a. NRPC will maintain a contract administration system which ensures that vendors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.
- b. NRPC will maintain a written code of standards of conduct as part of the NRPC Personnel Policies governing the performance of their employees engaged in the award and administration of contracts under this program. In addition, no employee, officer or agent of the NRPC shall participate in the selection, award or administration of a contract supported by State or Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
 - i. The employee, officer or agent or,
 - ii. Any member of their immediate family or,
 - iii. Their partner, or

- iv. Any organization which employs, or is about to employ, any of the above has a financial or other interest in the firm selected for award.
- c. NRPC will review proposed procurement to avoid purchase of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurement to obtain a more economical purchase. Where appropriate, an analysis should be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- d. The NRPC officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from vendors, potential vendors, or parties to sub-agreements. NRPC may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the NRPC officers, employees or agents, by consultants or their agents.
- e. In order to foster greater economy and efficiency, NRPC will endeavor to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
- f. NRPC will endeavor to use federal and state excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- g. NRPC will maintain records sufficient to detail the significant history of procurement. These records will include, but not be limited to, the rationale of the method of procurement, selection of contract type, vendor selection or rejection, and the basis for the contract price.
- h. NRPC will use time and material-type contracts only:
 - a. after a determination by NRPC that no other contract is suitable or this type is requested by the funding agency, and
 - b. if the contract includes a ceiling price that the vendor exceeds at its own risk.
- i. NRPC alone will be responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protest, disputes, and claims. These standards do not relieve NRPC of any contractual responsibilities under its contracts.
- j. NRPC will have protest procedures to handle and resolve disputes as part of all contracts awarded, and shall, in all instances of such occurrences, disclose information regarding the protest to any funding agencies.

- k. All procurement transactions will be conducted in a manner providing full and open competition as provided for in these policies. The NRPC will be alert to organizational conflicts of interest or noncompetitive practice among vendors that may restrict or eliminate competition or otherwise restrain trade. Awards will be made to the vendor whose offer is most responsive to the solicitation and is most advantageous to the NRPC.
- l. Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such a description shall not, in competitive procurement, contain features which unduly restrict competition. Brand name or equal description may be used as a means to define the performance of other salient requirements of a procurement, and when so used, the specific features of the name brand, which must be met by bidders, shall be clearly specified.
- m. Positive efforts shall be made by the NRPC to utilize Vermont's small businesses and minority-owned businesses as sources of supplies and services. Such efforts will allow these sources the maximum feasible opportunity to compete for contracts.
- n. Some form of price or cost analysis shall be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indications together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.
- o. All bids must be binding. Increases may be granted only in cases in which the NRPC and the vendor agree in writing that there is work required beyond that in the scope of the original bid specifications.
- p. NRPC will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- q. NRPC will provide termination provisions in all contracts and agreements over \$10,000 and contracts for projects over the Simplified Acquisition Threshold (\$150,000) will address administrative, contractual, or legal remedies when contractors violate or breach contract terms and provide for sanctions and penalties as appropriate. 2 CFR 200 Appendix II(A) and (B)
- r. NRPC will perform a cost or price analysis in connection with every procurement action, including contract modifications, in excess of the Simplified Acquisition Threshold. The method and degree of analysis is dependent upon the facts surrounding the procurement but, at a minimum, NRPC will make independent estimates before

receiving bids or proposals. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. 2 CFR 200.323

- s. NRPC 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 performed and industry profit rates in the surrounding geographic area for similar work.

3.0 Competition

- a. All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include but are not limited to:
 - i. placing unreasonable requirements on firms for them to qualify to do business;
 - ii. requiring unnecessary experience and excessive bonding;
 - iii. noncompetitive pricing practices between firms or between affiliated companies;
 - iv. noncompetitive awards to contractors on retainer contract if that award is not for the property or services specified for delivery under the retainer contract;
 - v. organizational conflicts of interest;
 - vi. specifying only a "brand name" product instead of allowing "an equivalent" product to be offered and describing the performance of other relevant requirements of the procurement; and
 - vii. any arbitrary action in the procurement process. 2 CFR 200.319(a)
- b. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations to bid, or requests for proposals will be excluded from competing for such procurements. 2 CFR 200.319(a)
- c. NRPC will not administratively impose 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 section does not preempt state licensing laws. 2 CFR 200.319(b)
- d. Solicitations for goods and services shall be based on a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. Detailed product specifications should be avoided whenever possible. "Brand name or equivalent" description may be used as a means to define the performance or other salient requirements of a procurement. 2 CFR 200.319(c)(1)
- e. NRPC will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include: placing qualified small and minority businesses and women's business enterprises on solicitation lists; assuring that small and minority businesses, and women's business

enterprises are solicited whenever they are potential sources; dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises; and requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in this section. 2 CFR 200.321

4.0 Applicable Bidding Thresholds, Contract Types and Requirements

NRPC will follow bidding thresholds and procedures contained in 2 CFR § 200.320 and Vermont Agency of Administration Administrative Bulletin 3.5 Procurement and Contracting Procedures. Together, 2 CFR § 200.320 and Vermont Agency of Administration Administrative Bulletin 3.5 define four methods of procurement that may be used by NRPC: procurement by micro-purchase (contract amount less than \$10,000); procurement by small purchase procedures (contract less than \$100,000); procurement by competitive proposals (optional for contracts under \$100,000, required for contracts over \$100,000). NRPC's preferred method of procuring contractor services is procurement by competitive proposals. Where work is to comply with Environmental Protection Rule Chapter 39, it may be procured under section 6.0 below. In some cases, State or Federal statutes or regulations require bidding at lower amounts. Such statutes shall take precedence over this policy.

Procurement by Micro- Purchase—\$ 10,000 or less (\$1,000 or less for CWSP)

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate annual dollar amount of which does not exceed the micro-purchase threshold established under 2 CFR § 200.67, currently defined at \$10,000. However, when a micro-purchase occurs pursuant to Environmental Protection Rule Chapter 39, the value of any single item shall not exceed \$1,000. Micro-purchases may be awarded without soliciting competitive quotations if NRPC considers the price to be reasonable. To the extent practicable, NRPC will distribute micro-purchases equitably among qualified suppliers.

Procurement by Small Purchase Procedures (Simplified Bid Process) -- Contracts not more than \$100,000

A standard bidding process is the preferred method for selection contractors. However, a simplified bid process may be used for relatively simple and informal procurements for securing services, supplies, or other property that do not cost more than \$100,000 (per Vermont Bulletin 3.5). Justification for using a simplified bid process must be submitted to, and approved by, the NRPC Executive Director in writing. A "simplified bid process" means that the NRPC has developed a specific and detailed statement of work for the service or product desired and has solicited written price quotations from at least three potential vendors known to provide the specified services or products. Price quotations may be obtained through telephone or verbal quotes, facsimile quotes, e-mail quotes or written bids. All communications with vendors to obtain price quotes must be documented. All records relating to the simplified bid process, including proposals and a record of the selection process, shall be retained in the contract file. The quotation most responsive to the selection criteria should be selected. If NRPC is unsure whether the contract will fall below the \$100,000 threshold, the standard bid process will be undertaken.

Procurement by Competitive Proposals (Standard Bid Process) -- Preferred for Contracts less than \$100,000; Required for Contracts Greater than \$100,000

Procurement by competitive proposal is NRPC's preferred method for procuring contractor services and is required for contracts greater than \$100,000 (per Vermont Bulletin 3.5). The technique of competitive proposals is normally conducted with more than one contractor submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded.

- i. Requests for qualifications, proposals or bid solicitations will be publicized and identify all evaluation factors and their relative importance. It is recommended that a minimum of three weeks be allowed for responses. Any response to publicized requests for qualifications, proposals or bids shall be considered to the maximum extent practical;
- ii. Qualifications, proposals or bids will be solicited from an adequate number of qualified sources;
- iii. NRPC will have a written method for conducting technical evaluations of the qualifications, proposals or bids received and for selecting awardees;
- iv. Awards will be made to the responsible contractor whose qualifications, proposal or bid is most advantageous to the program, with price and other factors considered. Qualifications-based procurement cannot be used to procure construction services. Construction contracts must use the sealed bid process discussed in the section below.

Procurement by Sealed Bids- Construction Contracts Greater than \$100,000

Procurement by sealed bids requires bids to be publicly solicited and a firm-fixed-price contract (lump sum or unit price) to be 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. The sealed bid method is the preferred method for procuring construction contracts. If procurement by sealed bids is used NRPC will follow procedures as defined in 2 CFR § 200.320(c) and Vermont Bulletin 3.5 Section VIII(B).

Procurement by Noncompetitive Proposals

Procurement by noncompetitive proposals is contrary to the competitive process supported by NRPC and will be avoided except when no available alternative exists. Procurement by noncompetitive proposals solicits proposals from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is not feasible under a competitive bid process and one of the following circumstances applies: the item is available only from a single source; the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; the awarding agency authorizes noncompetitive proposals; or after solicitation of a number of sources, competition is determined inadequate. 2 CFR 200.320(f)

Procurement by Time and Material Type Contracts

NRPC will use time and material type contracts, as defined in 2 CFR § 200.318(j), only after a determination that no other contract is suitable, and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material contracts provide no incentive for cost control or labor efficiency.

5.0 Contractor Selection Overview

For tasks that cannot be completed by NRPC staff due to workload or technical expertise, NRPC may procure the services of contractors. NRPC's preferred method for procuring contractor services is a Standard Bid Process, though a Simplified bid process may be used under some circumstances (see discussion above).

NRPC will follow the procedures described below for procuring contractor services using a Standard Bid Process. The section below does not apply when procuring construction contracts. Procurement of construction contracts over \$100,000 must follow *Procurement by Sealed Bids* procedures.

NRPC will maintain a list of potential contractors that include contractors who are currently working for NRPC, those who have previously worked for NRPC and those who have expressed interest in working with NRPC. The list also includes contractors identified by the Vermont Agency of Transportation (VTrans) and other sources. The intention of this list is to contain all potentially qualified contractors. Interested contractors will be added to the list upon request. NRPC will not preclude potential bidders from qualifying during the solicitation process. 2 CFR 200.319(d)

All proposals become the property of NRPC upon submission. The cost of preparing, submitting and presenting a proposal is the sole expense of the contractor. The NRPC reserves the right to reject any and all proposals received as a result of any solicitation, to negotiate with any qualified source, to waive any formality and any technicalities or to cancel a project in part or in its entirety if it is in the best interest of the NRPC. Solicitation of proposals in no way obligates the NRPC to award a contract.

The final draft contract or agreement or purchase record including a procurement process summary and any technical evaluation of proposals shall be placed in the procurement file.

5.1 Contractor Selection Procedure, General

Request for Proposal

For projects where the scope of work is well defined NRPC may use a Request for Proposal (RFP) process. For this process NRPC staff will solicit proposals from contractors listed on NRPC's contractor list. NRPC will also place an ad in a newspaper of general circulation and on the Vermont Bid System, and will place a notice on NRPC's website announcing the availability of the Request for Proposals. For specialized services, other sources for distribution of the RFP may be used.

Request for Qualifications

For projects where the scope of work is not well defined, the anticipated contractor response is expected to be large, or where NRPC wishes to select Retainer contractors a Request for Qualifications (RFQ) process may be used. If an RFQ process is undertaken NRPC staff will solicit statements of qualification from contractors listed on NRPC's contractor list. NRPC may also place an ad in a newspaper of general circulation and on the Vermont Bid System, and will place a notice on NRPC's website announcing the availability of the Request for

Qualifications. For specialized services, other sources for distribution of the RFQ may be used. A short list of contractors deemed to be qualified to perform the project may be sent an RFP for final selection of a contractor.

Pre-Qualified Contractors

To streamline procurement for work routinely bid out, NRPC may use the RFQ process to select Pre-Qualified Contractors to perform projects under task orders issued on an as-needed basis. These procedures do not apply to procuring construction services. NRPC will develop an RFQ for the specific services to be covered by the Pre-Qualified Contractors. NRPC may develop and award multiple Pre-Qualified Contractor contracts if a diversity of project types are anticipated during the contract period.

- i. NRPC will strive to select at least three contractors for each project type. However, this requirement may be waived if there are fewer than three respondents to the RFQ that are deemed qualified by the selection committee.
- ii. Pre-Qualified Contractors typically will be selected to perform the predefined tasks for a term of two years with the option of extending the contract for up to two additional one-year terms. Each Pre-Qualified Contractor will be issued a contract defining the specific services that are covered by the contract, the contract term, and additional items identified by NRPC.
- iii. NRPC will request proposals from among Pre-Qualified Contractors in accordance with the acquisition thresholds.
- iv. Task Order assignments will be made by NRPC and project stakeholders following a review of the task order complexity, experience of the firm, capacity to complete the work within the desired time-frame, and availability of contractor staff.

RFP or RFQ Formats and Requirements

The RFP or RFQ will contain adequate project descriptive information for contractors to understand the scope of the project. The RFP or RFQ will also detail the information required to be considered responsive to the RFP/RFQ and will outline the criteria that will be used for contractor selection. The contractors will be asked to provide the information listed below, as well as other items deemed important to the proposed project.

- Name, address and brief history and description of the firm.
- Resumes of key personnel to be assigned to the project.
- Related projects/areas of expertise/experience.
- Description of budgeting, cost and quality control procedures.
- A brief description of the firm's approach to the project.
- Documentation apprising NRPC of any record of debarment on the part of the firm or members of its staff.
- Executed Certificate of Good Standing using form B5-Act154Cert provided by Vermont Agency of Administration.
- Additional information NRPC determines is useful.

RFP/RFQ Evaluation

The RFP/RFQ will be evaluated considering a predetermined system of criteria and by a predetermined selection committee likely consisting of representatives of the affected communities, NRPC staff members, and others with expertise in the area of the proposal. Criteria may include, but not be limited to the following:

- Responsiveness to the scope of work;
- Knowledge of the project area;
- Quality and number of staff assigned to the project;
- Distribution of staff hours to tasks;
- Specific experience of the proposed staff;
- Schedule;
- Creativity of methodological approach;
- Technical resources;
- Location of the key management and staff team in relation to the location of the project;
- Overall experience of the firm;
- Experience with similar projects; and
- Good faith effort soliciting DBE's. The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program.
- Good faith effort to apply Justice/Equity/Diversity/Inclusion principles.

Once the proposal is discussed and ranked the cost proposal, if required, will be reviewed for consistency with, and in light of, the evaluation of the technical proposal.

The NRPC reserves the right to seek clarification of any proposal submitted and to select the proposal considered to best promote the public interest.

5.2 Contractor Selection Procedure, Clean Water Service Provider Pre-Qualification

Where NRPC is pre-qualifying Project Implementors and Contractors subject to Environmental Protection Rule Chapter 39 and NRPC's role as a Clean Water Service Provider (CWSP), the following shall apply:

- a. **CWSP Project Implementer Pre-qualification.** Consistent with Environmental Protection Rule §§ 39-303(a) and 39-306(h) NRPC may pre-qualify Partner Organizations as subgrantees and/or subcontractors. The Partner Organization Prequalification process described below shall qualify the Project Implementer for either or both roles.
 - i. When pre-qualifying CWSP Project Implementers, NRPC will issue a Request for Qualifications (RFQ) and evaluate Project Implementer responses. Pre-qualifications shall be valid for up to three years. NRPC will open the pre-qualification process to new entities annually.
 - ii. The RFQ issued by the CWSP for Project Implementers will clearly describe the services desired and qualification materials required for consideration. At a minimum, such qualification materials will include:
 - Name, address, and brief history and description of the Project Implementer.
 - Resumes of key personnel in the Project Implementer and tenure.
 - Relevant projects completed and areas of expertise/experience.

- Description of Project Implementer's budgeting, cost, quality control, DBE/WBE, and Justice/Equity/Diversity/Inclusion procedures.
 - Project Implementer's Procurement Procedures.
 - Fee Schedule.
 - Documentation apprising NRPC of any record of debarment on the part of the Project Implementer or members of its staff.
 - Executed Certificate of Good Standing using form B5-Act154Cert provided by Vermont Agency of Administration.
- iii. In evaluating responses to the RFQ issued to select Project Implementers, the CWSP shall give due consideration to the expertise of the Project Implementers, as well as to the following:
- Experience of Project Implementer staff and their knowledge of water quality project planning, design, and implementation.
 - Technical resources including equipment, access to materials, and access to contractors.
 - Experience advancing projects eligible for funding under the CWSP formula grant.
 - Project Implementer's ability and commitment to use the NRPC's online grant and contract management and project tracking systems.
 - Good faith effort to apply Justice/Equity/Diversity/Inclusion principles.
- iv. All records relating to the selection process, including submittals and a record of the selection process, shall be retained in the contract file.
- v. Project Implementers will be contracted with as appropriate to perform work that furthers Basin Water Quality Council prioritization decisions.
- vi. The services of Prequalified Project Implementers may be procured by Noncompetitive Proposals for projects and other work prioritized by a BWQC. Procurement by noncompetitive proposals may be used in accordance with the CWSP Rule and in recognition of a Prequalified Partner's unique ability to provide a service in connection with a specific project or task.
- b. **CWSP Subcontractors.** Consistent with Environmental Protection Rule §§ 39-303(a) and 39-306(h) NRPC may pre-qualify Subcontractors to complete CWSP projects including small scale construction, installation, and similar tasks under task orders issued on an as-needed basis. NRPC may pre-qualify CWSP Subcontractors through the process described below and engage them under Pre-Qualified Subcontractor Agreements. These procedures will apply to procuring services valued at less than \$250,000 for discrete projects. NRPC will develop an RFQ for the specific services to be covered by the Pre-Qualified Subcontractor contract. NRPC may develop and award multiple Pre-Qualified Subcontractor contracts if a diversity of project types are anticipated during the contract period.
- i. When pre-qualifying CWSP Partner Subcontractors, NRPC will issue a Request for Qualifications (RFQ) and evaluate Partner Subcontractors responses. NRPC will open the pre-qualification process to new entities annually.

- ii. NRPC will solicit cost proposals/quotations from Pre-Qualified Subcontractors in accordance with the acquisition thresholds. Task Order assignments will be made by NRPC based on cost as well as contractor experience, availability of key staff, and capacity to complete the work within the desired timeframe.
- iii. Subcontractors having active Pre-Qualified Subcontractor Agreements with NRPC will be considered prequalified and may be engaged by CWSP Project Implementers under separate Pre-Qualified Subcontractor Agreements following acquisition thresholds. The terms of the separate Project Implementers agreements must be consistent with those of the NRPC Pre-Qualified Subcontractor Agreements.

Adopted by the NRPC Board of Commissioners, July 27, 2022.



Catherine Dimitruk
Executive Director

Amendment History:

March 2014

- Incorporate requirements for procurement under the Transportation Planning Initiative (TPI)
- Repeal the separate TPI procurement procedures adopted in March 2005.

April 2015 (technical change)

- Replaced reference to OMB Circulars and Title 49 with the newly effective 2 CFR Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

July 2017

- Update to reflect additional changes to Vermont Bulletin 3.5 and clarifications related to 2 CFR Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

July 2022

- Updated small purchase minimum to \$10,000, added necessary references to the CWSP, added Section 5.2, added equity to evaluation criteria.