

BARROW COUNTY, GEORGIA
PURCHASING AND PROCUREMENT POLICY

(effective April 25, 2023)

SECTION 1-1. PURPOSE OF POLICY.

The purposes of this Policy are to:

- (1) Seek lower cost, better quality purchase terms and improved methods for the acquisitions of goods and services for the county by:
 - a) Seeking standardization of purchasing procedures and processes;
 - b) Encouraging the reduction to the greatest extent reasonably possible of small orders and emergency purchases;
 - c) Encouraging advanced planning;
 - d) Reducing paperwork through combined purchases;
 - e) Encouraging competitive purchasing;
 - f) Encouraging cooperative intergovernmental purchasing by departments; and
 - g) Improving systems and techniques involved in the procurement process.
- (2) Provide budget controls that ensure the financial stability of the county.
- (3) Ensure that the greatest value is received for each tax dollar expended.

SECTION 1-2. DEFINITIONS.

The following words, terms and phrases, when used in this Policy, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Approved vendor means a person or entity that is deemed capable of providing products or services to the county, that has completed the necessary paperwork (e.g., EEV, Vendor Application, W-9, and met the necessary Insurance Requirements) and has been approved by both the Purchasing Office and the Chief Financial Officer. This Vendor is deemed as being a legitimate and financially viable supplier, that has been assigned an official vendor number and has been entered into the Barrow County accounts payable system.

Blanket order means a purchase order(s) issued to an approved vendor which may be left open for a complete fiscal year. The goods or services specified might be ordered/released throughout the fiscal year as needed.

Capital Asset means any tangible asset (vehicles, equipment, furnishings, etc.) with a unit value of \$5,000.00 or more which has a life cycle of a minimum of one year or more.

Competitive sealed bid means the procurement method where a formal bid for materials, supplies or contractual services is submitted by a vendor in a sealed envelope that is to be opened publicly at a designated place, time, and date.

Competitive sealed proposal means an alternate procurement method to the competitive sealed bid process that is used when clear specifications are not available or when a unique service is required (architectural, engineering, etc.). A formal proposal is submitted by a vendor in a sealed envelope that is to be opened publicly at a designated place, time and date.

Emergency purchase means a purchase made necessary by a situation which could not have been anticipated by the department or elected official, usually involving life threatening circumstances or risks of injury, or resulting in work stoppages or undue delay, or occurring during non business hours when the ordinary purchase procedures cannot be followed.

Equipment means automotive equipment, machinery, or other items of a permanent or semi permanent nature.

Local vendor means a business entity maintaining, for a period of at least one (1) year prior to submitting a bid or proposal, a continuous physical presence within Barrow County, Georgia, including, but not limited to: 1) maintaining at least one (1) office within the County; 2) with at least two (2) full-time employees based at such office; 3) with such office having a U.S. Post Office street delivery address with the local U.S. Post office; and 4) holding a current occupation tax certificate issued by the County or a municipal corporation located within the County, regarding such office, and in good standing with the Barrow County Tax Commissioner with regards to property tax.

Materials, supplies or contractual services means all tangible equipment, commodities, repairs or nonprofessional services as are normally used or consumed during the current year, and for which a general appropriation has been made.

Professional services means such services including but not limited to medical, surveying, engineering, consulting, architectural, legal and audit services or other services performed by individuals whose profession may or may not be licensed by the state or federal government. These services are normally used during the current year and are covered by appropriations.

Purchasing office means the office designated and maintained by the board of commissioners that is assigned the general duties and responsibilities of supervising and administering the provisions of this Policy. The Purchasing Office is a division of the Barrow County Finance Department.

Sole source purchase means a purchase of a product or service that has a distinctive/unique feature or characteristic that is not shared or provided by competing companies or where a particular brand name or product is required.

Standardization means an item or service that Barrow County chooses to make standard (e.g., purchase from a single vendor or a single brand) in order to bring uniformity and efficiency to certain items or services as it determines necessary.

SECTION 1-3. PURCHASES TO BE MADE THROUGH PURCHASING OFFICE; EXCEPTIONS.

No officer, elected official or employee of the county shall purchase for or on behalf of the county any materials or supplies, goods, wares or merchandise of any kind or character or make any contract for materials or supplies or equipment or for services except through the purchasing office. *Purchases contrary to this method shall be deemed unauthorized purchases. The county will not be responsible for the payment of any bills submitted for unauthorized purchases.* It shall be considered a breach of duty on the part of any officer or employee of the county to make any purchase, or aid and abet the making of any purchase, in any other manner than through the purchasing office; provided, however, that this section shall not apply towards travel, entertainment, dues, training, other similar non material purchases, and to the provision of medical services for prisoners under the care of the sheriff's department or emergency purchases as provided in section 1-5.

SECTION 1-4. PURCHASE ORDERS/CONTRACTS/LEASES.

No officer, elected official or employee of the county shall request any merchant, dealer or other vendor to deliver goods or provide services of any kind to the county except on a written contract or a purchase order generated from the purchasing office, except in the case of provision of medical services for prisoners under the care of the sheriff's department or emergency purchases as provided in section 1-5. All changes to existing contracts or purchase orders will be executed only through the purchasing office.

SECTION 1-5. EMERGENCY PURCHASE

If an emergency requiring a purchase occurs during business hours, the department head or elected official shall contact the purchasing office and obtain an emergency purchase order number. The item sought may then be acquired using that number. The number will be given to the vendor as evidence that the purchase has been approved, and the number shall be noted on any vendor invoice for the item receiving emergency approval. If the emergency occurs during non business hours, the department head or elected official may make the purchase and, immediately upon the resolution of the emergency, prepare a purchase requisition stating the nature of the emergency. The purchase requisition shall be forwarded to the purchasing office as early as possible on the next business day. The purchase requisition shall be accompanied by the purchase receipt and a memorandum from the department head or elected official setting forth the details of the emergency. Negligence on the part of the department head or elected official to plan properly is not justification of any emergency purchase. In the case of an emergency need, the County Manager has unlimited spending authority to manage said emergency.

SECTION 1-6. DETERMINATION OF AVAILABILITY OF FUNDS.

Except in cases of emergency, no contract shall be executed and no order shall be issued for delivery against a contract or open market purchase until it has been determined that there exists a sufficient unencumbered appropriation balance for the budget line item to be charged.

SECTION 1-7. BIDDING REQUIREMENTS AND PROCEDURES.

Where practicable, all county purchases and contract work shall be subject to fair and open bidding subject to state law, county ordinances, and the following:

1) Purchases at state contract prices.

- a. The Department of Administrative Services for the State of Georgia competitively bids certain commodities, supplies, and services on an annual basis. Copies of these contracts and revisions are maintained on-line at www.doas.state.ga.us. These contracts are available to Barrow County for use but are not mandatory. Except as otherwise provided below, competitive bidding will not be required if these contracts are utilized. When State contracts are used for source justification, there will be no requirement for Board of Commissioner approval, unless the dollar amount is over \$25,000.00.
- b. If the purchasing office confirms that there is only one local vendor offering to sell equipment, goods and/or services matching the specific equipment, goods and/or services available through an active and open state contract at equal or less cost and under the same terms and conditions as such state contract, then, and in that event, the acquisition of such equipment, goods and/or services may be negotiated directly with such local vendor without advertising the opportunity and conducting a competitive solicitation.
- c. This provision in subsection b. above shall not apply to any public road contract, any public works construction contract or any other contract which must be competitively procured in accordance with state law or when there is more than one local vendor of the equipment, goods and/or services involved.

2) Material, supply, or contractual services under \$3,000.00. Small purchases with a value of less than \$3,000.00 may be made from approved vendors in the ordinary course of business and will be obtained through a telephone quotation or informal written solicitation. When several small purchases can be reasonably combined for non monthly recurring purchases, then consideration shall be given to a pooled or bulk purchase subject to the bidding process.

3) Material, supply, or contractual services between \$3,000.00 and \$24,999.99. For purchases and contracts with a value of at least \$3,000.00, but under \$25,000.00, written quotations from at least two approved vendors must be submitted except as follows:

- a) Items covered by other provisions of this Policy or other law.
- b) Sole source purchase (If purchased as a sole source item, this information is to be indicated on the purchase requisition).

4) *Material, supply, or contractual services of \$25,000.00 or more.* Unless otherwise provided in this Policy, all purchases and contracts with a value of \$25,000.00 or more shall be subject to competitive sealed bid or competitive sealed proposal, and approved by the Board of Commissioners, and signed by their designee; projects shall not be subdivided in an effort to evade this requirement. The purchasing office will advertise bid opportunities twice in the county's legal organ, the first being fifteen days prior to the scheduled public opening of the bids. A copy of such notice shall be posted in the purchasing office. Any other methods of advertisement, that are likely to result in optional competition, may be used in addition to required advertisement at the discretion of the purchasing office. Both vendor names and bid amounts will be read aloud at the opening of competitive sealed bids. Vendor names only will be read aloud at the opening of competitive sealed proposals.

5) *Public Works Construction and Public Roads Contracts.* All Public Works Construction and Public Roads contracts shall be procured in accordance with, respectively, Title 36, Chapter 91 and Title 32, Chapter 4, Article 3, Part 2 of the Official Code of Georgia.

6) *Used equipment.* Subject to budget appropriations and Board approval if over \$25,000.00, used equipment and personal property may be purchased without advertisement, provided that the department head and purchasing office have made a diligent search of the marketplace and provide documentation of such search. Documentation shall include information as to the cost of such equipment if purchased new, availability, warranty, life expectancy, proposed use, etc.

7) *Bulk purchases.* When items to be purchased are also used by other county departments and can be reasonably purchased in bulk with other county departments, then such departments shall coordinate such purchases with each other and with the purchasing office to promote the most economical purchase price and to minimize the number of transactions involved.

8) *Blanket orders.* Blanket orders may be used when the same or similar goods and services are ordered regularly throughout a fiscal year from a single approved vendor. The order is a means of setting aside a sum of money to cover recurring requirements for low dollar needs and may not be line item specific. A purchase requisition must be submitted by the department head for each blanket order including the description of goods or services that will be ordered and the estimated annual value of the order. This estimated value will be the dollar amount that will be encumbered against the specific department and budget line item. Unless goods and services fall under the sole source category, the bidding requirements for blanket orders will be as stated in this section, Items 1, 2, 3, 4, and 5 above.

- 9) *Inventory of capital assets.* All purchases of capital assets shall be added to the capital asset inventory as they are acquired. The purchasing office will inform the appropriate department head that a purchase is classified as a capital asset and that, upon receipt, specific information must be provided to the Chief Financial Officer. The department head is responsible to provide necessary information to the Chief Financial Officer to update records. Control of capital assets shall be in compliance with the Finance Department established capital asset procedure.
- 10) *Modification of bids and proposals.* Once a bid or proposal has been opened and accepted by the county, the county reserves the right to further negotiate with the lowest responsive and responsible bidder in an effort to ensure that the bid or proposal meets the approved budget and specifications. Further, once the county awards a contract, the county reserves the right to amend the contract without the necessity of rebidding such contract; any such amendment or change order not materially altering the terms of an agreement and not increasing the total amount to be paid under an agreement in excess of \$25,000 may be approved by the County Manager, and all other such amendments or change orders shall be approved by the Board of Commissioners, and signed by their designee.
- 11) *Georgia products preference.* The County shall comply with the Georgia Purchasing Preference provisions of O.C.G.A. § 36-84-1.
- 12) *Professional Services.* It is the policy of the County to award contracts for professional services on the basis of demonstrated competence and qualifications at a fair and reasonable price with the ultimate selection based on the best interest of the County and receipt of maximum value. Procurement of professional services is exempted by state law from bidding requirements and from this Policy, unless otherwise directed by the Board of Commissioners. (O.C.G.A. § 36-91-2(12)). Professional services procurements in excess of \$25,000 shall be approved by the Board of Commissioners.
- 13) *Standardization.* Except to the extent prohibited by Title 36, Chapter 91 and Title 32, Chapter 4, Article 3, Part 2 of the Official Code of Georgia regarding public works construction projects and road construction projects, respectively, Barrow County reserves the right where appropriate to standardize on vehicles, hardware, software and any other items or services it chooses. Such items or services will only be competitively bid among vendors providing the specific item or service at issue; by way of example, the County may choose to procure vehicles from a single manufacturer in order to standardize use of parts and service and repair procedures. The County Manager will make the final determination as to what will be standardized. Purchases in excess of \$25,000 shall be approved by the Board of Commissioners.

SECTION 1-8. REQUEST FOR PURCHASE; AUTHORIZATION OF PURCHASE; APPROVAL OF CONTRACTS.

All purchasing and contracting shall be in accordance with this Policy, state law, and the following:

- 1) A purchase requisition, in accordance with the approved budget, shall be submitted to the purchasing office by the department head, or the department head's authorized designee, *at least one week prior to the proposed purchase.*
- 2) The request for purchase shall contain all pertinent information about the proposed purchase or contract including the manufacturer, part number, description, specification, purpose of the item, cost if available, and the funding line item source.
- 3) Depending on the value and nature of the purchase, and other applicable ordinances and policies, the County Manager, or the County Manager's designee(s), will authorize all purchases provided sufficient unencumbered funds are available as shown in Section 1-6. The County Manager will establish such approval levels which shall be in writing and be maintained on file for audit purposes. Only purchases that exceed the approved operating and capital budgets will be submitted to the Board of Commissioners for approval. The purchasing office is authorized to sign all purchase orders resulting from the processing of approved requisitions.
- 4) All county contracts under \$25,000.00 must be approved and signed by the County Manager. Contracts of \$25,000.00 or more must be approved by the Board of Commissioners, and signed by their designee. Prior to submittal for final approval, all county contracts must be reviewed and approved for content by the purchasing office. The county attorney will review contracts as necessary. The County Clerk will retain all original copies of executed county contracts.

SECTION 1-9. SCHEDULING OF PURCHASES.

Where reasonably practical, equipment and capital purchases shall be made on a periodic scheduled basis rather than at one time. To avoid excessive demand on county revenue, equipment and capital purchases shall be broken down and purchased as funding is determined as available. The Board of Commissioners may specify a time for the purchase of any budgeted item.

SECTION 1-10. QUALIFIED AND APPROVED VENDORS.

- 1) The purchasing office shall maintain a file of all qualified vendors who desire to do business with the county, which file shall be maintained according to the nature of goods and materials offered and shall contain a description of the vendors' goods and services.
- 2) Purchases on behalf of the county shall be made only from a list of approved vendors.

SECTION 1-11. SOLE SOURCE PURCHASES.

The purchasing office shall be authorized to designate any item as a sole source item as defined under Section 1-2. Any such purchase shall be documented as to the reasons for this designation and shall be maintained on file in the purchasing office.

SECTION 1-12. USE OF MINORITY BUSINESS ENTERPRISES.

- 1) The objectives of the policy set out in this section are to provide economic opportunity, particularly for those persons who may have been historically excluded from full participation in the past, to take steps to ensure nondiscriminatory results and practices, and to involve minority business enterprises fully in contracts and programs funded by the county.
- 2) The county shall provide equal opportunity for all and shall not discriminate against anyone, regardless of race, color, national origin, religion, age, sex or handicap.
- 3) This policy shall be used, together with the general principles of sound procurement, to achieve the maximum practical use of minority business enterprises within the county.
- 4) The provisions contained in this section shall be managed by the purchasing office.

SECTION 1-13. CONSIDERATION OF QUALITY IN PRODUCTS SELECTION.

The purchasing office shall exercise discretion in making purchases where quality, price, and service are factors for consideration. In circumstances in which brand name items are requisitioned by any department or official, the purchasing office has the authority to determine whether similar products of equal quality are available to the county at a lower price. If so, such products shall be ordered in lieu of the name brand items.

SECTION 1-14. DELEGATION OF AUTHORITY TO USER DEPARTMENTS.

The purchasing office may delegate to a department head or the department head's designee the authority to purchase or release delivery against an existing order or contract those certain items, commodities or services if such delegation is advantageous to the county or necessary for the effective procurement of those items. The purchasing office shall establish parameters, criteria, and procedures for the management of this delegation of purchasing authority.

SECTION 1-15. RECORDS MAINTENANCE.

All requisitions, competitive bids, quotations, purchase orders, contracts, and other pertinent documentation of purchasing shall be maintained by the purchasing office in accordance with regulations and procedures prescribed in the purchasing manual and Retention Schedules For Local Government Records as published by the Georgia Secretary of State, Department of Archives and History.

SECTION 1-16. COMPLIANCE WITH PURCHASING POLICY AND PROCEDURES.

The County Manager at his discretion has the option to authorize his designee to perform compliance reviews of the purchasing function within county government. Such reviews shall examine the function handled by both the purchasing division and the user departments.

SECTION 1-17. ELECTRONIC PROCUREMENT PROCESSES.

The purchasing office is charged with the responsibility to improve techniques and systems utilizing electronic means for conducting county purchasing activities. Such techniques and systems must be compatible with the county's overall business system and must include assurance for an appropriate level of security.

SECTION 1-18. COUNTY CREDIT CARD PURCHASES.

Purchases made using a County-issued credit card should be infrequent and used primarily for travel related expenses such as reserving hotel rooms, renting vehicles, fuel purchases when traveling, and for certain internet purchases. Normal purchasing procedures shall apply when using the County's credit card. The credit card is simply a payment method. Under no circumstances shall the County's credit card be used for personal purchases, even to be reimbursed later by the employee.

SECTION 1-19. SPECIAL ISSUES REGARDING THE BID/PROPOSAL PROCESS.

- 1) Once a bid or proposal process has been initiated, no further contact or correspondence regarding the proposed purchase is allowed between the County user department, any County employee, or any County elected official and the potential vendor until the bid or proposal is awarded to ensure that all bidding or proposal information is consistent.
- 2) In no instance will quotations received from one vendor during bidding or other negotiations be divulged to other vendors prior to bid or proposal award/opening. Production of bid documents shall be governed by the Georgia Open Records Act.
- 3) In the event a vendor is awarded a bid or proposal by the Board of County Commissioners and the selected vendor fails to fulfill the conditions of the award, the Board of Commissioners at their discretion may award the bid or proposal to the second most responsive and responsible vendor without rebidding. If the second vendor cannot fulfill the conditions of the award, the Board of Commissioners at their discretion may award the bid or proposal to the third most responsive and responsible vendor without rebidding. If the third vendor cannot fulfill the conditions of the award, the Purchasing Agent will rebid the item or service.
- 4) If a vendor has a grievance regarding this Policy or their bid or proposal, the vendor must first file a written grievance with the County CFO or his/her designee within 10 days of the bid or proposal award, and the County CFO or his/her designee shall issue a final written decision within 20 days of receipt of such written grievance. If the County CFO or his/her designee cannot resolve the grievance in a satisfactory manner to the vendor, the vendor may appeal in writing to the Board of the County Commissioners within 10 days of the date of the final written decision of the County CFO or his/her designee.

SECTION 1-20. LOCAL PREFERENCE.

- 1) Because bids awarded to Local Vendors contribute to the County's tax base and promote the local economy, the County has determined that, under certain circumstances described in this Section, Local Vendors shall be provided an additional privilege, whenever not otherwise prohibited by State law (including, but not limited to, public works and road construction projects as contemplated by Section 1-7(6) above), when bidding against non-Local Vendors.
- 2) For bids in the amount of \$25,000.00 or more, if a Local Vendor's bid shall meet all specifications and does not exceed four percent (4%) more than the lowest responsive and responsible bidder, the lowest bidding Local Vendor shall be offered three (3) business days from the opening of such bids in which to notify the Purchasing Office in writing that it agrees to match the low bid submitted by any non-Local Vendor. If such Local Vendor shall not agree to match the low bid, then the next lowest Local Vendor, if any, shall be offered within three (3) business days thereafter to notify the Purchasing Office in writing that it agrees to match the low bid submitted by any non-Local Vendor, and so on until all applicable Local Vendors are offered the opportunity to match the low bid.

SECTION 1-21. TRANSPORTATION AGREEMENT REQUIREMENTS.

- 1) Title VI. The County shall comply with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, all other provisions of Federal law, and with its Nondiscrimination Agreement with the Georgia Department of Transportation.
- 2) Brooks Act and 23 CFR § 172. The County shall comply with the procedures set forth in Appendix A, attached to and incorporated by reference as part of this Policy. Said procedures shall be administered by a committee appointed by the County Manager and comprised of not less than three (3) County staff members.

SECTION 1-22. GEORGIA PROCUREMENT REGISTRY.

- 1) If a bid or proposal opportunity is extended by the County for goods, services, or both, valued at \$100,000.00 or more, such bid or proposal opportunity shall be advertised by the County in the Georgia Procurement Registry, as established in O.C.G.A. § 50-5-69(b), at no cost to the County. Such bid or proposal opportunity shall be advertised on such registry for the same period of time, as set by ordinance or policy, if any, as the County advertises bid or proposal opportunities in the official legal organ of the County. Each advertisement shall include such details and specifications as will enable the public to know the extent and character of the bid or proposal opportunity. HB 489 (2018); O.C.G.A. § 36-80-27; HB 322 (2019).
- 2) Prior to entering into a public works construction contract other than those exempted by O.C.G.A. § 36-91-22, the County shall publicly advertise the contract opportunity. Such notice shall be posted conspicuously in the County's Purchasing Department office and shall be advertised on the Georgia Procurement Registry as provided for in O.C.G.A. § 50-

5-69 at no cost to the County. Such advertisement on such registry shall be for the same period of time specified under O.C.G.A. § 36-91-20(b)(3). Such notice may be advertised in the legal organ of the County or by electronic means on the County's website or any other appropriate websites identified by the County. HB 489 (2018); O.C.G.A. § 36-91-20(b); HB 322 (2019).

APPENDIX A

(1) Except as provided in (2), Small Purchases, and (3), Noncompetitive, below, the County shall use the competitive negotiation method for the procurement of engineering and design related services when Federal Aid Highway Program (FAHP) funds are involved in the contract (as specified in 23 U.S.C. 112(b)(2)(A)). The solicitation, evaluation, ranking, selection, and negotiation shall comply with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40 U.S.C. 1101–1104, commonly referred to as the Brooks Act.

In accordance with the requirements of the Brooks Act, the following procedures shall apply to the competitive negotiation procurement method:

(I.) Solicitation.

The solicitation process shall be by public announcement, public advertisement, or any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract. Procurement procedures may involve a single step process with issuance of a request for proposal (RFP) to all interested consultants or a multiphase process with issuance of a request for statements or letters of interest or qualifications (RFQ) whereby responding consultants are ranked based on qualifications and request for proposals are then provided to three or more of the most highly qualified consultants. Minimum qualifications of consultants to perform services under general work categories or areas of expertise may also be assessed through a prequalification process whereby statements of qualifications are submitted on an annual basis. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under an RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

(II.) Request for Proposal (RFP).

The RFP shall provide all information and requirements necessary for interested consultants to provide a response to the RFP and compete for the solicited services. The RFP shall:

- (A) Provide a clear, accurate, and detailed description of the scope of work, technical requirements, and qualifications of consultants necessary for the services to be rendered. The scope of work should detail the purpose and description of the project, services to be performed, deliverables to be provided, estimated schedule for performance of the work, and applicable standards, specifications, and policies;
- (B) Identify the requirements for any discussions that may be conducted with three (3) or more of the most highly qualified consultants following submission and evaluation of proposals;
- (C) Identify evaluation factors including their relative weight of importance in accordance with subparagraph (a)(1)(iii) of this section;

- (D) Specify the contract type and method(s) of payment to be utilized in accordance with § 172.9;
- (E) Identify any special provisions or contract requirements associated with the solicited services;
- (F) Require that submission of any requested cost proposals or elements of cost be in a concealed format and separate from technical/qualifications proposals as these shall not be considered in the evaluation, ranking, and selection phase; and
- (G) Provide a schedule of key dates for the procurement process and establish a submittal deadline for responses to the RFP which provides sufficient time for interested consultants to receive notice, prepare, and submit a proposal, which except in unusual circumstances shall be not less than 14 days from the date of issuance of the RFP.

(III.) Evaluation Factors.

- (A) Criteria used for evaluation, ranking, and selection of consultants to perform engineering and design related services must assess the demonstrated competence and qualifications for the type of professional services solicited. These qualifications-based factors may include, but are not limited to, technical approach (e.g., project understanding, innovative concepts or alternatives, quality control procedures), work experience, specialized expertise, professional licensure, staff capabilities, workload capacity, and past performance.
- (B) Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
- (C) In-State or local preference shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement which attests to the minimum qualifications and competence of a consultant to perform the solicited services.
- (D) The following non-qualifications based evaluation criteria are permitted under the specified conditions and provided the combined total of these criteria do not exceed a nominal value of ten percent of the total evaluation criteria to maintain the integrity of a qualifications-based selection:
 - (1) A local presence may be used as a nominal evaluation factor where appropriate. This criterion shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been

established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

(2) The participation of qualified and certified Disadvantaged Business Enterprise (DBE) sub-consultants may be used as a nominal evaluation criterion where appropriate in accordance with 49 CFR Part 26 and the County's Federal Highway Administration (FHWA)-approved DBE program.

(IV.) Evaluation, Ranking, and Selection.

(A) Consultant proposals shall be evaluated by the County based on the criteria established and published within the public solicitation.

(B) While the contract will be with the prime consultant, proposal evaluations shall consider the qualifications of the prime consultant and any sub-consultants identified within the proposal with respect to the scope of work and established criteria.

(C) Following submission and evaluation of proposals, the County shall conduct interviews or other types of discussions determined three of the most highly qualified consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFP. Discussion requirements shall be specified within the RFP and should be based on the size and complexity of the project as defined in County written policies and procedures (as specified in § 172.5(c)). Discussions may be written, by telephone, video conference, or by oral presentation/interview. Discussions following proposal submission are not required provided proposals contain sufficient information for evaluation of technical approach and qualifications to perform the specific project, task, or service with respect to established criteria.

(D) From the proposal evaluation and any subsequent discussions which have been conducted, the County shall rank, in order of preference, at least three consultants determined most highly qualified to perform the solicited services based on the established and published criteria.

(E) Notification must be provided to responding consultants of the final ranking of the three most highly qualified consultants.

(F) The County shall retain acceptable documentation of the solicitation, proposal, evaluation, and selection of the consultant accordance with the provisions of 49 CFR 18.42.

(V.) Negotiation.

- (A) Independent estimate. Prior to receipt or review of the most highly qualified consultant's cost proposal, the County shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation and ensuring the consultant services are obtained at a fair and reasonable cost.
- (B) Elements of contract costs (e.g., indirect cost rates, direct salary or wage rates, fixed fee, and other direct costs) shall be established separately in accordance with § 172.11.
- (C) If concealed cost proposals were submitted in conjunction with technical/qualifications proposals, only the cost proposal of the consultant with which negotiations are initiated may be considered. Concealed cost proposals of consultants with which negotiations are not initiated should be returned to the respective consultant due to the confidential nature of this data (as specified in 23 U.S.C. 112(b)(2)(E)).
- (D) The County shall retain documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract in accordance with the provisions of 49 CFR 18.42. This documentation shall include the consultant cost certification and documentation supporting the acceptance of the indirect cost rate to be applied to the contract (as specified in § 172.11(c)).

(2) Small Purchases.

The small purchase method involves procurement of engineering and design related services where an adequate number of qualified sources are reviewed and the total contract costs do not exceed an established simplified acquisition threshold. The County may use the State's small purchase procedures which reflect applicable State laws and regulations for the procurement of engineering and design related services provided the total contract costs do not exceed the Federal simplified acquisition threshold (as specified in 48 CFR 2.101). When a lower threshold for use of small purchase procedures is established in State law, regulation, or policy, the lower threshold shall apply to the use of FAHP funds. The following additional requirements shall apply to the small purchase procurement method:

- (I.) The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of small purchase procedures.
- (II.) A minimum of three consultants are required to satisfy the adequate number of qualified sources reviewed.
- (III.) Contract costs may be negotiated in accordance with State small purchase procedures; however, the allowability of costs shall be determined in accordance with the Federal cost principles.

(IV.) The full amount of any contract modification or amendment that would cause the total contract amount to exceed the established simplified acquisition threshold would be ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if it is modified or amended above the applicable established simplified acquisition threshold.

(3) Noncompetitive.

The noncompetitive method involves procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation or small purchase procurement methods. The following requirements shall apply to the noncompetitive procurement method:

(I.) The County may use their own noncompetitive procedures which reflect applicable State and local laws and regulations and conform to applicable Federal requirements.

(II.) The County shall establish a process to determine when noncompetitive procedures will be used and shall submit justification to, and receive approval from, the FHWA before using this form of contracting.

(III.) Circumstances under which a contract may be awarded by noncompetitive procedures are limited to the following:

(A) The service is available only from a single source;

(B) There is an emergency which will not permit the time necessary to conduct competitive negotiations; or

(C) After solicitation of a number of sources, competition is determined to be inadequate.

(IV.) Contract costs may be negotiated in accordance with the County noncompetitive procedures; however, the allowability of costs shall be determined in accordance with the Federal cost principles.

Additional Procurement Requirements.

(1) Common Grant Rule.

(I.) The County must comply with procurement requirements established in State and local laws, regulations, policies, and procedures which are not addressed by or in conflict with applicable Federal laws and regulations (as specified in 49 CFR 18.36).

(II.) When State and local procurement laws, regulations, policies, or procedures are in conflict with applicable Federal laws and regulations, the County must comply with Federal requirements to be eligible for Federal-aid reimbursement of the associated costs of the services incurred following FHWA authorization (as specified in 49 CFR 18.4).

(2) Disadvantaged Business Enterprise (DBE) program.

(I.) The County shall give consideration to DBE consultants in the procurement of engineering and design related service contracts subject to 23 U.S.C. 112(b)(2) in accordance with 49 CFR part 26. When DBE program participation goals cannot be met through race-neutral measures, additional DBE participation on engineering and design related services contracts may be achieved in accordance with the County's FHWA approved DBE program through either:

- (A) Use of an evaluation criterion in the qualifications-based selection of consultants (as specified in § 172.7(a)(1)(iii)(D)); or
- (B) Establishment of a contract participation goal.

(II.) The use of quotas or exclusive set-asides for DBE consultants is prohibited (as specified in 49 CFR 26.43).

(3) Suspension and Debarment.

The County must verify suspension and debarment actions and eligibility status of consultants and sub-consultants prior to entering into an agreement or contract in accordance with 49 CFR 18.35 and 2 CFR part 180.