

**CONTRACTS/PROCUREMENT
POLICY AND PROCEDURES
MANUAL**



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DRAFT

GOVERNMENT PROCUREMENT LOOKS FOR:



Adequacy of resources, knowledge, staff and operational ability



Ability to comply with production and delivery schedules



Good performance record and reputation



Legal eligibility



Access to proper equipment and facilities



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CHAPTER 1 INTRODUCTION / COMPLIANCE

This manual is intended to serve the KHC GCC as a user-friendly, how-to-guide for successful procurement practices in securing bids and proposals to make:

- ◆ Micro-Purchases,
- ◆ Small Purchases,
- ◆ Large Purchases,
- ◆ Sole Source Purchases, and
- ◆ Single-Bid Purchases.

1.1 COMPLIANCE

This “Contracts and Procurement Policy and Procedures Manual” establishes guideline standards that the KHC GCC will use to process third party contracts. This manual is intended to help the KHC GCC comply with the Federal standards in 23 CFR Part 172 to ensure competitive bidding through full and open competition and equitable treatment of all potential sources for all purchases made with funding derived from the federal, state, and local governments. Competitive proposals and sealed bid transactions will be conducted in a manner to provide maximum open and free competition consistent with FHWA 23 CFR Part 172, FTA Super Circular 2 CFR Part 200, FTA Circular 4220.1F "Third Party Contracting Guidance," and Department of Transportation 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments," FTA Web site: <http://www.fta.dot.gov/> The policies and procedures contained herein establish standard business practices to ensure the timely, efficient, and economical delivery of services and materials. The following contracts are outside the scope of third party contracting and will not be governed by these policies and procedures:

- ◆ Employment Contracts,
- ◆ Real Estate Contracts, and
- ◆ Intergovernmental Agreements.

The goal of procurement practices is to provide an atmosphere in which all procurement transactions will be conducted in a manner providing full and open competition. In accordance with FHWA 23 CFR Part 172, and 2 CFR§200.319, the KHC GCC will avoid the following situations considered to be restrictive of competition:

- (1) Unreasonable requirements placed on firms in order for them to qualify to do business;
- (2) Unnecessary experience and excessive bonding requirements;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive awards to any person or firm on retainer contracts;
- (5) Organizational conflicts of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- (6) The specification of only a "brand name" product without listing its salient characteristics and not allowing "an equal" product to be offered; and
- (7) Any arbitrary action in the procurement process.

The KHC GCC shall conduct procurements in a manner that does NOT give in-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 does not pre-empt State licensing laws. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services if an appropriate number of qualified firms, given the nature and size of the project, are able to compete for the contract.

1.2 DOCUMENTATION

In order to meet standards established by the FTA, DOT, FHWA, INDOT and SBOA and to be prepared for Triennial Reviews and Procurement Reviews, it is critical to accurately document procurement procedures. This manual outlines the steps to take and provides the standardized forms to completed (unless consultant has their own documentation process) for each type of procurement. Addresses, telephone numbers, and website addresses have been included to help the buyer expedite each step. Appendix B contains the standardized forms to be used to document practices. FHWA 23 CFR Part 172, Section 165 (49 U.S.C. § 5323(j) Buy America Act and FTA Circular 4220.1F, "Third Party Contracting Guidance" can be found at http://www.fta.dot.gov/legislation_law/12349_8641.html . All documentation and procurement procedures shall follow FTA Super Circular 2 CFR Part 200, Department of Transportation 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments to ensure full compliance. The KHCGCC Procurement Officer will maintain the procurement master files for capital and planning projects indefinitely, but no less than seven (7) years. It is important to work closely with the Procurement Officer to make sure the forms and documentation are completed on schedule and placed in the master file. The steps to perform each type of procurement are intended to serve as a checklist. Additional information is located on the following websites:

FTA Final Circulars <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/final-circulars>

FTA Best Practices and Lessons learned

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/procurement/8286/fta-best-practices-procurement-and-lessons-learned-manual-2016.pdf>

FTA Best Practices Procurement Manual http://www.fta.dot.gov/documents/BPPM_fulltext.pdf

FTA Master Agreement <http://www.fta.dot.gov/library/legal/agreements/2001/ma.html>.

Code of Federal Regulations (CFR) <http://www.access.gpo.gov/nara/cfr/cfr-tablesearch.html>.

Federal Acquisition Regulation <http://www.acquisition.gov/far/>

United States Code <http://www4.law.cornell.edu/uscode/>.

CHAPTER 2 CODE OF ETHICS AND CONFLICT OF INTEREST POLICY In accordance with 2 CFR § 200.318(c)(1), 49 CFR Part 18,

2.1 WRITTEN STANDARDS OF CONDUCT

In order to conduct procurement activities in an ethical manner, a Code of Ethics and Conflict of Interest Policy is established for the KHCGCC, stated as follows.

2.2 PERSONAL CONFLICT OF INTEREST

No KHCGCC employee, officer, agent, board member, or immediate family member shall participate in the selection of, award, or administration of a contract funds if a conflict of interest, real or apparent, would be involved. Such a personal conflict of interest would arise when any of the following has a financial interest or other interest in the firm selected for the award:

- 1) The employee, officer, agent, or board member,
- 2) Any member of his/her immediate family,
- 3) His/her partner, or
- 4) An organization that employs, or is about to employ, any of the above.

The KHCGCC employees, officers, agents, and board members shall neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from actual contractors, potential contractors, or parties to sub-agreements, including but not limited to monies, credits, discounts, seasonal or special occasion presents, edibles, drinks, household appliances and furnishings, clothing, vacations, travel or hotel expenses, various forms of entertainment if:

- 1) It tends to influence the employee, officer, agent, or Board member in the discharge of employee's official duties; or
- 2) The employee, officer, agent, or Board member recently has been, or is now, or in the near future may be, involved in any official act or action directly affecting the donor or lender; or

3) The employee, officer, agent, or Board member has or appears to have influence over The KHCGCC actions affecting the donor or lender in the employee's official capacity.

Notwithstanding the above, this section shall not apply to the following scenarios:

- 1) An occasional unsolicited non-pecuniary gift of insignificant value (less than \$50.00) such as accepting food or refreshment of nominal value on infrequent occasions in the ordinary course of a business luncheon or business dinner meeting or other meeting, or unsolicited thank you cards or gifts of insignificant value such as coupons, balloons, floral arrangements, or small gift baskets; or
- 2) Unsolicited advertising and promotional material such as pens, pencils, note pads, calendars, or other business-related items of nominal intrinsic value; or
- 3) An unsolicited gift, entertainment, or other thing of value when circumstances make it clear that an obvious long-standing social or family relationship rather than the business of the persons concerned is the motivating factor.

Purchasing employees must recognize that their purchasing activities are of public interest and a matter of public record, therefore, their actions must be conducted in a manner so as to be fully substantiated and legally defended in accordance with the authority of the Board of Public Works and Safety and/or Policy Board. At all times, the KHCGCC employees must endeavor to keep from involvements that could result in a possible position of "conflict of interest."

When an actual or potential violation of any of these standards is discovered, the person involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions and disposition of the matter. If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and/or have an existing contract canceled.

2.3 ORGANIZATIONAL CONFLICTS OF INTERESTS

The Procurement Officer and technical personnel are encouraged to work closely with the KHCGCC Attorney to review all situations that appear to have the potential for an organizational conflict of interest. The KHCGCC Attorney can help in the preparation of restrictive contracting clauses suitable for the particular situation. The KHCGCC Attorney can also recognize when involvement by FHWA, INODT or the FTA regional office would be appropriate. Organizational conflicts of interest can cause two distinct problems. One concerns the issue of bias; the other involves the issue of unfair competitive advantage. An organizational conflict of interest occurs due to the type of work to be performed under a third-party contract, or because of other activities or relationships such as:

- ◆ A contractor is unable, or potentially unable, to render impartial assistance or advice to the KHCGCC;
- ◆ A contractor's objectivity in performing contract work is or might otherwise be impaired; or
- ◆ A contractor has an unfair competitive advantage.

Bias arises when a contractor is placed in a situation where there may be an incentive to distort advice or decisions. Whenever a contract is awarded that involves the rendering of advice, the question must always be asked as to whether the potential for a conflict of interest exists for the contractor rendering the advice. In fact, the KHCGCC should always consider using a "Conflict of Interest Disclosure Statement," such as follows, in its solicitation when contracting for services of this nature.

- 1) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) affected by any KHCGCC employee, officer, agent, or board member; any member of these entities' immediate family, partner, or organization that employs, or is about to employ, any of the above, and which is related to the work under this solicitation. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors, and key personnel of any of the above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract, where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.
- 2) The offeror shall describe in detail why it believes, in light of the interest(s) identified in above, that performance of the proposed contract can be accomplished in an impartial and objective manner.

- 3) In the absence of any relevant interest identified in (1) above, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.
- 4) The KHC GCC Attorney will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to the KHC GCC, will be used to determine whether an award to the offeror may create a conflict of interest. If any such conflict of interest is found to exist, the KHC GCC Attorney may (a) disqualify the offeror, or (b) determine that it is otherwise in the best interest of the KHC GCC to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.
- 5) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to The KHC GCC Attorney. The disclosure shall include a full description of the conflict, a description of the action the contractor has taken, or proposes to take, to avoid or mitigate such conflict. The KHC GCC Attorney may, terminate the contract for convenience if he or she deems that termination is in the best interest of the KHC GCC by sending the contractor a Notice of Termination specifying the nature of default.

The problem of unfair competitive advantage occurs most often when a contractor is developing specifications or statements of work that will be used in a future competitive solicitation. The problem most often causing unfair advantage occurs when the contractor writes specifications or statements of work around its own corporate competitive strengths or products, and then bids on those specifications or statements of work. The KHC GCC can overcome the unfair advantage by placing reasonable restrictions on the contractor's involvement in the procurement that will utilize the specifications. Some form of advance restriction (limitation on future contracting) must be agreed to with the contractor as a provision within its consulting contract. Another typical problem scenario is that a contractor developing specifications or work statements may have access to information that the KHC GCC has paid the contractor to develop, or which the KHC GCC has furnished to the contractor for its work and which has not been made public. When this information enhances the contractor's competitive position in the bidding, it represents an unfair competitive advantage. The potential solution to this problem is to fully disclose all information to the bidders for a reasonable time prior to receipt of proposals.

The situation of "unfair competitive advantage" is to be distinguished from a "fairly won competitive advantage" which naturally accrues to any contractor that can do work more efficiently because it has more experience (i.e., won more contracts) for its products or services. It is a fact that competitors are frequently discouraged from bidding on a particular procurement because they perceive an incumbent contractor to have an insurmountable competitive advantage by virtue of its previous work.

Environmental Impact Statements – There is a special regulatory requirement imposed by 40 CFR 1506.5 on contractors who develop environmental impact statements. These contractors are required to sign a disclosure statement certifying that the firm has no financial or other interests in the execution or outcome of the proposed project. This certification is intended to avoid situations where contractors are hired to study alternatives and potential environmental impacts of proposed projects when they have some corporate interest in the outcome of their findings. Grantees are advised to include such a certification in their Requests for Proposals for the consultant services so that such conflicts can be identified early in the contracting process, thus avoiding unnecessary expense to offerors and delays to the project.

Obtaining Access to Proprietary Information – When a consulting contractor requires proprietary information from others to perform the KHC GCC contract, the contractor may gain an unfair competitive advantage. Imposed restrictions protect the information and encourage companies to provide it when necessary for contract performance. A contractor doing work for the KHC GCC and requiring such information is required to enter into agreements with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and also to refrain from using it for any purpose other than that for which it was furnished. The KHC GCC Procurement Officer will obtain copies of these agreements.

2.4 COMPLIANCE WITH THE CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

The KHCGCC requires that all committee and board members involved in procurement functions sign a Conflict-of-Interest Statement and that these signatures be kept on file by the Procurement Officer.

CONFLICT OF INTEREST POLICY

In accordance with 2 CFR § 200.318(c)(1)

As a General Policy, the KHCGCC to prevent and avoid any conflicts of interest in the conduct of its business operations and to avoid any appearance of such conflicts to the public it services shall adhere to the conflict-of-interest guidelines. Each board member or committee member has the duty to place the interests of the KHCGCC foremost in any dealings on behalf of the organization and has a continuing responsibility to comply with this Policy. In order to comply with this Policy, it is expected that:

If an employee, board or committee member has an interest in a proposed transaction with the KHCGCC in the form of a significant personal or organizational financial interest in the transaction or holds a position as trustee, director, officer or staff member in such organization or business, he or she must make full disclosure of such interest before any discussion or negotiation of such transaction. The disclosure shall be recorded in the minutes of the meeting.

Any employee, board or committee member who has a potential conflict of interest with respect to any matter coming before the board or a committee shall not participate in any discussion of or vote in connection with the matter. The disclosure shall be recorded in the minutes of the meeting.

Any employee, board or committee member who gains privileged information by virtue of his or her role as a board, committee or staff member shall not use that privileged information for personal or professional gain.

This Policy shall be distributed annually to employees, board and committee members. A signature in the designated space at the bottom of this Policy will indicate that board or committee members' agreement to abide by this Policy to the best of his or her ability.

Noncompliance with the intent and spirit of this Conflict-of-Interest Policy may result in action deemed appropriate by the KHCGCC Attorney.

This Policy may be revised or amended as determined appropriate by the KHCGCC.

I have read the above statement of policy regarding conflict of interest and agree to abide by the policy to the best of my ability in my role as a board or committee member.

Signature: _____ Date: _____
Printed Name:

**CHAPTER 3
PROCUREMENT PROCESS, PLANNING
AND ORGANIZATION**

A Guide to KHCGCC Procurement Methods			
	Description	Notice	Documentation
Micro Purchases	Under \$10,000/yr Quotes from 3 qualified vendors Spread around if possible	None	Subject to audit
Small Purchase	Less than \$150,000.00 Selection based on low cost, qualified Quotes from min 3 qualified vendors	14-30 day advanced 7 day Website	Subject to audit
Request for Information	Seeking information or ideas may not Lead to a contract	14-30 day advanced 7 day Website	None
Request for Proposal	Selection based on detailed qualifications, approach and pricing	Public Notice 14-30 day advanced 7 day Website	5 year record, publicly available upon request
Non-Competitive/Special Purchase	Purchasing agent determines purchase to meet one of the special criteria	None, unless public notice required	5 year record, publicly available upon request form

The following sections are written as a guide for the procurement process to assist purchasers in making Micro-Purchases, Small Purchases, Large Purchases, Sole Source Purchases, and procuring through Invitation for Bid and Request for Proposals. FTA Circular 4220.1F, FTA’s Master Agreement, or the Uniform Guidance (also referred to as the “Super Circular,” found at 2 C.F.R. 200, replacing and superseding FTA’s Common Grant Rules found at 49 C.F.R. 18) and/or IC 5-22.

Follow these steps for purchases funded by the Federal, State, and Local governments.

All procurements should have the following basic supporting documentation:

Complete the Price Analysis Documentation for Small and Large Purchases (Form B-13). This form certifies that adequate price competition was obtained by comparison of quotations and the low price is fair and reasonable.
DBE Source List.

Any supporting documentation needed from bid package.

Procurement advertisement must contain the following:

1. The description of the work, goods, or services to be procured;
2. The location at which the bidding documents, plans, specifications, or other documents may be examined by all bidders, and time and place of the pre-bid conference (set the pre-bid conference minimum of seven [7] days after the publication of the first notice);
3. Approved Equal Deadline (set the deadline 10 days after the publication of the first notice);
4. The date, time, and place for submitting bids and the date, time (include the time zone), and place for the opening of competitive sealed bids;
5. DBE program requirements or goals;
6. Late bids will be returned unopened to the sender.

CONTRACTING with SMALL and MINORITY BUSINESS, WOMEN'S BUSINESS ENTERPRISES, and LABOR SURPLUS AREA FIRMS (DBE)

The KHCGCC currently falls below the DBE threshold. 2 CFR § 200.321 is included in this policy to allow for future compliance, if/when necessary.

2 CFR § 200.321 states as follows:

- (a) The KHCGCC must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

3.1 MICRO-PURCHASES: USC § 200.67 and IC 5-22-8-2

Micro-purchase means a purchase of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchase procedures comprise a subset of a non-Federal entity's small purchase procedures. The non-Federal entity uses such procedures in order to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. The micro-purchase threshold is set by the Federal Acquisition Regulation at 48 CFR Subpart 2.1 (Definitions). It is \$10,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation.

- ◆ Micro-Purchases are purchases that cost \$0.01 to \$10,000.00, including delivery charges.
- ◆ Micro-Purchases may be made without obtaining competitive quotations if the price is determined to be "fair and reasonable" and is documented as such.
- ◆ Micro-Purchases are exempt from Buy America requirements.
- ◆ Micro-Purchase procedures may not be used for Construction Contracts with a value of \$2,000 or greater. Davis Bacon Act applies to construction contracts between \$2,000 and \$2,500.
- ◆ One method to equitably distribute the micro-purchases among qualified suppliers is to rotate through an approved supplier list. If possible, place Disadvantaged Business Enterprises (DBEs) on the list. **If this method is used, indicate the name of the company to be used, as well as the previous company used on the rotating list** on the "Fair and Reasonable" Price Documentation (Form B-2).
- ◆ Splitting procurements to avoid the \$10,000.00 competition requirement is not allowed. IC 5-22-8-1
- ◆ Contract clauses are not required for Micro-Purchases.
- ◆ Purchase cards may be used if the Price Determination Form (Form B-1) is up to date (signed at the beginning of each fiscal year.) Talk to the Procurement Officer for information regarding this procurement method.
- ◆ To justify Sole Source Procurements, complete Form B-9 and attach it to the Purchase Order documentation.

3.2 SMALL PURCHASES. In accordance with USC 200.320b and IC 5-22-8. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than \$10,000 but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at \$150,000) per OMB Super-Circular (2 CFR Part 200, adopted by the USDOT via 2 CFR Part 1201), IC 5-22 chapter 8. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources. These quotations are to be kept on file as proof the price was fair and reasonable.

Small Purchase - A purchase under \$150,000; with the exception of Quantity Purchase Awards

Small purchase procurement for securing services, capital items, or supplies that do not cost more than \$150,000 in the aggregate, will contain price or rate quotations from an adequate number of suppliers.

3.3 LARGE PURCHASE (Exceeding \$150,000) – SEALED BIDS.

- ◆ Primary Goal: To obtain the best quality products and service at minimum cost.
- ◆ Secondary Goal: To guard against favoritism and profiteering at public expense.
- ◆ Tertiary Goal: To provide equal opportunities for potential parties to participate in public business.
- ◆ This method of procurement allows for free and open competition.
- ◆ Use this procurement method for:
 - 1) Goods and Services that are clearly defined;
 - 2) Construction Projects; and
 - 3) Awards that can be made primarily based upon the price of the bid.
- ◆ Contracts that exceed \$150,000 shall be awarded by sealed bid or competitive negotiation unless there is an explicit exception.
- ◆ Advertise Invitation for Bid if the independent estimate exceeds \$150,000.
- ◆ The KHC GCC Policy Board shall approve all contracts and procurements exceeding \$20,000 through an agenda item.
- ◆ In order for sealed bidding to be feasible, the following conditions must be present:
 - 1) A complete, adequate, and realistic specification or purchase description is available;
 - 2) Three or more responsible bidders are willing and able to compete effectively for the business;
 - 3) The procurement lends itself to a firm fixed price contract, and the successful bidder can be selected principally on the basis of price;
 - 4) No discussion with the bidders is needed.
- ◆ Large Purchases require the following:
 - 1) Publicly advertise the Invitation for Bids, and solicit bids from an adequate number of known suppliers, and provide them sufficient time to prepare bids prior to the date set for opening the bids; IC 5-22-9-3
 - 2) The Invitation for Bids shall include specifications and pertinent attachments, and shall define the items or services sought so the bidder can properly respond;
 - 3) Award a firm fixed-price contract (lump sum or unit price) in writing to the lowest responsive and responsible bidder whose bid conforms to all the material terms and conditions of the Invitation for Bids. Factors such as discounts, transportation costs, and life cycle costs shall be considered in determining the lowest bid;
 - 4) Any or all bids may be rejected based upon a sound documented business decision.
- ◆ Large Purchases must comply with Buy America requirements and other Federal Clauses.
- ◆ The KHC GCC may not restrict competition by:
 - 1) Placing unreasonable requirements on firms in order for them to qualify to do business;
 - 2) Having an organizational conflict of interest;
 - 3) Requiring vendors to have unnecessary experience or unnecessary bonding; or
 - 4) Giving preference in the evaluation of bids to in-state or local businesses, except in those cases where Federal statutes expressly mandate or encourage geographic preference. (This does not preempt State licensing law.)

3.4 COMPETITIVE PROPOSALS (REQUEST FOR PROPOSALS)

- ◆ Requests for Proposals are used to procure architectural and engineering services, technology, legal services, accounting services, insurance and in cases where the quality of the service outweighs price. (For more information, see Best Practices Procurement Manual Sec. 4.3.1. and IC 5-22)
- ◆ The competitive proposal method is normally conducted with more than one source submitting an offer (proposal).
- ◆ Either a fixed price or cost reimbursement type contract is awarded.
- ◆ When for transit the Request for Proposals must meet the following requirements according to FTA Circular 4220.1F
 - (a) Publicity. The request for proposals is publicly advertised. IC 5-22-9-3
 - (b) Evaluation Factors. All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.
 - (c) Adequate Sources. Proposals are solicited from an adequate number of qualified sources.

(d) Evaluation Method. A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.

(e) Price and Other Factors. An award is made to the responsible offeror whose proposal is most advantageous to the recipient's program with price and other factors considered.

(f) Best Value. If permitted under its State or local law, the recipient may award the contract to the offeror whose proposal provides the greatest value to the recipient. To do so, the recipient's solicitation must inform potential offerors that the award will be made on a "best value" basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The recipient should base its determination of which proposal represents the "best value" on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

- ◆ An independent estimate is required for **all** purchases.

- ◆ A cost analysis is required.

- ◆ Proposers are required to submit corporate financial data and labor rates which proposers usually regard as privileged information. Therefore, treat all documentation received in response to Requests for Proposals as confidential. Should the need arise to share the contents of the proposal with another company or firm, first acquire permission in writing from a responsible official of the proposing firm. The Board will control the dissemination of proposals within the KHCGCC so that only staff with a demonstrable "need to know" have access to the proposals.

- ◆ The Board is required to approve all contracts and procurements exceeding \$20,000 through an agenda item.

3.5 PROCUREMENT of ARCHITECTURAL and ENGINEERING SERVICES (A&E): IC 5-16-11.1

- ◆ When architectural or engineering services costing less than \$10,000 are needed for a specific project, a qualified firm or individual will be selected on a rotation basis from a list of architects and engineers who have expressed an interest in doing business with the KHCGCC who have completed and submitted an Architect-Engineer and Related Services Questionnaire (Industry Standard Form 254).

- ◆ Initial selection shall be based only on the demonstrated competence and qualifications of the person, including any firm, who is to provide the services. **Price and/or number of man-hours must not be asked for or discussed during the initial selection phase.** After the firm or individual is selected, a contract shall be negotiated (section 6.2.5) at a fair and reasonable price using Memorandum of Negotiations (Form B-19).

- ◆ When Contracting for Architectural, Professional Engineering Services, and Land Surveying, use the competitive proposal procedures based on the Brooks Act as defined and defined in IC 5-16-11.1 (For the Brooks Act, see <http://www4.law.cornell.edu/uscode/40/541.html>.) (Also see Best Practices Procurement Manual Sec. 6.5 for more discussion on procuring Architectural and Engineering Services.) The Brooks Act requires that:

- (1) An offeror's qualifications be evaluated and selection is based upon qualifications not price;

- (2) Price be excluded as an evaluation factor although the price must be fair and reasonable;

- (3) Negotiations be conducted with only the most qualified offeror; and

- (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

- ◆ This "qualifications-based procurement method" can only be used for the procurement of A&E services. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services. These requirements apply except to the extent any state adopts or has adopted by statute a formal procedure for the procurement of architectural and engineering services.

- ◆ Other types of services considered A&E services include program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, and services which require performance by a registered or licensed architect or engineer.

- ◆ Develop Scope of Work.

- ◆ Choose the contract type most appropriate for the project such as fixed price, cost reimbursement, time and materials, and labor hour contracts. (See Best Practices Procurement Manual for more information on contract types).

- ◆ Requests for Project Specific Qualification Statements must be publicized. Include all evaluation factors in the published notification. (See the Best Practices Procurement Manual for more information on Qualification Statements)

- ◆ Conduct discussions with no fewer than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. Invite the short-listed firms to give oral presentations. Advise firms in advance of questions the committee will ask regarding the firm and its capabilities. The selection committee

should have members with experience in architecture, engineering, construction, procurement, EEO program, related matters, and members from the operational departments that will ultimately use the project. Select the most qualified firm from this pool of firms based upon criteria established and published. If a reasonable price cannot be negotiated with the first firm, formally terminate negotiations with that firm, and proceed down the list in order of rank based upon qualifications until a price is negotiated.

3.6 SOLE SOURCE PROCUREMENTS

Sole Source procurements are accomplished through solicitation or acceptance of a proposal from only one source or, after solicitation of a number of sources, competition is determined inadequate. A contract amendment or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with FTA 2 CFR 200.320(f) or IC 5-22-13 Methods of Sole or Single Source purchasing.

(1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

(a) Unique or Innovative Concept. The offer or demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and has not in the past been available to the recipient from another source.

(b) Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.

(c) Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.

(d) Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.

(e) The item is an associated capital maintenance item as defined in 49 U.S.C. that is procured directly from the original manufacturer or supplier of the item to be replaced. The grantee must first certify in writing to FTA:

1. That such manufacturer or supplier is the only source for such item; and

2. That the price of such item is no higher than the price paid for such item by like customers.

(2) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

◆ Avoid Sole Source procurements except in circumstances where it is both necessary and in the best interest of the KHCGCC.

◆ Make sure the item or service is needed to meet a requirement and is not merely desired as something "nice to have."

- Complete Sole Source Procurement Justification (Form B-9).
- Complete Cost Analysis Documentation (Form B-14). If price reasonableness can be established on the basis of a catalog or market price of a commercial product sold to the general public in substantial quantities or on the basis of prices set by law or regulation, complete the Price Analysis Documentation
- Check to see if the selected vendor has not been debarred from working on Federal Contracts, SAM.gov. Check the Federal Government's General Services Administration Debarred Bidder's List at www.gsa.gov under Public Information, Publications, Directories and Catalogues, Debarred Bidders List. Complete the Contractor Verification (Form B-17.)

3.7 PROCUREMENT OF RECOVERED MATERIALS (2 CFR § 200.323)

The KHCGCC must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program, for procurement of recovered materials identified in the EPA guidelines.

3.8 CONTRACT COST AND PRICE 2 CFR § 200.324, IC 5-22-17-1

The KHCGCC must perform (a) a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-federal entity must make independent estimates before receiving bids or proposals; (b) the KHCGCC must negotiate profit as a separate element of the price of 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 must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work; (c) costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles; (d) the cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. (Form B-8)

3.9 FEDERAL AWARDING AGENCY OR PASS-THROUGH ENTITY REVIEW 2 CFR § 200

- (a) The KHCGCC must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to technical aspects of the proposed purchase.
- (b) The KHCGCC must make available upon request, for the Federal awarding agency or pass-through entity pre procurement review, procurements documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
 - (1) The KHCGCC's procurement procedures or operation fails to comply with the procurement standards in this part;
 - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to solicitation;
 - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
 - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The KHCGCC is exempt from pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
 - (1) The KHCGCC may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
 - (2) The KHCGCC may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the KHCGCC that it is complying with these standards. The KHCGCC must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

INSURANCES

General liability, property damage and worker's compensation insurances are required for all construction or service contracts where the contractor is performing any portion of the service.

BONDS

IC 36-9-27-78 Contracts; bidding; required provisions; surety bonds Sec. 78. (a) Whenever the board is ready to let contracts, it shall publish notice in accordance with IC 5-3-1. The notice must:

- (1) state that at a date, time, and place the board will receive bids on the work;
- (2) generally, and concisely describe the nature of the work to be done and materials to be furnished;
- (3) invite sealed bids; and
- (4) state that prospective bidders may obtain plans, specifications, and forms from the county surveyor in charge of the work.

A defect in the form of the notice does not invalidate proceedings under the notice.

(b) Each bidder shall deposit with the bidder's bid, at the bidder's option, either a certified check made payable to the board in the sum of five percent (5%) of the bid or a bid bond in the sum of five percent (5%) of the bid. If a bidder elects to deposit a bid bond, the bond must be payable to the board with sufficient sureties, and the bond must be conditioned upon the bidder's execution of a contract in accordance with the bidder's bid if accepted by the board and must provide for the forfeiture of five percent (5%) of the amount of the bid upon the bidder's failure to do so. The board shall return all checks and bonds submitted by unsuccessful bidders, and shall return a successful bidder's check or bond when the successful bidder enters into a contract with the board.

(c) At the hour specified in the notice for receiving the bids, the board shall open and examine all bids. The board shall then promptly award the contract or contracts to the lowest bidder or bidders it finds to be qualified. In determining whether a bidder is qualified, the board shall consider the complexity and magnitude of the work to be performed, and the skill and experience of the bidder. Within five (5) days after the acceptance of a bid, the successful bidder shall enter into a contract with the board that complies with subsection (d). If a successful bidder fails to enter into such a contract, the successful bidder forfeits to the board, as liquidated damages, the check or bond deposited under subsection (b).

(d) The contract between the board and a successful bidder must provide:

- (1) that the contractor will perform the work under the supervision of the county surveyor and in accordance with the plans, specifications, and profiles adopted by the board;
- (2) that a claim for payment under the contract will not be approved by the board until the work for which the claim is presented has been approved by the county surveyor;
- (3) the time within which the work must be completed;
- (4) that fifteen percent (15%) of the contract price shall be withheld by the board for a period of sixty (60) days after the completion of the work, for the purpose of securing payment of suppliers, laborers, and subcontractors; and
- (5) for other terms that the board considers appropriate.

(e) Upon execution of the contract, the successful bidder shall give to the board a bond payable to the board, in an amount fixed by the board but not less than the amount of the bid, and with a corporate surety licensed to do business in Indiana. The bond must be conditioned on the faithful performance of the contract and the payment of all expenses and damages incurred under the contract, including payment of all suppliers, laborers, and subcontractors. However, in lieu of a corporate surety bond, the board may accept:

- (1) a cash bond;
- (2) a property bond; or
- (3) a bond from a sufficiently financed private bonding company.

PREVAILING WAGE ADMINISTRATION (NOW COMMON CONSTRUCTION WAGE ACT)

Indiana repealed its Common Construction Wage Statute in 2015. Prevailing wages that applied to contracts for construction greater than \$350,000 awarded before July 1, 2015 are still enforceable. Ind. Code § 5-16-7.1-2

LONG TERM RELATIONS WITH PROFESSIONAL FIRMS

Because of the critical and interpersonal nature of contracts with professional firms, it is recognized that it is in the best interest of the KHC GCC is to not put professional contracts out for competition every year. However, to avoid the possibility of preferential vendor relations, professional service purchases should not exceed five years without complete re-evaluation. Formal contracts should include definite terms of service. Informal professional service relations such as trainers may be evaluated every year or two.

Care should be taken for all purchases of professional services to avoid conflict of interest.

***SELF-CERTIFICATION.** It is expected each recipient self-certify that its procurement system complies with Federal requirements for any assisted third party contract the recipient undertakes and administers. This will include any documentation to be kept on file with procurements including but not limited to ICE (Independent Cost Estimates), Buy America, DBE goals, Cost Analysis, Etc.*

MODIFICATIONS AND ALTERATIONS:

After the solicitation has been mailed, modifications and alterations are not permitted except by means of a written addendum or amendment sent to all prospective bidders who must acknowledge receipt of the addendum or amendment in writing or by attaching to the solicitation and submitting it with their bid. If necessary, the bids may be canceled prior to the bid opening date, with bids then returned unopened to the bidders and a new bid solicitation prepared. The bid opening date may be postponed to provide time for all bidders to incorporate the modification or alterations in their bid. If the bid opening is postponed, and the bidder has submitted his/her bid before receipt of the addendum, he/she may incorporate changes on the addendum and submit it in the same manner as the original bid, provided the addendum is properly sealed and identified and received prior to the new bid opening date and time.

CHAPTER 4 DISPUTE AND PROTEST PROCEDURES

According to FTA Circular 4220.1F, "In general, FTA will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. Examples of "Federal concerns" include, but are not limited to, situations "where a special Federal interest is declared because of program management concerns, possible mismanagement, impropriety, waste, or fraud." Nevertheless, FTA can become involved in the recipient's administrative decisions when a recipient's protest decision is appealed to FTA, or when the recipient seeks to use FTA assistance to support the costs of settlements or other resolutions of protests, disputes, claims, or litigation." **In all instances, the KHC GCC shall disclose information regarding protests to federal agency via memorandum.**

Potential bidders, contractors, or proposers can lodge written protests as a remedy to correct a perceived wrong that may have occurred during the procurement process. The KHC GCC will accept and review the protest with the understanding that the integrity of the procurement process may be at stake. The KHC GCC will use the following procedures to resolve disputes in the attempt to avoid FTA involvement or litigation.

All protests lodged by potential or actual bidders, contractors, or proposers must be made in writing and contain the following information:

- ◆ Name, address, and telephone number of the protester.
- ◆ Identification of the solicitation or contract number and title.

- ◆ A detailed statement of the protest's legal and factual grounds, including copies of relevant documents.
- ◆ Identification of the issue(s) to be resolved and statement of what relief is requested.
- ◆ Argument and authorities in support of the protest.
- ◆ A statement that copies of the protest have been mailed or delivered to all interested parties in the Invitation for Bid or Request for Proposal process. In the case of Requests for Proposals, the KHC GCC Procurement Officer shall direct the protester to mail or deliver the protest to relevant parties.

Mail or hand deliver the protest to:

Procurement Officer

The KHC GCC

219 E. Sycamore St.

Kokomo, IN 46901

Faxed or e-mailed protests will not be accepted.

The KHC GCC Procurement Officer will respond, in written detail, with counterclaims to each substantive issue raised in the protest.

The Executive Director has the authority to render the final determination regarding the protest. Any determination rendered by the KHC GCC will be final. The Federal Transit Administration will entertain appeals only in cases stated below in Section 5.4.

KHC GCC PROTESTS:

a. After a contract has been awarded, any actual or prospective consultant who is aggrieved in connection with the pending award of the contract process leading to the award of the contract may protest to the KHC GCC Executive Director. A protest is a written statement that concerns any unresolved issues arising out of the procurement process with the KHC GCC. Filing shall be considered complete when the protest is received by the executive director, who will notify the Policy Board.

b. The KHC GCC shall require a deposit from a protester to compensate the KHC GCC for the expenses of administering the protest. If the protest is decided in the protester's favor, the entire deposit shall be returned to the protester. If the protest is not decided in the protester's favor, the deposit shall be forfeited to the KHC GCC. The deposit shall be the greater of 1% of the pending award or \$5,000.

c. In the event of a timely protest, the executive director shall stay the award of contract, unless, after consulting with the KHC GCC attorney, the executive director determines that the award of the contract without delay is necessary to protect substantial interests of the KHC GCC.

d. The executive director has to authority to review, settle, and resolve the protest.

e. If the executive director determines that the pending award of a contract or any element of the process leading to the award involved a significant violation of law or applicable rule or regulation, all steps necessary and proper to correct the violation shall be taken. If the protest is determined to be without merit, the executive director shall promptly issue a decision in writing stating the reason for the decision and furnish a copy to the protester and any other interested party, and the process leading to the award shall proceed forthwith.

f. A protester must exhaust all administrative remedies with the KHC GCC and the grantee before pursuing a protest with the applicable State or Federal agency

4.1 PRE-BID OR SOLICITATION PHASE PROTEST

A Pre-Bid or Solicitation Phase Protest must be received in writing by the KHC GCC Procurement Officer a minimum of five (5) full work days prior to the bid opening or proposal due date. If the written protest is not received in the time specified, the award may be made following normal procedures, unless the Procurement Officer, upon investigation, determines that remedial action is required on the grounds of fraud, gross abuse of the procurement process, or otherwise indicates substantial prejudice to the integrity of the procurement system, and said action should be taken. Within three (3) work days from the time the protest is received, the Procurement Officer will notify all potential bidders, contractors, or proposers that a protest has been lodged and the nature of the protest. The Procurement Officer will respond to the protest in writing within five (5) working days from the time the protest was received. If the Procurement Officer decides to withhold the award pending the resolution of the protest, the Procurement Officer may request a time extension for award acceptance from those

bidders, contractors, or proposers whose bids or proposal might become eligible for award. This extension for award acceptance must be with the consent of sureties, if any, in order to avoid to the need for re-advertising.

The KHC GCC will not make an award prior to five (5) working days after the protest is resolved, or if the protest has been filed with any federal agency during the protest negotiation period, unless the KHC GCC attorney determines that:

- ◆ The items or services to be procured are urgently required;
- ◆ Delivery or performance will be unduly delayed by failure to make the award promptly; or
- ◆ Failure to make the award will otherwise cause undue harm to the KHC GCC or the federal government. The Procurement Officer will document this action and give written notice of the decision to proceed with the award to the Protester, and to other parties when deemed necessary.

4.2 PRE-AWARD PROTESTS

Protests may be lodged after the Bid Opening or Close of Request for Proposal deadline and prior to Notice of Award. Within three (3) workdays from the time the protest is received, the Procurement Officer will notify all potential bidders, contractors, or proposers that a protest has been lodged and the nature of the protest. The Procurement Officer will respond to the protest in writing within five (5) working days from the time the protest was received. If the Procurement Officer decides to withhold the award pending the resolution of the protest, the Procurement Officer may request a time extension for award acceptance from those bidders, contractors, or proposers whose bids or proposal might become eligible for award. This extension for award acceptance must be with the consent of sureties, if any, in order to avoid the need to re-advertise. The KHC GCC will not make an award prior to five (5) working days after the protest is resolved, or if the protest has been filed with federal government during the protest negotiation process, unless The KHC GCC determines that:

- ◆ The items or services to be procured are urgently required;
- ◆ Delivery or performance will be unduly delayed by failure to make the award promptly; or
- ◆ Failure to make the award will otherwise cause undue harm to the KHC GCC or the Federal Government. The Procurement Officer will document this action and give written notice of the decision to proceed with the award to the Protester, and to other parties when deemed necessary.

4.3 POST-AWARD PROTEST

The Procurement Officer will receive protests in writing within three (3) working days after the Notice of Award and letters of notification should have been received by bidders or proposers. Upon receipt of a protest, the Procurement Officer shall notify the bidder or proposer awarded the contract. The Procurement Officer will render a determination to proceed with the contract or suspend the project until the protest is resolved. The Procurement Officer will respond to the protest in writing within five (5) working days after receipt of the protest.

4.4 APPEALS

The Procurement Officer has the authority to settle any dispute and resolve the protest. The Procurement Officer may solicit written responses regarding the protest from other parties. If this course of action does not result in a satisfactory resolution, the Protester may appeal in writing to the Board of Public Works and Safety within three (3) working days after the Procurement Officer issues a final decision. The Executive Director will issue a decision within five (5) working days after receipt of the appeal.

The KHC GCC may elect to involve KHC GCC legal department or arbitration and mediation consultants to resolve the issue(s).

The Protester has the right to appeal in writing to the federal government if:

- ◆ The Protester has exhausted all administrative remedies with the KHC GCC /KHC GCC, and
- ◆ The KHC GCC /KHC GCC has failed to follow its protest procedures or failed to review a complaint or protest. The Protester's appeal must be received within five (5) working days of the date the Protester knew or should have known of the violation.

When the Protester sends an appeal to the federal agency the Protester must also send copy of the appeal to the KHC GCC Procurement Officer within the same timeframe.

Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of state or local authorities.

In the event that data becomes available that was not previously known, or there has been an error of law or regulation, the KHC GCC will grant an allowance for request for reconsideration.

CHAPTER 5 CONTRACT NEGOTIATION

The Procurement Officer shall be responsible for all negotiations with proposers, and prospective contractors and shall obtain the necessary assistance from personnel involved in the procurement project and legal counsel for the KHC GCC.

5.1 COMPETITIVE NEGOTIATION

In order to procure Professional/Personal Services, Technology, and Architectural/Engineering (A&E) services, The KHC GCC will issue Request for Proposals. All proposals except for A&E shall require both technical and cost proposals. The KHC GCC shall solicit proposals from a minimum of three sources to ensure adequate competition. The KHC GCC reserves the right and sole discretion to cancel the solicitation, without penalty. The KHC GCC reserves the right to reject all proposals and re-solicit or cancel the procurement if this action is considered to be in the best interest of the KHC GCC. The KHC GCC also reserves the right to award the contract based upon initial submissions or on the basis of a best and final offer without conducting written or oral discussions if the solicitation specifically stipulates this reservation of the KHC GCC rights. Whenever the KHC GCC enters negotiations with one proposer, the KHC GCC must enter discussions with all proposers that submitted proposals within the KHC GCC predetermined price range, except in the case of A&E (see below). If the KHC GCC does enter into negotiations, the KHC GCC shall make the final selection at the conclusion of formal negotiations based upon the evaluation of best and final offers, unless the KHC GCC decides to award the contract based upon initial submissions. It is critical to thoroughly document all correspondence and negotiations.

If procuring Architectural or Engineering services, the KHC GCC will enter negotiations with the most technically qualified firm to arrive at a fair and reasonable price. If an agreement cannot be reached, the KHC GCC will enter negotiations with the next qualified firm on the list, and will proceed in this manner, until an award is made.

All proposal's cost and pricing data that the KHC GCC receives shall be treated as confidential. All technical data received in response to RFPs shall also be treated as confidential except for data contained in the awarded contract.

The KHC GCC Proposal Evaluation Team for the specific procurement will convene to evaluate and rank the proposals. If needed, the Evaluation Team may conduct oral interviews with the finalists. The questions to be asked during the interviews shall be sent to the finalists a minimum of three (3) days prior to the interviews. The Evaluation Team shall then finalize the selection of proposers in descending order for the document file.

The Evaluation Team shall then enter into detailed and carefully documented negotiations with each of the finalists. The negotiations shall consist of addressing the total proposed effort and contract terms and conditions. Avoid "auctioning" of prices (Allowing vendors to lower their prices below their competitor's, and so on). After negotiating with each proposer, establish a schedule and deadline for the submission of "Best and Final Offers" which may include Technical and/or Cost/Price Proposals.

Upon receiving the "Best and Final Offers," reconvene the Evaluation Team. Perform a Cost Analysis on the submitted contract modifications, and decide which proposer should receive the contract award based either upon the final offers or the initial offers. Complete the procurement steps.

If the Evaluation Team is unable to reach an agreement with the proposers, assess the reasons and either amend the Request for Proposals and send the amendments to the proposers with whom the Evaluation Team is negotiating, or formally cancel the solicitation and start over with a new Request for Proposals.

5.2 NONCOMPETITIVE NEGOTIATION

Whenever the KHC GCC performs a "Sole Source Procurement," noncompetitive negotiation is involved. After receiving only, a single bid or determining that competition is inadequate, discuss with the Procurement Officer about entering into negotiations with the single bidder in order to establish a fair and reasonable price. Negotiate the final terms and conditions

of the contract using the negotiation procedures outlined in the competitive negotiation method above. These negotiations can be more pointed and open because there is no competitive environment involved and the integrity of the procurement process is not involved.

CHAPTER 6

CONTRACT CLOSEOUT PROCEDURES

In order to comply with the *Closeout* requirements of 49 CFR Part 18.50 all required information, reports, final invoices, and other documentation as appropriate from their third-party contractors as part of the contract closeout process (see <http://www.law.cornell.edu/cfr/text/49/18.50> for guidance). The Contract Closeout Procedures ensure that contracts are both "physically complete" and "administratively complete."

- ◆ The vendor has rendered all services and has fulfilled the contract.
- ◆ The vendor has delivered all articles or services and the KHC GCC has accepted them, including such things as reports, spare parts, warranty documents, and proof of insurance (where required by the contract terms). These deliverable items may or may not have been priced as discrete pay items in the contract, but they are required deliverables, and the contract is not physically complete until all deliverables are made.
- ◆ The KHC GCC has made all payments on the services or articles including the Final Payment.
- ◆ The Contractor has formally released the KHC GCC from all liabilities, obligations, and claims.
- ◆ All administrative actions have been completed including
 - The settlement of disputes, protests, and litigation;
 - The final overhead rates have been determined;
 - Funds have been released; and
 - Property has been accounted for or disposed of properly.
- ◆ All documentation has been properly filed.

6.1 FINAL PAYMENT

The KHC GCC will make the Final Payment for the article or service once the contract is complete and The KHC GCC has accepted the work. The Final Payment will be made after the Contractor presents a properly executed voucher or invoice that shows the dollar amount agreed upon in the contract less any amounts previously paid. Before authorizing the final payment, the KHC GCC Procurement Officer must receive a memorandum from the KHC GCC Project Manager ensuring that all required inspections have been performed and certifying to the satisfactory completion of the contract. Pay careful attention to documents that are notoriously problematic, such as warranties. The KHC GCC may wish to make warranty documents a pay item in contracts when the contract pay items are being established. This action will motivate the Contractor to deliver the documents in a timely manner and preclude a dispute as to the proper amount that should be paid for these items.

If, and only if, the contract contains a clause that Final Payment could be withheld until the articles or service under the contract are completed, finalized, and accepted, the KHC GCC may withhold the final payment until both parties agree in writing that the contract has been completed. Most payment clauses require the Contractor to furnish and execute a release of claims. This is generally used if subcontractors are involved and ensures that all sub-claims have been paid and resolved. A General Release at the time of the Final Payment effectively bars all existing Contractor claims, including pending claims and known and unknown claims. The Contractor may reserve the right to Specific Claims by accepting those claims at the time that the Release is executed. The Final Payment also ends the KHC GCC 's ability to file claims against the Contractor except in the event of latent defects, fraud, or gross mistakes.

6.2 POST-PERFORMANCE AUDIT

A close-out audit may be required to determine the final provisional overhead rates in cost reimbursement contracts. In addition to the overhead costs, there may also be some elements of costs that need audit examination. This audit cannot be conducted until the Contractor has completed the contract and submitted a final invoice. The final settlement of claims may create additional audit issues.

6.3 CONTRACT CLOSEOUT CHECKLIST

The Federal Transit Administration requires grantees to provide the following:

- (1) Final performance or progress report.

- (2) Financial Status Report.
- (3) Final request for payment.
- (4) Invention disclosure (if applicable).
- (5) Federally-owned property report (does not include property obtained with grant funds).

It is generally the responsibility of the KHC GCC Project Manager to establish that the work under a contract has been completed and the contract is ready for closeout. Upon determining that the work is complete, the Project Manager prepares a checklist showing all the contract deliverables and submittals, and indicating on the checklist that all submittals and deliverables have been reviewed, inspected and accepted. The Project Manager sends a memorandum to the Procurement Officer indicating that the contract is complete and all required deliverables have been inspected and accepted. To closeout routine purchase orders and contracts for commodities and other commercial products, the KHC GCC 's Procurement Officer ensures that the item's end user has inspected and accepted the deliverable items as being in conformance with the purchase order/contract specifications. Complete the Inspection and Acceptance Closeout Form (Form B-25) and place it in the file attesting to the contractor's delivery of all contract items.

To closeout routine purchase orders and contracts for commodities and other commercial products, the KHC GCC 's Procurement Officer ensures that the item's end user has inspected and accepted the deliverable items as being in conformance with the purchase order/contract specifications. Complete the Inspection and Acceptance Closeout Form (Form B-25) and place it in the file attesting to the contractor's delivery of all contract end items, including any descriptive literature or warranty documentation. The file must also contain documentation from the KHC GCC 's Finance Department as proof of final payment.

Contracts for personal services, complex equipment, rolling stock, construction, and other one-of-kind items require a number of steps to affect an administrative closeout. Major elements of the closeout process, and related documentation, might include:

- a) ___ Resolution of all contract changes, claims, and final quantities delivered.
- b) ___ Determination/recovery of liquidated damages.
- c) ___ Review of the insurance claim file by KHC GCC /insurance specialist to determine if funds need to be withheld from final payment to cover unsettled claims against the contractor. For all contracts requiring the Contractor to maintain insurance for its products or services (e.g., professional liability or product liability insurance), the Procurement Officer should obtain proof of insurance from the Contractor as part of the closeout process. This documentation should be submitted to the KHC GCC's Finance Department for approval prior to final payment to the Contractor. The Finance Department will be required to maintain these documents as active files until such time as the insurance requirement ceases under the terms and conditions of the contract; i.e., these insurance terms will continue past (survive) the final contract payment.
- d) ___ Settlement of all subcontracts by the prime contractor.
- e) ___ Performance of all inspections (and acceptance tests if any) by the grantee's project manager, with appropriate documentation.
- f) ___ Conduct a cost audit for cost-reimbursement contracts and resolve questioned costs, if any.
- g) ___ Generation of a Contractor Performance Report. A performance report may be generated if the Project Manager or Procurement Officer thinks that such a report would be helpful in conducting future procurements, especially if the product or service is exemplary of unsatisfactory
- h) ___ The submittal of all required documentation by the Contractor, may include items such as:
 - Final reports
 - Final payroll records and wage rate certifications
 - Spare parts list
 - Manufacturer's Warranties and Guarantees. The contract specifications may require that individual warranties or guarantees be furnished for various installed equipment or building systems. For each completed contract requiring warranties, the Project Manager should develop a **Warranty and Guarantee Register**, which is a status form listing:
 - Each individual item of equipment and system for which a warranty or guarantee is specified (roofing, doors, sealants, etc.);
 - the pertinent section in the contract specification;
 - the name of the company providing the warranty;
 - the expiration date of the warranty; and

- the address of the providing company
- Final corrected shop drawings
- Operation and maintenance manuals
- Catalogues and brochures
- Invention disclosure (if applicable)
- Federally-owned property report (if there was Government-furnished property)
- Resolution of final quantities (construction contracts)
- Final invoice
- Consent of Surety to release final payment to Contractor
- Contractor's Affidavit of Release of Liens
- Contractor's General Release (releasing the grantee from any further liabilities/claims under the contract). As part of the contract closeout process, the Procurement Officer or Project Manager must send the Contractor a closeout letter that includes the **Contractor's General Release**. This document must be a standard statement prepared by the KHC GCC 's legal counsel for use on all contracts. The release will say that for the payment of a sum certain, which is the final contract amount agreed to by both parties, the Contractor releases the grantee from any and all claims of every kind arising directly or indirectly out of the contract. The release may also contain a certification that the contractor has paid its subcontractors and suppliers for all their labor, materials, services, etc. furnished under the contract. The release is to be signed by a corporate official authorized to bind the Contractor.

The *General Release* is important to obtain prior to final payment because it assures the grantee that there will be no further claims from the Contractor once the final payment has been made. The grantee should have the release reviewed by its legal KHC GCC if the Contractor makes any changes to the grantee's standard release language that was sent to the Contractor for signature. It is necessary for the grantee and the Contractor to have resolved all open issues of a financial nature prior to the execution of the release (change orders, claims, liquidated damages, etc.), and this resolution of all outstanding claims is an important step in the contract closeout process.

To prevent a construction contractor from "walking away" from a project that is almost complete by refusing to sign a General Release and forgoing final payment, the KHC GCC should anticipate this possibility by carefully estimating the amount of retainage in such a way that it represents twice the amount of the punch list work and undelivered items (manuals, drawings, spare parts, etc.). A contractor who lacks sufficient financial incentive to complete the contract; e.g., if the punch list is large and there is very little money left in retainage, may profit by refusing to correct the punch list items and leave the retainage with the KHC GCC. Or the contractor may have been awarded another contract, which requires the reassignment of his personnel to another job.

The KHC GCC procedures provides an example in which the contract provisions call for the retainage of at least 5% of the total contract value as the work progresses (10% if there are problems observed with the work). At the point of final inspection and punch list preparation, the KHC GCC 's resident engineer or for rolling stock the fleet director estimates the value of the punch list items and the undelivered items such as spares, manuals, warranties, etc., and then the KHC GCC pays out the retainage minus twice the value of all the unfinished work. By establishing the retainage in this way, the contractor is motivated to complete the contract, because the contractor will actually receive twice the amount of money that it takes to finish the work. When all else fails, the grantee should definitely involve the surety in the issue of unfinished work (even if the amount of work is relatively small) because the contractor's relationship with its surety is a vital one for its future business. If the contractor loses the confidence of its surety, it is effectively foreclosing on its ability to bid on future work requiring performance bonds. Maintenance Bond (if required)

i) ___ Contract Closeout File review by legal counsel for the KHC GCC. For procurements involving services, construction, and larger dollar value equipment purchases, the KHC GCC may wish to have legal counsel for the KHC GCC review the closeout file to ensure the adequacy of the contractor's legal documents, including the contractor's General Release, insurance certificates, surety's release, maintenance bonds, etc.

APPENDIX

FORMS

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FORM B-1

"FAIR AND REASONABLE" PRICE DOCUMENTATION

FOR MICRO PURCHASES (\$0 TO \$3,000)

ITB OR RFP NUMBER: _____ GRANT/PO NUMBER: _____

PROJECT TITLE: _____

I hereby determine that the price of the product to be purchased is "fair and reasonable," based upon the methodology indicated below.

___ A. Telephone Quotes (Name of Offeror 1 and price) _____ \$
(Name of Offeror 2 and price) _____ \$
(Name of Offeror 3 and price) _____ \$

___ B. Used a Rotating List of Qualified Suppliers:
Name of supplier selected for this procurement _____
Name of supplier selected for previous procurement _____

___ C. Competitor's Catalogs (Home Depot, Office Depot, etc. -- Compare catalogs for the same time frame. The following 4 criteria must be met.

- 1. Established Catalog prices exist.
2. The items are commercial in nature.
3. Items are sold in substantial quantities.
4. Items are sold to the general public. (Attach copy of the catalog pages to this form.)

___ D. Newspaper Advertisements (Current advertisement only -- attach copy of ad to this form.)

___ E. Industrial Catalogues (The National Mechanical Contractor Estimator (NMCE) is an excellent source for pricing mechanical items.)

___ F. Established Market Prices (The current price established in the usual or ordinary course of business between buyers and sellers free to bargain. Verify prices by buyers and sellers who are independent of the offeror. If you do not know the names of other commercial buyers and sellers, you may obtain this information from the offeror. Provide documentation.)

___ G. Comparison to Previous Recent Purchase (Changes in quantity, quality, delivery schedules and the economy cause price variations. Make sure previous price was fair and reasonable based on physical review of documentation contained in previous files. Analyze each differing situation through trend analysis. Provide Documentation.)

___ H. Comparison to a Valid Independent Estimate (Attach estimator's methodology and data used in developing the estimate, and verify the facts and assumptions.)

___ I. Value Analysis (Review the item and its function in order to determine its worth. The decision of price reasonableness remains with the contracting officer. Provide methodology.)

___ J. Government Catalogs (Federal Supply Schedules may be used for price comparison even though they may not be able to fulfill the requirement.) (Attach catalog page.)

___ K. Government Price Index (Use to compare or analyze historical prices to predict current prices. Search Http://stats.bls.gov under Data, Series Report.

___ L. Prices Established by Law or Regulation (Prices determined through a rate schedule and verified that the prices apply to the situation, e.g., utilities.)

___ M. Personal knowledge of item procured (Explain) _____

___ N. Other (e.g., Sole Source): _____

Buyer's Signature

Date

FORM B-2
PRICE QUOTES DOCUMENTATION
FOR SMALL PURCHASES (EXCEEDING \$3,000 BUT NOT \$150,000)

Purchases exceeding \$150,000 must be advertised and procured through competitive bidding.

ITB OR RFP NUMBER: _____ **GRANT/PO NUMBER:** _____
PROJECT TITLE: _____

A. Telephone Quotes Obtain at least 3 telephone or faxed/email quotes. Indicate Disadvantaged Business Enterprises with "DBE."

(Name of Offeror 1 and price) _____ \$ _____

(Name of Offeror 2 and price) _____ \$ _____

(Name of Offeror 3 and price) _____ \$ _____

(Name of Offeror 4 and price) _____ \$ _____

(Name of Offeror 5 and price) _____ \$ _____

B. List of companies from whom quotes were requested and who did not supply a quote. Indicate Disadvantaged Business Enterprises with "DBE."

(Attach any copies of catalog pages, advertisements, purchase order, etc.)

Comments: _____

Buyer's Signature

Date

FORM B-7
PRICE ANALYSIS DOCUMENTATION
FOR SMALL PURCHASES (EXCEEDING \$150,000) AND LARGE PURCHASES

ITB OR RFP NUMBER: _____ **GRANT NUMBER:** _____
PROJECT TITLE: _____

Based upon the bids/quotes received as identified on the Bid Tabulation (Form B-11), I hereby determine that adequate price competition was obtained by comparison of the quotations and that the low price is fair and reasonable based upon one of the following methods.

The price analysis was obtained through:

_____ Comparison of bids received

_____ Comparison to Previous Purchase (Changes in quantity, quality, delivery schedules and the economy cause price variations. Make sure previous price was fair and reasonable based on physical review of documentation contained in previous files. Analyze each differing situation through trend analysis.
(Use when adequate competition does not exist.)

_____ Surveyed other Agencies (Contact other transit or public agencies that recently purchased a similar item to find out the price they paid. Place information in a memorandum or a form. Include additions or deletions for specific components (e.g., operator's seat, lighting system, signage system, etc.) **(Use when adequate competition does not exist.)**

_____ Other: _____

_____ This was a sole source bid. (Include a letter of explanation in the contract file.)
(Complete Sole Source Procurement Justification Form B-15.)

COMMENTS: _____

Buyer

Date

FORM B-8
COST ANALYSIS DOCUMENTATION

For Construction Contracts, RFPs (Technological Items), and Sole Source contracts exceeding \$150,000

ITB OR RFP NUMBER: _____ **GRANT/PO NUMBER:** _____

PROJECT TITLE: _____

When necessary: Perform a Cost Analysis when the offeror is required to submit the following elements of the estimated cost for professional consulting, architectural and engineering services contracts: Labor Hours, Overhead, Materials, etc. Architect/Engineering firm must provide unit quantity prices (e.g., estimates for asphalt, curb and gutter, number of hours for surveyors, drafting, etc.)

Perform a Cost Analysis whenever adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalogue or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

Based upon the proposals or bids received, I hereby determine that the price is fair and reasonable based upon one of the following methods.

The cost analysis was obtained through:

_____ Technical Evaluation (This method is not directly related to price, but involves an assessment of quantitative and qualitative factors that influence the offered price. This method allows an evaluation of the functions that cause cost. It is recommended that technically trained and experienced personnel assist in the analysis of hours, quantities, tooling, testing, head counts, productivity, and similar factors. When a technical evaluation is required prior to negotiations, it should address:

- 1) An estimate of necessary labor-hours with an indication of desirable adjustments;
- 2) Reasonableness of proposed material type, quantity and necessity;
- 3) The need for acquiring equipment and which equipment is considered general purpose or unique to perform a particular contract;
- 4) The possibility and availability of property that could be furnished by the Grantee;
- 5) The number, location, and need for any Grantee-funded trips for contractor personnel; and
- 6) The evaluator's summary statement and rationale that address whether or not the labor, material, travel, and other cost elements are reasonable.)

_____ Accounting Records (This method can present the cost of a job, but it is limited in determining reasonableness. Technical skills and judgments are required to determine reasonableness and necessity of the costs.)

_____ Auditor's Support (An auditor verifies proposed costs, overhead costs, and examines the vendor's estimates. Certain categories of materials, salaries, or the actual cost elements have contributed to an overhead rate. The auditor should tell you the prohibited costs included in the contractor's proposal.)

COMMENTS:

Buyer

Date

KHCGCC Procurement Officer

Date

FORM B-9
SOLE SOURCE PROCUREMENT JUSTIFICATION
Complete this form to document the process to justify a Sole Source procurement.
Page 1 of 2

ITB OR RFP NUMBER: _____ **GRANT/PO NUMBER:** _____
PROJECT TITLE: _____

Indicate the reason for choosing a sole source procurement based upon compliance with the following considerations from FTA 2 C.F.R. § 200.320(f). For more information, see Best Practices Procurement Manual Sec. 4.6.

_____ (a) Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and has not in the past been available to the recipient from another source.

How did you arrive at this conclusion? _____

How did you determine the availability of the service or item? (e.g., checked on prior procurements for the same or similar item) _____

List other sources for identical or compatible parts or equipment if any and indicate if they are responsible:

Did a vendor or contractor help prepare the statement of work? ___ Yes ___ No

Vendor's name _____

Will they benefit if the KHCGCC proceeds with a sole source contract? ___ Yes ___ No

Explain your answer _____

_____ (b) Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.

Name of manufacturer or supplier _____

Describe the restrictions _____

FORM B-9
SOLE SOURCE PROCUREMENT JUSTIFICATION
Page 2 of 2

ITB OR RFP NUMBER: _____ **GRANT/PO NUMBER:** _____
PROJECT TITLE: _____

_____ (c) Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.

Name of manufacturer or supplier _____

Reason the above is the sole source _____

Describe how you ascertained this (e.g., whom did you contact?) _____

_____ (d) Unacceptable Delay. In the case of a follow-on contract for the continued development or production of a highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.

Name of manufacturer or supplier _____

Reason the above is the sole source _____

Describe how you ascertained this (e.g., whom did you contact?) _____

COMMENTS: _____

Buyer

Date

The KHCGCC Procurement Officer

Date

FORM B-10
CONTRACTOR VERIFICATION

Use this form for the general contractor and all subcontractors.

ITB OR RFP NUMBER: _____ **GRANT/PO NUMBER:** _____
PROJECT TITLE: _____

I have verified through the Federal Government's General Services Administration Debarred Bidder's List at www.gsa.gov under Public Information, Publications, Directories and Catalogues, Debarred Bidders List, that the company _____ awarded the KHC GCC contract to provide the following product(s) or service(s) _____
(product or service)

_____ has not been debarred from working on federally funded projects. Likewise, I have verified through the lists above that the following sub-contractors have not been debarred from working on federally funded projects.

Company Name	Address	Subcontract Product or Service
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The KHC GCC Buyer or Procurement Officer

Date

FORM B-11
CONTRACT AWARD OFFER AND ACCEPTANCE FORM
Include in Request for Proposals

RFP NUMBER: _____ **GRANT/PO NUMBER:** _____

PROJECT TITLE: _____

Offeror shall complete this form and include this form in the price proposal.

OFFER

By execution below the Offeror _____ hereby offers to furnish equipment and services for \$ _____ as specified in the KHCGCC Request for Proposals (Number : _____) for (description of item or service) _____

_____ including the General Conditions, Technical Specifications and Offer and Award Provisions.

Offeror: _____
Name

Street Address

City, State, Zip

Signature of Authorized Signer

Title

Phone

Additional Notes: _____

NOTICE OF AWARD

By execution below, the KHCGCC accepts Offer as indicated above.

Name (Executive Director)

Signature

Date of Award: _____

FORM B-12

NOTICE OF CONTRACT AWARD FOR BIDS AND RFPs

If applicable, include the following: (1) description and specifications of items or services being procured; (2) quantity and unit of measure; (3) unit price; (4) extended totals.

RFP OR ITB NUMBER: _____ **GRANT/PO NUMBER:** _____
REQUISITION NUMBER: _____

PROJECT TITLE: _____

This is to notify you that (name of company): _____
(Street address): _____
(Name and title of authorized person): _____
(Telephone number): _____ (Company identification number): _____
has been awarded the contract (contract number) _____ to provide (product or service) _____ including all terms referenced in the IFB to the KHCGCC, for the dollar value of \$ _____, for the period beginning _____ and ending _____.

Your contract contains a Disadvantaged Business Goal of _____%. The Contract requires that you submit work schedules and copies of executed subcontract agreements for your proposed DBE subcontractors within 30 days of the date of this award letter. You are further required to submit monthly reports of your progress toward meeting these goals, on the forms provided in the contract documents.

Upon receipt of this Notice of Contract Award for Bids and RFPs, complete the enclosed Notice of Contract Award Acceptance for Bids and RFPs (Form B-13) and fax document to the KHCGCC Procurement Officer at 765.456.2338, and then **mail** it to: Procurement Officer, 219 E. Sycamore St. Kokomo, IN 46901.

The following documents are attached hereto, incorporated by reference and made part of this contract for all purposes:

NOTICE OF AWARD

Procurement Officer: _____

Signature

Date of Award: _____

Executive Director: _____

Signature

FORM B-13
NOTICE OF CONTRACT AWARD ACCEPTANCE FOR BIDS AND RFP'S

Contractor must complete and sign this Notice of Contract Award Acceptance for Bids and RFPs, and return it to the KHC GCC within five (5) working days of receipt of the Notice of Contract Award for Bids and RFPs via fax to the KHC GCC Procurement Officer at [FAX #], with hard copy postmarked by the fifth working day mailed to: Procurement Officer, [AGENCY ADDRESS]. Failure to return the Notice of Acceptance of Award may result in a breach of this contract and the KHC GCC has the right to annul this contract without liability and/or employ any other remedy it may have at law.

RFP OR ITB NUMBER: _____ **GRANT/PO NUMBER:** _____

The KHC GCC REQUISITION NUMBER: _____

PROJECT TITLE: _____

(Company name) _____ is in receipt of the Notice of Contract Award (contract number) _____, dated _____, for the time period beginning _____ and ending _____, for the dollar value of \$_____.

We understand that the contract contains a Disadvantaged Business Goal of _____%, and that the Contract requires our company to submit work schedules and copies of executed subcontract agreements with proposed DBE subcontractors within 30 days of the date of the aforementioned award letter. We understand that our company is further required to submit monthly reports of progress toward meeting these goals, on the forms provided in the contract documents.

Name of Company: _____

Street Address: _____

Telephone Number: _____

Company Identification Number: _____

Printed Name and Title of Authorized Person: _____

Authorized Signature

Date

FORM B-14

NOTICE TO PROCEED

Complete all pre-construction surveys and engineering prior to issuing the contractor a Notice to Proceed.

RFP OR ITB NUMBER: _____ **GRANT/PO NUMBER:** _____

DATE

NAME AND TITLE
ADDRESS
CITY, STATE, ZIP

RE: PROJECT TITLE
CONTRACT #

Dear _____:

Enclosed is your fully-executed copy of the Contract referenced above.

This letter shall serve as your Notice to Proceed. Effective _____, you may begin providing services and incurring costs. The term of this Contract shall be from _____ through _____. Should you have any questions, feel free to contact me at [TELEPHONE #].

I look forward to working with you on this important project.

Regards,

KHCGCC Procurement Officer
Enclosure

**FORM B-15
CLOSEOUT LETTER OF RELEASE
FROM LIABILITIES, OBLIGATIONS AND CLAIMS**

[Date]

[Contact
Company Name
Company Street Address, Suite
City, State, Zip Code]

Dear []:

In order to finalize the contract file for the purchase of [number and product or service] that occurred on [date product delivered], the KHC GCC requires a statement from [vendor] that formally releases the KHC GCC from all liabilities, obligations, and claims. Please sign this letter if you are in agreement with the following statement, then return the letter to [AGENCY ADDRESS], by [DATE].

As an official of [vendor], authorized to legally bind the company, I _____ certify that [vendor] has sent the final invoice to the KHC GCC on [date of invoice], and received payments from the KHC GCC for [number and product or service] in the amount of [\$ amount of payment] dated [date on check]. I further certify that [vendor] has completed the work agreed to in the contract signed [date contract or Bid Form signed], and hereby formally release the KHC GCC from any and all liabilities, obligations, and claims.

Signature: _____
Authorized Representative

Date: _____

The KHC GCC certifies that all contract elements have been completed, all deliverables have been received in satisfactory condition and have been inspected and approved, and that the KHC GCC holds no claims regarding this contract against [vendor].

Signature: _____
KHC GCC Executive Director

Date: _____

