

NORTH DAKOTA NONPOINT SOURCE POLLUTION MANAGEMENT (NPS) PROGRAM

PROCUREMENT STANDARDS FOR THE ACQUISITION OF PROPERTY OR SERVICES



APRIL 2025

The implementation of Section 319 projects may require the acquisition of property or services.

It may be necessary to obtain services for the construction of scheduled Best Management Practices (BMP) such as livestock manure management facilities, clean water diversions, pipelines, and ponds. Equipment purchases may include eligible items such as computers, flow meters, and data loggers. Vehicles and construction equipment are NOT eligible purchases under the NPS Program.

The cost and qualifications of vendors may vary significantly within a project area. To ensure a project sponsor or cost share recipient (e.g. agricultural producers, private landowners, homeowners, etc.) secure the most qualified vendor for the lowest possible cost, the appropriate procurement method must be utilized.

When planning the acquisition of property or services, the total dollar amount of the purchase determines the level of competition required. The procurement requirements for each purchasing threshold must be reviewed by the project sponsor and/or cost share recipient to ensure each party is aware of their roles and responsibilities.

Competition thresholds and procurement requirements for the acquisition of property or services are outlined below.

A. Level 1 Purchases - Less than \$10,000

Obtain at least one (1) fair and reasonable price quote. "Fair and reasonable" price can be based on purchase history, market research, experience, a published price list, or by simply soliciting more than one (1) vendor. Rotate vendors solicited on an equitable basis.

B. Level 2 Purchases - At least \$10,000 but less than \$50,000

- Provide the same information to all vendors and obtain a written or oral price or rate quotation from at least three (3) vendors. May solicit additional vendors if desired. Price or rate quotations can be obtained via phone, mail, email, and in person, etc.
- Documentation is required. Document the total amount, date and source of each price or rate quotation requested and received. If three (3) price or rate quotations are not received, written justification must be provided and retained in the procurement file (e.g. "contacted three vendors, only two responded"). Documentation of this process must be retained in the project file by the project sponsor.
- Award is made to the responsible vendor with the lowest total price that is responsive to the specifications and other solicitation requirements. If the vendor with the lowest total price is not selected, written justification as to why another vendor was selected must be provided to the NPS Coordinator for approval before the vendor is hired. If approved, Section 319 cost share assistance will be based on actual costs, not to exceed the accepted price or rate quotation.

C. Level 3 Purchases - At least \$50,000 but less than \$100,000

- Provide the same information to all vendors and obtain a written or oral price or rate quotation from more than three (3) vendors. Price or rate quotations can be obtained via phone, mail, email, and in person, etc.
- Documentation is required. Document the total amount, date and source of each price or rate quotation requested and received. If more than three (3) price or rate quotations are not received, written justification must be provided and retained in the procurement file (e.g. “contacted four vendors, only two responded”). Documentation must be retained in the project file by the project sponsor.
- Award is made to the responsible vendor with the lowest total price that is responsive to the specifications and other solicitation requirements. If the vendor with the lowest total price is not selected, written justification as to why another vendor was selected must be provided to the NPS Coordinator for approval before the vendor is hired. If approved, Section 319 cost share assistance will be based on actual costs, not to exceed the accepted price or rate quotation.

D. Level 4 Purchases - \$100,000 and over

Formal procurement methods are required for Level 4 purchases. Formal procurement methods are competitive and require public notice. Following the completion of any procurement method for a Level IV purchase, a contractual agreement should be developed between the awarded vendor and the recipient of the property or services. A sample Landowner/Contractor contract is provided in Appendix F of the Cost Share Guidelines for NPS Best Management Practices.

The following formal methods of procurement may be used.

1. Sealed Bid

Sealed Bids are publicly solicited through an invitation for bid and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible vendor whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. The Sealed Bid procurement method is preferred for procuring construction services. To ensure a Sealed Bid procurement method is the most appropriate method the following conditions must apply.

- A complete, adequate, and realistic specification or purchase description is available.
- Two or more responsible vendors are willing and able to compete effectively for the business.
- The procurement lends itself to a firm-fixed-price contract, and the selection of the successful bidder can be made principally based on price.

If a Sealed Bid procurement method is used, the following requirements apply.

- The invitation for bid must include specifications and all pertinent information including any needed attachments that clearly define the bid items and/or services associated with the project so the vendor can properly respond.
- Sealed Bids must be solicited from two or more known vendors, providing the vendors with sufficient response time prior to the bid response

deadline. The invitation for bid must identify a bid response deadline and address for submitting bids.

- The invitation for bid must be publicly advertised for a minimum of 30 days prior to the bid response deadline.
- All bid responses must be publicly opened at the time and address specified in the invitation for bid.
- If necessary, the entity or individual soliciting the bid may establish a bid holding period, not to exceed 20 days, to allow for a closer review of bid responses and vendor qualifications following the bid response deadline.
- A firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible vendor. Section 319 cost share assistance must be based on the accepted firm-fixed price.
- Any or all bid responses may be rejected if there are sound documented reasons.
- Documentation of this procurement method is required. Documentation must be retained in the project file by the project sponsor.

2. Request for Proposal (RFP)

The Request for Proposal (RFP) procurement method is generally used when conditions are not appropriate for the use of Sealed Bids and factors other than the “lowest price” are needed to select the most appropriate vendor for the acquisition of property or services. This procurement method may result in either a fixed-price or cost-reimbursement contract.

If the RFP procurement method is used, the following requirements apply.

- The RFP must include specifications and all pertinent information that clearly defines the scope of work for the services requested for the project so the vendor can properly respond.
- The RFP must identify all evaluation factors and their relative importance.
- Proposals must be solicited from two or more known vendors, providing the vendors with sufficient response time prior to the RFP due date. The RFP must identify a proposal due date and address for submitting proposals.
- The RFP must be publicly advertised for a minimum of 30 days prior to the proposal due date.
- The project sponsors and/or individual(s) responsible for the approval of the RFP must have an established process and method for evaluating all proposals and selecting the most appropriate proposal. The proposal evaluation process should not exceed 20 days.
- To the extent practicable, any proposal submitted in response to the public notice must be considered.
- Unless all proposals are rejected, the contract award must be offered to the vendor whose proposal conforms to the RFP requirements and is determined to be the most advantageous to the project, taking into

consideration price and the evaluation factors set forth in the RFP. No other factors or criteria should be used in the proposal evaluation process.

- Written notice of the award of the contract to the successful vendor must be promptly sent to all vendors that submitted proposals. The basis for the contract award, including any evaluation worksheets, must be retained in the project file by the project sponsor.
- Documentation of this procurement method is required. Documentation must be retained in the project file by the project sponsor.

3. Request for Qualifications (RFQ)

This procurement method is used for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the vendor's qualifications are evaluated, and the most qualified vendor is selected, subject to negotiation of fair and reasonable compensation. In qualifications-based procurements, the price is not used as an evaluation factor and this procurement method can only be used to procure architectural/engineering (A/E) professional services. This method may NOT be used to purchase other services provided by A/E firms that are a potential source to perform the proposed effort.

In general, the qualifications-based procurement includes three phases. The first phase involves a publicized request for proposals describing vendor/contractor qualifications, experience, staff, office locations, etc. Rates or costs are NOT included in this first phase. The second step of the process focuses on the review of all proposals and the selection of the most qualified applicant. During the third and final phase, representatives of the entity soliciting the proposals will meet with the selected vendor to negotiate a mutually agreed upon price or rate. If an acceptable price or rate cannot be established, negotiations can be initiated with the next most qualified vendor.

If the RFQ procurement method is used, the following requirements apply.

- The RFQ must include specifications and all pertinent information that clearly defines the scope of work for the services requested for the project.
- The RFQ must identify all evaluation factors and their relative importance excluding cost.
- Proposals must be solicited from two or more known vendors, providing the vendors with sufficient response time prior to the RFQ due date. The RFQ must identify a proposal due date and address for submitting proposals.
- The RFQ must be publicly advertised for a minimum of 30 days prior to the proposal due date.
- The project sponsors and/or individual(s) responsible for the approval of the RFQ must have an established process and method for evaluating all proposals and selecting the most appropriate proposal. The proposal evaluation process should not exceed 20 days.

- To the extent practicable, any proposal submitted in response to the public notice must be considered.
- Written notice of the award of the contract to the successful vendor must be promptly sent to all vendors that submitted proposals. The basis for the contract award, including any evaluation worksheets, must be retained in the project file by the project sponsor.
- Documentation of this procurement method is required. Documentation must be retained in the project file by the project sponsor.

4. Noncompetitive Procurement

The Noncompetitive Procurement method involves the procurement of property or services by soliciting only one source. This method may NOT be used if the sealed bid or request for proposal methods can be used to secure the necessary property or services.

The Noncompetitive Procurement method may only be used if one of the following circumstances apply.

- The aggregate amount of the total purchase price does not exceed the Level 1 purchasing threshold.
- The property or services can only be obtained from a single source. The project sponsor is responsible for providing accurate and complete information to support the sole source request to the NPS Program Coordinator for review. The project sponsor must obtain written approval from the NPS Coordinator before hiring the vendor.
- The NPS Program Coordinator has approved the use of a noncompetitive procurement method in writing in advance of the project sponsor conducting the procurement and hiring the vendor.
- A public emergency involving the project will not allow for delays associated with the other procurement methods.
- After soliciting several sources, competition is determined to be inadequate. The NPS Program Coordinator must be involved in the determination process, and the project sponsor must obtain written approval from the NPS Coordinator before hiring the vendor.
- Documentation of this procurement method is required. Documentation must be retained in the project file by the project sponsor.