

## XII. Advertising for Bids, Award\*, and Contracting

**Overview.** Advertising for bids, award of a contract, and contracting is another step in construction management. The object of the bidding process is to provide competition and to secure the performance at the lowest cost to the governing body and yet provide assurance that the completed project will meet all of the standards specified. The underlying philosophy of the formal bid process is to obtain maximum competition from a much broader group of potential bidders. As a result, it is intended that contracts be awarded to the lowest, qualified, responsive and responsible bidder\*. The role of the Tribe is to advertise, award, and administer the construction contract on any route on the IRR system.

***NOTE:** A Tribe has several options in the advertizing and administering a contract. The Tribe can advertise and administer the contract in house or subcontract out to a consultant, BIA, or FHWA. The Tribe maintains the option of completing the project under Force Account using its own forces and equipment. If doing the project in this manner the Tribe should complete an independent in house cost analysis to compare to the engineers estimate to the PS&E to ensure the reasonability of the anticipated cost and accuracy of the engineers estimate.*

*Under the authority prescribed in 23 U.S.C. 204, FLH can perform any or all phases of IRR project development and construction, if requested by a Tribal government. If so requested, each of the FLH Divisions (Eastern, Central, and Western) may execute individual Project Agreements with Tribal governments to perform any or all project development activities if IRR funds are used (See **Example 9.4 – Tribal Request for Services form**).*

*However, awarding the contract should be by the Tribe. A contract to perform highway construction work is between a contractor and a Tribe – not the FHWA. For the purposes of highway construction, the Tribe is an extension of the FHWA and gives money directly to the Tribe for highway construction.*

### Statutory/Regulatory Requirements

- \*Under 25 U.S.C. Section 450e(b) and 23 U.S.C. Section 204 (e), Indian organizations and Indian-owned economic enterprises are entitles to a preference, to the greatest extent feasible, in the award of contracts, subcontracts, and sub-grants for all work performed under the IRR Program.
- Before soliciting bids for projects(s), Tribes must certify in writing (**see Example 12.1 - Tribe Certification Letter for Soliciting Bids**) to the FHWA Administrator that it afforded the public authority an opportunity to review and comment on the PS&E package, address any issues, and received no written comments from the public authority that prevent the Tribe from proceeding with the project (Program Agreement - Article III, Section 1C(2)(c)).
- The Tribe agrees to initiate and complete IRR construction projects in accordance with the approved PS&E (Program Agreement - Article III, Section 1B).
- Each Tribe needs Contracting Procedures (advertize bids, award, and contracts) documented and in place in order to perform the contracted programs and projects in accordance with the requirements of 25 CFR Part 170, as amended by SAFETEA-LU (Program Agreement – Article III, Section 1B).

**Guidelines / Procedures.** The Tribe may at its sole option, adopt applicable State DOT, FHWA or BIA policies, procedures, program guidelines and memoranda, or develop tribal policies, procedures, program guidelines and memoranda which meets or exceeds federal standards to facilitate operation or administration of any aspect of the programs assumed by or delegated to the Tribe under the FHWA and Tribe Agreement.

Attached is a PS&E Advertising Checklist the Tribe may wish to use to help ensure all items have been complete prior to advertising for bids (**see Example 12.2 – IRR PS&E Advertisement Checklist**).

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### **Resources.**

- Contract Administration Core Curricular Participants' Manual and Reference Guide 2006 – Provides guidance to State DOT on Advertising for Bids, Bid Analysis, Award of Contract

<http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>

## Example 12.1 - Tribe Certification Letter for Soliciting Bids)

Victor M. Mendez  
FHWA Administrator

[date]

Dear Mr. Mendez,

I certify that we afforded the public authority an opportunity to review and comment on the PS&E package for at least 30 days and received no written comments from the public authority that prevent the Tribe from proceeding with the project (Program Agreement - Article III, Section 1C(2)(c)).

In addition, we agree to initiate and complete IRR construction projects in accordance with the approved PS&E (Program Agreement - Article III, Section 1B).

Further, we confirm that we have Contracting Procedures (advertize bids, award, and contracts) documented and in place in order to perform the contracted programs and projects in accordance with the requirements of 25 CFR Part 170, as amended by SAFETEA-LU (Program Agreement – Article III, Section 1B).

Please contact me if you have any questions concerning this letter.

Sincerely,

[Insert name],  
[Tribe Name]

Tribal Representative

Example 12.2 – IRR PS&E Advertisement Checklist

**IRR PS&E ADVERTISEMENT CHECKLIST**

**Project Name:**                      **Project Number:**

**IRR Inventory Route No.:**              **IRR Inventory Sections:**

**DOCUMENT or MILESTONE**

**DATE**

Project Agreement (with Owner for Maintenance) .....

IRR Design Standards Certification Form signed .....

Environmental Clearance (CE\_\_\_ EA\_\_\_ or EIS\_\_\_) .....

Environmental Commitment Review by: \_\_\_\_\_

(Verified all commitments incorporated into the PS&E) .....

Permits (if applicable):

404 Permit (Individual No.\_\_\_\_\_, or Nationwide No.\_\_\_\_\_) .....

401 Permit .....

NPDES Permit (Notice of Intent).....

SWPPP filed .....

Encroachment Permit (State DOT, County, Municipality).....

Special Use Permit (for USFS projects).....

Other: (Any additional items to be included in SCRs) .....

[Right-of-Way and Utility Certification](#) (Certification Level \_\_\_ ) .....

Right-of-Way Agreements w/landowners or others .....

Right-of-Entry/Letter of Consent (if applicable) .....

[Utility Data Quality Level Certification](#) .....

Utility Agreements.....

Fire Plan (USFS Projects).....

External Review Distribution (Agency: \_\_\_\_\_) .....

External PS&E Review comments reviewed/incorporated .....

Revised 11-17-11

Approvals (attach Standards Certification Form):

State.....

County.....

Other .....

Internal PS&E Review comments reviewed/incorporated.....

PS&E QA/QC Completed by:\_\_\_\_\_

Engineer Estimate (EE) Check by: \_\_\_\_\_

Unit Price Analysis performed by: \_\_\_\_\_

**IF DEVELOPED BY A/E FIRM:**

All Plan Sheets Stamped, Sealed and Signed.....

Front Page of SCRs Stamped, Sealed and Signed .....

Instrument in place for A/E design support during construction.....

Name, phone #, and e-mail address of A/E Firm Contact:

Anticipated Advertisement Date.....

**Recommended for Approval by Tribal Official**

Signature: \_\_\_\_\_

Date:\_\_\_\_\_

Title:\_\_\_\_\_