

PROCUREMENT - CONSTRUCTION SERVICES

POLICY: Construction contracts must be awarded to the **lowest responsible, responsive bidder** after advertisement and solicitation of competitive bids. NCDOT must concur in the award of a construction contract by the LGA.

GUIDANCE

All procurement is governed by The Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (49 CFR 18), however transportation projects within the highway right of way must be procured in accordance with Federal Highway Administration regulations at 23 CFR 635. The State of North Carolina also has procurement procedures for construction projects by local governments at NCGS 143 Article 8 – Public Contracts.

CONSTRUCTION SERVICES

In order to proceed to the construction phase of the project, all LGAs must advertise, receive competitive bids, and award a construction contract to the lowest responsible, responsive bidder. The location of the project will determine whether or not particular federal regulations will apply.

PROCEDURE:

- Projects located **ON** a highway – In addition to the NCGS, follow relevant provisions of 23 CFR 635 Subpart A – Contract Procedures that differ from the general statute:
 - The project must be advertised for at least three (3) weeks
 - No negotiation is allowed with the low bidder
- Projects located **OFF** the highway – Follow *NCGS 143 – Article 8 Public Contracts*
 - Project cost \geq \$500,000 – follow *NCGS 143-129 – Procedure for letting of public contracts*
 - You must advertise for at least seven (7) days
 - Allowed to negotiate with low bidder if bid is greater than funding available
 - Must receive at least three bids; if not, LGA must readvertise. If after 2nd advertisement, 3 bids are not received, LGA may accept the lowest bid received (NCGS 143-132)
 - Project cost between \$30,000 and \$499,999 – follow *NCGS 143-131 – When counties, cities, towns and other subdivisions may let contract on informal bids*
 - No public advertising required
 - NCDOT recommends soliciting at least three bidders to submit a bid
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- **AFTER RECEIVING BIDS**, LGA should review for compliance with Disadvantaged Business Enterprise goals, and submit the following to NCDOT:
 - Letter that describes overview of bid process, identifies low bidder, and requests NCDOT to concur in award
 - Bid Tabulation

- Listing of DBE Subcontractors
- Letters of Intent (if applicable)
- Good Faith Effort if DBE goal is not met
- Municipal Resolution awarding contract to low bidder, pending NCDOT concurrence.

All forms should have been included in Bid Documents – see separate section

- NCDOT will review the documents and reply in writing, giving approval to proceed.

EXCEPTIONS:

In a few cases, a LGA may be approved to acquire construction services through Force Account.

IMPORTANT: DISADVANTAGED BUSINESS ENTERPRISES requirements apply for all PROCUREMENT activities, see separate section for guidance.

REFERENCES:

- 49 CFR 18.36(d)(1) – Procurement by small purchase procedures
- 49 CFR 18.36(d)(2) – Procurement by sealed bids
- 23 CFR 635 Subpart A – Contract procedures
- NCGS 143 Article 8 –Public Contracts

MINORITY BUSINESSES PARTICIPATION

POLICY: Minority Business shall have equal opportunity to participate in the performance of contracts funded financed in whole or in part by Federal and/or state funds.

Definitions:

Disadvantaged Business Enterprises (DBE) is the US Department of Transportation term for economically and socially disadvantaged groups. The DBE program supersedes state or local requirements concerning the solicitation and participation of minority businesses, whenever federal funds are involved.

Minority Business Enterprise (MBE) and Women Business Enterprise (WBE)

These state terms are used for businesses that are majority owned by a minority or a woman. The MBE/WBE program applies when a project is funded with state funds only.

For a business to be considered a DBE, MBE, or WBE, it must be certified by NCDOT. See <http://www.ncdot.org/business/ocs/dbe/> for more information on how to become certified

PROCEDURE:

BID DOCUMENT

NCDOT will review the engineer's estimate for the project and establish a goal for participation by DBEs. Only firms certified by NCDOT as a DBE (federal funds), and MBE/WBE (state funds) can count towards meeting the goal. The goal will be inserted in the contract documents.

REFERENCES

FEDERAL FUNDS	Use <i>Special Provision (SP1G62) Disadvantaged Business Enterprise (POC and Municipalities)</i> in the Bid Document .
STATE FUNDS	Use <i>Special Provision (SP1G68) Minority Business Enterprise and Women Business Enterprise (POC and Municipalities)</i> in the Bid Document .

DETERMINING ADEQUATE PARTICIPATION

When bidding on a construction contract, all bidders must submit a listing of minority subcontractors they propose to use and the dollar amounts on the Commitment Items Form. The apparent low bidder must then submit a **Letter of Intent** with each subcontractor, committing both parties to an established dollar figure. If the low bidder does not meet the goal, he must show a good faith effort to solicit minority contractors for the contract.

DOCUMENTING PARTICIPATION

As the contractor pays his minority subcontractors, he must submit a **Subcontractor Payment Report**, showing how much he has paid to each subcontractor. If the total amount paid to a minority subcontractor is less than what was reported in the Letter of Intent, the contractor must provide an explanation for the difference.

FORCE ACCOUNT

The term "force account" means the direct performance of construction work by a LGA, railroad or utility company. It involves the use of labor, equipment, materials, and supplies furnished by them and used under their direct control, in lieu of contracting with an outside firm.

POLICY: In limited circumstances, the NCDOT will approve the use of force account, if it is more cost-effective, or an emergency exists.

Both Federal regulations and NC General Statutes require construction contracts to be awarded on the basis of competitive bidding. There are, however, exceptions to this requirement and Force Account may be used in limited cases, when it can be demonstrated that it is more cost-effective or an emergency exists, and certain requirements are met.

PROCEDURE:

All proposed uses of Force Account must be approved by NCDOT.

- Submit proposals to use Force Account to NCDOT. Proposals must include documentation to support the use of Force Account.
- All proposals must be in accordance with the following guidance:

23 CFR 635 Subpart B – *Force Account Construction*

- Finding of cost-effectiveness – either there is a lack of bids or the bids received are unreasonable, or the construction is more appropriately undertaken by a railroad or utility because of the inherent nature of the work; or
- An emergency exists

NCGS 143-135 – *Limitation of application of Article (143-129)*

- Work must be undertaken by employees on the permanent payroll of the LGA; and
 - Either the total project costs do not exceed \$125,000 or the labor costs do not exceed \$50,000.
- NCDOT will review request and respond in writing, if approved.

LGA LETTER REQUESTING NCDOT CONCURRENCE
(Place letter on Town/City/Agency letterhead)

NCDOT PROJECT MANAGER

Subject: Name of Project
 Project TIP#

Dear (NCDOT PROJECT MANAGER):

Enclosed are the following items: bid tabulation sheets for the subject project and a copy of the City/Town/County resolution.

The final engineer's estimate was \$_____. The low bid was submitted by (name) in the total amount of \$_____. This bid was _____% (higher/lower) than our final engineer's estimate. [Note: if the low bid is more than 10% higher than the final engineer's estimate, justification should be provided either as to why the estimate is low (i.e. current materials prices are higher than originally estimated) or why the bid should be accepted, rather than re-bid.]

A Disadvantaged Business Enterprises goal was established at _____% for this project and was (achieved/not achieved) by the low bidder. [Note: If DBE goal is not achieved, use the following] We have reviewed the efforts by the low bidder to meet the DBE goal and believe the low bidder made a good faith effort to solicit DBEs. See attached documentation.

We have conducted an item-by-item review of the bids and have concluded that (name of recommended low bidder) has properly prepared its bid with no irregularities and no questionable prices.

Accordingly, we have recommended that the City/Town/County of (Name) accept this bid and award the contract to (Name of recommended low bidder) after NCDOT review and approval.

Bid Tabulations and percentages over/under the final engineer's estimates are as follows:

Name(s) of Bidders	Total	Difference
ABC Company	\$XXX,XXX.XX	-X.X%
XYZ Company	\$XXX,XXX.XX	+X.X%

The contract date of availability shall be [typically] upon written notice to proceed and the completion date shall be (number) calendar days after written notice to proceed. Liquidated damages shall be assessed at \$_____ per calendar day.

By signing this letter the City/Town/County certifies that all applicable federal and state guidelines and policies were followed in the bid process.

We request that the NCDOT review the bid package and the City/Town/County of (Name) resolution to award the construction contract to the lowest responsible bidder—(name of low bidder) and validate that the correct procedures were followed.

Sincerely,

(Name of LGA Project Manager)

encl.

CONSTRUCTION ADMINISTRATION – Engineering and Inspection

Construction Administration involves the oversight of construction activities, the review and acceptance of any change orders, and inspection and/or testing of finished projects.

POLICY: The LGA must perform construction administration for all projects, although NCDOT will perform the final inspection and accept the project. NCDOT will also be required to accept the work done as part of the Encroachment Agreement.

For projects **ON** the highway right of way – NCDOT will assign a local District or Resident Engineer to inspect the project as necessary.

For projects **OFF** the highway right of way – the LGA will be responsible for inspecting and certifying the project to ensure compliance with approved plans, but NCDOT will also provide a final inspection.

PROCEDURE:

During construction, a representative of the LGA must oversee all activities. If necessary, oversight meetings may be called where the NCDOT and/or other involved agencies attend. Any change orders should be submitted by the LGA to NCDOT for review and approval.

NCDOT will inspect and approve all projects.

Only after project has been inspected and approved may final **Reimbursement** request be submitted.

MAINTENANCE

Maintenance includes the normal upkeep of a completed project to ensure it remains in good condition and accessible to the general public. The responsibility for maintenance will be identified in the Project Agreement

POLICY: The LGA must maintain the completed project, with the exception of roads that are on the State Highway System. In those cases, NCDOT will provide maintenance.

The Project Agreement will identify the party responsible for maintenance and if the project is not maintained in accordance with the useful life, then NCDOT may require the repayment of federal-aid highway funds.