

PROCUREMENT - CONSTRUCTION SERVICES

An LGA advertises the contract for proposed construction services and enters into a contract with the lowest bidder. Federal, State, and Local policy and procedures may all apply when an LGA is letting a contract with federal funds.

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.

All procurement is governed by the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200); however, transportation projects within the highway right of way must be procured in accordance with Federal Highway Administration regulations at 23 CFR 635.

NCDOT's own procurement process for construction contracts meets FHWA requirements for competitive bidding. In addition, because most federal funds have a requirement to treat projects as though they were located within the highway right of way, even if they are not, the Department requires all local-let construction projects to comply with NCDOT's procedures for procurement. Modifications may be made by the LGA in order to comply with state general statutes for procurement of construction projects at NCGS 143 Article 8 - Public Contracts.

LOCAL-LET CONSTRUCTION PROJECTS

Follow NCDOT Specifications - Division 1 for advertising and letting a construction contract, with modifications to ensure compliance with NCGS 143-129 or 143-131 and 143-132.

PRE-QUALIFICATION

All contractors bidding must be pre-qualified as either a "PO Prime Contractor" or "Bidder", in the approved work codes, by the NC Department of Transportation prior to bid opening.

- For Projects with a cost that exceeds \$5 million, the contractor shall be pre-qualified as a "Bidder"
- For Projects with a cost up to \$5 million, the contractor may be pre-qualified as a "Bidder" or "PO Prime Contractor".

No "subcontractors" may bid as a prime on any project. All subcontractors shall be pre-qualified by NCDOT before beginning work on the project.

To find contractors pre-qualified by NCDOT, go to <https://www.ebs.nc.gov/VendorDirectory/default.html>

PROCEDURE

Follow NCDOT Specifications – Division 1 for advertising and letting a construction contract, with modifications to ensure compliance with NCGS 143-129 or 143-131 and 143-132.

There are two important differences between State Law and NCDOT Procedure, where NCDOT procedure prevails:

- Bids must be advertised for a minimum of 3 weeks (this includes any re-advertisements)
- No Negotiations allowed with low bidder

State law also requires the LGA to receive at least three (3) bids (see 143-132) when advertising a project greater than \$500,000. [Neither FHWA nor NCDOT has a minimum bid requirement.] When three bids are not received, the LGA must re-advertise. The Department requires that any re-advertisement also be for three (3) weeks. If after the second advertisement three bids are not received, the LGA may accept the low bid.

AFTER RECEIVING BIDS, LGA shall review for compliance with Disadvantaged Business Enterprise goals, and submit the following to NCDOT:

- Sponsor letter requesting concurrence (original, on municipal letterhead – see template)
- Documentation of LGA’s acceptance of Low Bid
 - Signed Copy of LGA resolution; or,
 - Certified Copy of Minutes from Council Meeting, if formal resolution not required; or,
 - Statement from Authorized Individual (for ex. Mayor, City Manager, etc.) to award contract, based on previously delegated responsibility.
- Itemized Bid tabulation sheets (comparing eng. est. to responsive bids and percentages over/under)
- Copy of the Low Bidder’s itemized estimate from Bid Proposal
- Copy of Non-collusion affidavit from Bid Proposal (signed and sealed)
- Copy of DBE Subcontractors Listing from Bid Proposal
- Good Faith Effort Documentation (if DBE goal not met)
- Letters of Intent to Subcontract (if applicable)

NCDOT will review the documents and reply in writing with a Concurrence in Award Letter, giving **NOTICE TO PROCEED**.

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

RESOURCES:

- [23 CFR 635 Subpart A](#) - Contract procedures
- [NCDOT Standard Specifications \(2012\) - Division 1](#)