

# **Town of Wilkesboro**

## **PURCHASING POLICY**



**Effective: 10/26/2022**

# PROCUREMENT POLICY

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## **INTRODUCTION**

This policy is intended for use as a guide to Town of Wilkesboro's purchasing methods and practices. This policy establishes rules and regulations to govern all purchases and contracts by Town of Wilkesboro. It also implements a system that provides reasonable assurance that the Town follows Federal and North Carolina General Statutes and Town of Wilkesboro's local policies. All town employees shall be subject to the provisions within this policy. These procedures may be modified at any time as deemed necessary or as the general statutes and local policies are adopted.

It is the policy of the Town to comply with competitive bidding rules and regulations as required by the state of North Carolina general statutes, along with all federal and/or Town ordinances and local policies, when making purchases of supplies, materials, equipment, construction and repair work and services. The objective is to ensure fairness and an open process between all competitors while in turn obtaining the best value for contracts involving the use of public funds.

This policy is not intended as detailed instructions for purchase transactions but as an overall policy for Town Procurement.

## **1. STATUTORY AUTHORITY**

The procurement of non-IT goods and services in the state is governed by Chapter 143, Article 3 of the North Carolina General Statutes. State agencies, institutions, community colleges, and the universities of the UNC system must adhere to these statutes. Entities that do not fall under this authority include public schools, charter schools, and local and county governments, which fall under the authority of Chapter 143, Article 8.

## **2. INTEGRITY AND ETHICS**

Integrity and ethics are central to public procurement. While laws and rules merge to provide a mechanism for public procurement, only people can ensure that integrity and ethics are the standard. Procurement professionals must exhibit the values of pride and worth in their conduct and performance. Impediments to these values must be detected early, and safeguards provided at all levels. This applies to Town employees and our vendors.

Ethics are the moral principles that govern behavior and conduct. Strong ethical principles are required for public procurement because they prevent breach of the public trust by any attempt to realize personal gain through conduct inconsistent with discharge of duties. Therefore, it is imperative that all Town employees be entirely aware of the necessity for ethical behavior. It takes only the slightest hint of impropriety to cast doubt on the procurement process. NC GS §14-234 (a)(3); NC GS §133-32.

See the [\*\*Town of Wilkesboro's Ethics policy\*\*](#)

## **3. EQUAL OPPORTUNITY**

It is the policy of Town of Wilkesboro to:

- provide minorities equal opportunity to participate in all aspects of the Town contracting

and purchasing program, including but not limited to, participation in procurement contracts, professional and other service contracts, and construction contracts.

- prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, color, sex, religion, disability, or national origin, and to conduct its contracting and purchasing programs so as to prevent any discrimination and to resolve all claims of such discrimination.

#### **4. COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964.**

*See the full **Title VI policy** and forms in accordance with Town of Wilkesboro Resolution 2021-02, adopted 01/11/2021.*

#### **5. CONFLICT OF INTEREST POLICY**

The policies of Town of Wilkesboro require that all business shall be transacted in compliance with all laws and shall be conducted in conformance to the highest ethical standards. The proper operation of government requires that public employees be independent, impartial, and responsible to the citizens, and that the public positions not be used for personal gain.

Town of Wilkesboro's conflict of interest policy is established to set guidelines that meet or exceed the requirements under state law and local policy when procuring goods (apparatus, supplies, material, and equipment), services, and construction or repair project paid for in part or whole by federal funds and required under 2. C.F.R. 200.318(c)(1).

This policy applies when procuring goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects funded in part or whole with federal financial assistance (direct or reimbursed). This policy also applies to any sub-recipient of the funds.

##### **2.1 Conflict of Interest Defined**

In addition to the prohibition against self-benefiting from a public contract under GS 14-234, no officer, employee, or agent of the Town of Wilkesboro may participate directly or indirectly in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. A real or apparent conflict exists when any of the following parties has a financial or other interest in or receives a tangible personal benefit from a firm considered for award of a contract:

- the employee, council member, officer, or agent involved in the selection, award, or administration of a contract or with knowledge of such contracts.
- any member of his or her immediate family.
- his or her partner.
- close friendships or confidants; or
- an organization which employs or is about to employ any of these parties.

Any employee, council member, officer, or agent with an actual, apparent, or potential conflict of interest as defined in this policy shall report the conflict to his or her immediate supervisor. Any such conflict shall be disclosed in writing to the federal

award agency or pass-through entity in accordance with applicable Federal awarding agency policy.

The employee responsible for managing the federal financial assistance award shall review the notice of award to identify any additional conflicts of interest prohibitions or requirements associated with the award, and shall notify all employees, officers, and agents, including sub-recipients, of the requirements of this policy and any additional prohibitions or requirements.

See the **Conflict of Interest Statutorily Defined** NC GS § 14-234; 18 U.S.C.208; 5 C.F.R.§ 2635.402

See the **Town of Wilkesboro's Conflict of Interest policy and forms.**

## 6. GIFTS AND FAVORS NC GS § 138A-32

In addition to the prohibition against accepting gifts and favors from vendors and contractors under NC GS § 133-32, officers, employees, and agents of the Town of Wilkesboro are prohibited from accepting or soliciting gifts, gratuities, favors, or anything of monetary value from contractors, suppliers, or parties to subcontracts. Items of nominal value valued at less than \$25 which fall into one of the following categories may be accepted:

- promotional items.
- honorariums for participation in meeting; or
- meals furnished at banquets.

Any officer, employee or agent who knowingly accepts an item of nominal value allowed under this policy shall report the item to his or her immediate supervisor. For the appearance of impartiality or favoring a brand or business, these promotional items (i.e. cups, mugs, shirts, hats, etc.) should not be used or worn at work.

However, if **federal funds are being used for a project**, the employee are not allowed to accept any gifts or favors, including the items mentioned in the above paragraphs.

See the **Town of Wilkesboro's Conflict of Interest policy and forms.**

## 7. APPROPRIATIONS AND ENCUMBRANCES

### Definitions:

**Appropriation** is the act of setting aside money for a specific purpose. In accounting for the government, an account that shows the funds a government department has been credited with.

**Non-appropriation Clause** enables the lessee to terminate the lease agreement at the end of the current appropriation period without further obligation or penalty. This may be done only in cases where the lessee was unable to obtain funding for future payment obligations on the contract.

**Encumbrance** - A financial obligation created by a purchase order, contract, salary

commitment, unearned or prepaid collections for services provided by the State, or other legally binding agreement.

**Pre-audit Requirement** - If an obligation is reduced to a written contract or written agreement requiring the payment of money or is evidenced by a written purchase order for supplies and materials, the written contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been pre-audited to assure compliance with subsection (a) of this section. The certificate, which shall be signed by the finance officer (or any deputy finance officer approved for this purpose by the governing board), shall take substantially the following form:

*"This instrument has been pre-audited in the manner required by the  
Local Government Budget and Fiscal Control Act.*

\_\_\_\_\_  
*(Signature of finance officer)"*

Under the Local Government Budget and Fiscal Control Act (LGBFCA), all expenditures must be supported by an appropriation. In NC GS § 159-28(b), bills, invoices, or other claims against a local government or public authority may be approved if

- 1) the amount is determined to be payable and
- 2) the budget or project ordinance includes an appropriation authorizing the expenditure and either
  - (a) an encumbrance has been previously created for the transaction
  - (b) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

Contracts, including purchase orders, must include a pre-audit certificate signed by the Finance Officer.

**Encumbrances** include all outstanding purchase orders, unpaid invoices, written agreements, and contracts that have not been completed for which the Town has an obligation to expend funds. Encumbrances against an appropriation are an obvious reduction in the amount available for future expenditures, and only when the encumbrances are recorded is a true report of the financial condition of a department evident.

## **8. NC HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) NC GS § 143-128.4**

Vendors must become certified as a HUB firm with the State of North Carolina under the Statewide Uniform Certification Program (SWUC) for good faith efforts participation goals in Construction, Renovation and Repair Contracts. The Town of Wilkesboro follows the state goals, which is currently 10%.

For more information: see School of Government's Coats' Canon Law Blog:  
<https://canons.sog.unc.edu/good-faith-efforts-prove-it/> or at the

NC HUB Office at <https://ncadmin.nc.gov/businesses/hub> and  
<https://vendor.ncgov.com/vendor/login>.

## **9. PUBLIC BIDDING**

Public bidding promotes full, fair, and open competition, reduces the risks of fraud,

transparency, promotes fair play, and lowers costs; therefore, competition should be attempted and obtained for any purchase where competition is available. North Carolina General Statutes requires bidding for materials, supplies, equipment; construction, renovation, and repair contracts; and certain types of services (architectural, engineering, surveying, construction manager-at-risk and data processing/information technology related services).

Based on the Town's purchasing governance, the Town must seek competitive offers from qualified suppliers unless the items can be obtained through existing contracts established by North Carolina State Term Contract. Town of Wilkesboro can participate in North Carolina State Term Contracts whenever these contracts are feasible and cost-effective, with the exception of Federal funds.

## **10. PUBLIC BIDDING ROLES**

Town of Wilkesboro has a decentralized process for purchasing in which individual departments identify their needs, obtain competitive pricing, and follow sound, legal purchasing practices; however, the Town is not bound by any commitment to a vendor made by a department.

### **Bidding Hierarchy:**

#### **Town Manager/Budget Officer**

- o approving any purchase over \$5,000 (*local policy*)
- o approves any construction, repair, and renovation projects
- o signs all town contracts
- o discusses any purchasing issues with town attorney
- o placing purchasing items on the Town Council agenda for approvals

#### **Finance Director**

- o Reviews and approves requisitions against appropriations for pre-audit certification and purchase order generation
- o all other finance task to ensure legal, procedural guidelines are followed including documentation, analysis, and acceptance.
- o Completes all vendor's application and W-9, sales tax exemption forms as requested.

#### **Town Clerk**

- o Advertising required for all types of purchasing
- o Contracts and certificates of insurance must be on file in the Town Clerk's office.

#### **Accounts Payable**

- o All invoices should be turned in with a ***purchase order number*** written on it.
- o All quotes should be attached to the invoice(s). After an award of a contract, a record of all bids received must go to accounts payable for filing.

#### **Department Employee**

- o Along with order information, the employee placing the order shall give each new vendor (not currently listed in financial software as a vendor) a vendor packet and any forms to complete and return to Accounts Payable. These forms are on the town's website. The vendor forms on the Town's website should be used for each request for the most up-to-date vendor packet.
- o The employee placing the order shall give the purchase order number to vendors for billing purposes. If a vendor needs a copy of PO, obtain a fax or email and then ask

Accounts Payable to fax or email a copy of the purchase order to the vendor.

## 11. BIDDING

Bid processes differ based on the type and the anticipated amount of the contract. Bidding promotes full, fair, and open competition. There are **two (2)** types of bidding that the Town regularly uses, informal and formal. The term “**bid**” usually implies a competitive situation to acquire commodities (goods, supplies, materials, equipment, etc.) where the award decision is primarily based on cost (see the procurement of “services section of this policy).

A “bid” may also be known or identified as a

**Request for Bid (RFB),  
Invitation to Bid (ITB), or  
Request for Quote (RFQ).**

**Request for Information (RFI)** documents are used as an information gathering process that may later serve as the basis for either an RFB or RFP process. RFIs do not, as a rule, result in an award to a vendor.

**Contracts shall not be divided for the purpose of evading competitive bidding requirements.**

### A. INFORMAL BIDDING

- if pricing falls between items 1-4 in this section only.

Definitions of Lowest Responsible, Responsive Bidder (LRRB)

**Responsive** – The contract award takes into consideration previous quality, performance during a project/job, and time specified in the proposals for the performance of a contract.

**Responsible** – The term “responsible” has been interpreted to imply skill, judgement, and integrity necessary to the faithful performance of the contract, as well as, sufficient financial resources, ability to be bonded, and ability to award the contract.

- 1) **Local policy** - Any purchase \$5,000 and greater will need approval by the Town Manager.
- 2) **Materials, supplies, and equipment** – informal bidding is required when the estimated cost is \$0 - \$89,999.
- 3) **Construction, renovation, and repair contracts not involving buildings** – informal bidding is required when the estimated cost is \$0 – \$29,999.
- 4) **Construction, renovation, and repair contracts (NC GS § 143-131)** – informal bidding is required when the estimated cost is \$5,000 - \$29,999.

**Wilkesboro Local Purchasing Policy and NC General Statutes requires the following for informal bids:**

\_\_\_\_\_ Town Manager approval:

- **Local policy** - any purchase, service \$5,000 and over
- **Local policy** - any type of Construction, renovations, or repairs.

- \_\_\_\_\_ NC GS § 143-129, 143-131 Board approval:
  - *Local policy* - Town manager will place purchasing items on the Town Council agenda for Town Board approval
- \_\_\_\_\_ NC GS § 143-132 Minimum number of bids
  - *Local policy* under \$1,000 requires 1 bid minimum
  - *Local policy* \$1,000.01 and over requires 3 bid minimum
- \_\_\_\_\_ NC GS § 143-131 A record of all quotes/bids must be kept
  - *Local policy* - must be turned into Accounts Payable
- \_\_\_\_\_ NC GS § 143-129, 143-131 Awarded to the Lowest Responsible, Responsive Bidder (LRRB)
- \_\_\_\_\_ NC GS §143-129 (f1) Dispute Resolution
  - *Local policy* - Town uses the process adopted by the State Building Commission
  - ✗ NC GS § 143-129 A bid bond is **NOT** required.
  - ✗ NC GS § 44A-26, 143-129 Payment & performance bonds are **NOT** required.
  - ✗ NC GS § 143-129 Advertisement is **NOT** required
  - ✗ NC GS § 143-129, 143-129.9, 143-131 Public bid opening is **NOT** required
  - ✗ NC GS § 143-128.2, 143-131 HUB is **NOT** required
  - ✗ NC GS § 143-129, 143-131 **No** sealed bids
  - *Local policy* - Town manager may request sealed bids on specific projects
  - ✗ NC GS § 132-1, 132-6, 143-131 Public inspection of bids:
  - *Local policy* - Public/vendors can view bids after the contract is awarded

## B. FORMAL BIDDING

is required where the estimated cost items 1-3 in this section only.

- 1) **Materials, supplies, and equipment** – formal bidding is required when the estimated cost is \$90,000 or greater.
- 2) **Construction, renovation, and repair contracts not involving building** – formal bidding is required when the estimated cost is \$30,000 or greater.
- 3) **Construction, renovation, and repair contracts** (NC GS §143-131) – formal bidding is required when the estimated cost is \$30,000 or greater.

**Wilkesboro Local Purchasing Policy and NC General Statutes requires the following for Formal bids:**

- \_\_\_\_\_ Written specifications must be reviewed by Town Manager and/or legal.
- \_\_\_\_\_ NC GS § 87-1, 87-1.1, 143-139.1 ***Licensed contractor is required if part of a project worth more than \$30,000***
- \_\_\_\_\_ NC GS § 143-128 Separate specifications required for plumbing, electrical, HVAC and general contractor for contracts costing more than \$300,000 or more (\*see more information below)
- \_\_\_\_\_ NC GS § 143-129 Every effort will be made to obtain at least three (3) bids
- \_\_\_\_\_ NC GS § 143-129 Newspaper advertising at least 7 full days before bid opening
  - **There is NO local policy** for using electronic bids only. This has NOT been adopted by the Wilkesboro Town Council.
- \_\_\_\_\_ NC GS § 143-132 Bids must be written and sealed
- \_\_\_\_\_ NC GS § 143-129, 143-131 bids must be sealed for \$500,000 or more

- \_\_\_\_\_ NC GS § 143-129, 143-131 must keep a record of all bids; \$30,000 or more
- \_\_\_\_\_ NC GS § 143-129, 143-131 Public bid opening is required: \$500,000 or more
- \_\_\_\_\_ NC GS § 143-129 Bid bond/deposit 5% of bid amount is required
- \_\_\_\_\_ NC GS § 44A-26, 143-129 Performance and Payment Bonds are required (100% of bid amount) for contracts costing more than \$50,000 that are part of a project cost more than \$300,000
- \_\_\_\_\_ NC GS § 143-128.3, 143-131 HUB participation goals are required if:
  - Document good faith efforts and report to HUB office for projects worth \$30,000,
  - Part of a state funded project worth \$100,000 or more,
  - Good faith efforts to reach goals, bidders must submit affidavits so local government (LG) can verify bidders' good faith efforts and LG to report to HUB efforts for \$300,00 or greater.
- \_\_\_\_\_ NC GS § 143-129, 143-131 Approval by the Town Council for \$500,000 or more
  - **Local policy** – Town manager approval for any purchase or service \$5,000 and over
  - **Local policy** – Town manager approval for any type of Construction, renovations, or repairs.
  - **Local policy** - Town manager will place purchasing items on the Town Council agenda for Town Board approval
- \_\_\_\_\_ NC GS § 143-129, 143-131 Awarded to lowest responsive, responsible bidder (LRRB) while also considering quality, performance, and the time specified for performance.
- \_\_\_\_\_ NC GS § 143-128(f1) Dispute Resolution -local government must adopt own resolution process (including mediation) or process adopted by the State Building Commission, available to all parties, with amount in controversy not less than \$15,000.
- \_\_\_\_\_ NC GS § 132-1, 132-6, 143-131 Public inspection of bids – bids and the record of bids are NOT subject to public inspection until contract award for \$500,000 or more.
  - **Local policy** - public/vendors can view any bid after the contract is awarded
- \_\_\_\_\_ NC GS § 143-129, 143-131 Public bid opening is required for \$500,000 or greater. All formal bids must be opened in public. Bids must be sealed and opening a bid or package with knowledge that it contained a bid or disclosing the contents without the permission of the bidder prior to the time set for opening constitutes a Class 1 misdemeanor NC GS § 143-129(b).
- \_\_\_\_\_ Wilkesboro Town Council will approve formal bid awards based on recommendation by the Town Manager.
- \_\_\_\_\_ Wilkesboro Town Council reserves the right to reject any and all bids.

**\*NC GS § 143-128 - BUILDING CONSTRUCTION PREPARATION OF SPECIFICATIONS**

- Every officer, board, department, commission, or commissions charged with responsibility of preparation of specifications, awarding or entering into contracts for the erection, construction, alteration, or repair of any building for the State, or for any county, municipality, or other public body, shall have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

- 1) **Heating, ventilating, air conditioning (HVAC)** and accessories (separately or combined into one conductive system), refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all related work.
- 2) **Plumbing and gas fitting and accessories**, and all related work.
- 3) **Electrical** wiring and installations, and all related work.

- 4) **General work** not included in subdivisions (1), (2), and (3) of this subsection relating to the erection, construction, alteration, or repair of any building.

### C. CONSTRUCTION METHODS

On local public construction projects, contracts are put out for bid and awarded under one of the following methods:

- 1) Multi-prime
- 2) Single-prime
- 3) Dual bidding - accepting both multi-prime and single-prime bids
- 4) Construction management at risk (CMaR)
- 5) Design-build (DB)
- 6) Design-build bridging (DBB)
- 7) Public-private partnership (P3)

Specifications for contracts that will be bid under the separate-prime system or dual bidding system shall be drawn as to permit separate and independent bidding upon each of the subdivisions of work enumerated in this subsection. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission, or commissions from preparing additional separate specifications for any other category of work.

### D. QUALIFICATIONS BASED SELECTION (QBS) SERVICES

The procurement of professional services performed by architects, engineers, surveyors, construction manager at risk (CMaR), design build (DB) services, and private developer for public private partnership (P3) construction services is governed by NC GS § 143-64.31 referred to as the “Mini-Brooks Act.”

QBS is not competitive bidding, which focuses on price under the lowest responsive responsible bidder standard of award. In fact, the initial determination of which firm is the **BEST QUALIFIED** must be done “without regard” to the fee or price other than unit cost (an example of unit cost would be a general hourly fee, but articulation of fees that can be easily correlated as a fixed price or bid is prohibited, such as including both hourly fees and an estimate of the number of hours to complete the project). So, the Town cannot request firms to submit an estimated total fee or contract price when responding to the RFQ, and firms are prohibited from submitting this information whether or not requested by the local government. And, if a firm submits price information, the local government is prohibited from considering it.

The procurement of these services is defined by NC GS § 143-64.31. Projects in which the estimated fees **are less than \$50,000, or other projects on a case-by-case basis**, may be exempt from this requirement by approval from the Town Board. NC GS § 143-64.32.

- |                |                                                  |
|----------------|--------------------------------------------------|
| 143-Article 3D | Architects, engineers, surveyors                 |
| 143-128.1      | Construction manager-at-risk                     |
| 143-128.1A     | Design-build services                            |
| 143-128.1B     | Design-build bridging contracts                  |
| 143-128.1C     | Public-private partnership construction services |

## E. SERVICES

Services in this section are defined as any service other than what the “Mini-Brooks Act” covers.

If both goods and services are included in the same contract, the “**Predominant Aspect**” test is applied. This test is a question of purpose and not necessarily the relative prices of goods and services covered by the contract or which purpose is the most? Examples: aerial photography and images/maps: you cannot get the images/maps without the aerial service. The aerial service is the predominant aspect of the contract.

This could be for any numbers of services such as: (not all inclusive) uniform rentals, cleaning services, attorney services, web domain and hosting, cloud storage, document storage, nursing, drug-testing, install flooring, painter, mailing services, printing, pest management, landscaping, solid waste collection services, fuel or propane onsite delivery service (not piped), tree removal, graphic design, actuarial services, etc.

**Local policy** - Town departments should competitively solicit bids or proposals when there is a competitive market for the service and when it is in the best interest of the Town. It is the policy of the Town to attempt to obtain at least three (3) competitive quotes before a service contract is awarded.

The competitive process may be informal or formal. It may be an RFP, RFQ, or another method that accurately reflect the competition process. Any award should be based on the best overall, justifiable solution, which may NOT include cost and other factors.

For contracts estimated to be **\$5,000 or more** per fiscal year or term of contract, the **Town Manager should be contacted prior** to initiation of the competition process to provide guidance for the process.

- Departments are responsible for documenting the competition process for contracts.
- A bid summary should be included with the contract when submitted to Finance for contract control.
- After award of contract – quotes are to be filed in Accounts Payable.
- Service contracts with a contract term longer than one (1) year period must have express written consent of the Town Manager.
- Contracts for services should be subjected to competition every three (3) to five (5) years unless a business case justifies otherwise.
- Verbal quotes will NOT be accepted as meeting the competition requirement.

## F. SELECTING A FIRM QUALIFIED FROM PROPOSALS:

- Initial proposals: to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fees and
- After initial bidding/proposals - negotiate a contract for those services at a fair and reasonable fee with the best qualified firm.
- If a contract cannot be negotiated with the best qualified firm, ONLY THEN can negotiations with that firm shall be terminated and initiated with the NEXT BEST

qualified firm. This would be the next highest scored.

- Any firm selected shall include the use of **good faith efforts** by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity.
- no work product or design may be solicited, submitted, or considered as part of the selection process under this Article; and no costs or fees, other than unit price information, may be solicited, submitted, or considered as part of the selection process under this Article. Examples of prior completed work may be solicited, submitted, and considered when determining demonstrated competence and qualification of professional services; and discussion of concepts or approaches to the project, including impact on project schedules, is encouraged.

## **G. REQUEST FOR PROPOSALS (RFP)**

The Town uses Request for Proposals (RFP) as a competitive process or as an alternative to the standard bidding process. Typically, RFPs are used in situations where:

- a) detailed specifications cannot be or are difficult to develop; or
- b) when obtaining a goal or providing a solution to a problem/issue is the main objective. NC GS § 143-129.8 provides authority to use the RFP process as opposed to standard bidding for information technology goods and services.

RFPs can be used in either a formal or informal process. RFPs are advertised in the same manner as standard bids and the award approval is the same as standard bids, **with the exception** of RFPs for:

- o 143-Article 3D architects, engineers, surveyors
- o 143-128.1 construction manager-at-risk
- o 143-128.1A design-build services
- o 143-128.1B design-build bridging contracts
- o 143-128.1C public-private partnership construction services.

***These require additional requirements.***

## **H. EXCEPTIONS TO THE BIDDING REQUIREMENTS**

There are exceptions to the bidding requirements that apply to contracts. Contact the Town Manager to determine whether or not your situation is applicable. The following are considered exceptions:

**NC GS § 143-129(e)(1)** - Purchases from other governmental agencies within the US

**NC GS § 143-129(e)(2)**-Special emergency cases that involve public health and safety of people or their property – used in rare cases.

**NC GS § 143-129(e)(3)** -Competitively bid group purchasing program

**NC GS § 143-129(e)(4)** - Change order work during the progress of a project that was initially bid – only for construction or repair contracts

**NC GS § 143-129(e)(5)** -Gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil or natural gas - informal bids are required

**NC GS § 143-129(e)(6)** - Sole source; requires Town Council approval and specific criteria

must be met.

**NC GS § 143-129(e)(7) or NC GS § 143-129.8** - Information technology goods and services purchased through the state Office of Information Technology or using RFPs.

**NC GS § 143-129 (e)(8)** - Vendor makes improvements to a public facility that will generate saving in energy costs sufficient over other term of contract to pay for the cost of the improvements.

**NC GS § 143-129(e)(9)** - Purchase from competitively bid NC state contracts.

**NC GS § 143-129(e)(9a)** - Purchase from competitively bid Federal contracts.

**NC GS § 143-129(e)(10)** - Used apparatus, supplies, materials, or equipment; does not apply to remanufactured, prefabricated or demo items.

**NC GS § 143-129(e)(11)** - Construction Manager-at-Risk (CM@R) other provisions set forth in NC GS § 143-128.1, NC GS § 143-64.31, NC GS § 143-129

**NC GS § 143-129(g)** - Piggybacking is contracts that were previous competitively bid contracts (***similar to contracts under NC GS § 143-129***), within the last 12 months, must be SAME EXACT product, if the vendor is willing to extend the same or better prices, terms, and conditions, advertise 10-day prior notice, and Wilkesboro Town Council must approve contract at regularly scheduled meeting. (*Example: buying from cooperative is not piggybacking*)

**NC GS § 143-129(h)** - Transportation Authority Purchases – requires Wilkesboro Town Council to approve before using RFP process (must use RFP process), Wilkesboro Town Council certify the RFP process has been followed, and Wilkesboro Town Council must approve contract at regularly scheduled meeting.

**NC GS § 143-129.2** - Solid Waste Management Facilities

**NC GS § 143-129.5** - Purchases from nonprofit work center for the blind and severely disabled.

**NC GS §143-129.8** - Information Technology goods and services combinations as defined under NC GS § 147-33.81(2)

**NC GS § 143-135** - Use of Unit's Own Forces (force work account) – Construction or repair contracts in NC GS § 143-129(b). However, the unit must still comply with the competitive bidding laws for any equipment, supplies, or materials that it purchases for this project. Labor and materials must be within the statutory dollar limits and must be conducted entirely with the unit's own forces. No dividing any part of the project in order to evade the limitations.

**NC GS § 115C-264** - Supplies and food for school food services – Applies to local school units only.

**Exceptions to bidding requirements SHALL BE specifically documented** by NC General Statute as noted above either on the purchase order or contract documents.

## **I. BID WITHDRAWAL**

A bidder may request permission to withdraw their bid after the bids are opened, without forfeiting their bid deposit, if they can produce credible evidence that the bid was based on a mistake containing a substantial, unintentional arithmetic error or unintentional omission of work. Withdrawal is not allowed due to errors in judgment.

The request to withdraw must be made no later than 72 hours (excluding weekends & holidays) after the bid opening. A bidder that requests that their bid be withdrawn cannot participate in the contract, even if the project is rebid. This withdrawn bid cannot count in the three (3) bid minimum NC GS § 143-129.1.

## **J. AWARDING CONTRACTS**

Contracts and bids are awarded to the “lowest responsible, responsive bidder or bidders (LRRB) taking into consideration quality, performance and the time specified in the proposals for the performance of the contract” NC GS § 143-129(b). Whereas the QBS is awarded to the firm is the best qualified must be done “without regard” to the fee or price other than unit cost.

In the event the lowest responsive, responsible bid exceeds the funds available for the project or purchase, negotiations may be held with the low bidder to make reasonable changes in the plans and specifications to bring the price within the funds available. Also, the Town may elect not to do the project if the bids exceed the funds available.

## **12. CONTRACTS**

**A contract** definition is an agreement between two or more parties with the intent to be legally bound.

There are four elements of a contract:

- 1) mutual assent (agreement)
- 2) consideration (obligation)
- 3) competent parties
- 4) legality of purpose

If one of these elements is missing from a contract, the contract is void and is not enforceable. The town requires that all contracts be in writing and implied or oral contracts will not be permissible.

Contracts are to be used for all types of purchases. If any payments will exceed \$600 (for a fiscal year) a form called W-9 with the Internal Revenue Service (IRS) will be required.

**Services SHALL NOT begin until** a fully executed contract is in place and reviewed by Town Manager and Town Attorney before agreeing and signing. Before a purchase order/contract can be processed for payment, all required forms must be completed, but not limited to accounts payable vendor form packet, W-9, Title VI, and certificate of insurance has been completed and returned.

If both goods and services are included in the same contract, the “**Predominant Aspect**” test is applied. This test is a question of purpose and not necessarily the relative prices of goods and services covered by the contract or which purpose is the most? Examples: aerial

photography and images/maps: you cannot get the images/maps without the aerial service. The aerial service is the predominant aspect of the contract.

**Multi-year contracts**, defined as more than 12 months or crossing fiscal years (local government fiscal year runs from July 1st thru June 30th of the next year), requires Town Manager approval.

Each year of the contract must be in budgeted and approved through the budget process in order for funding to be carried over. This is called an appropriation of funds which is the act of setting aside money for a specific purpose and local governments appropriate money in its budget-making processes.

## A. REQUIRED CONTRACT ELEMENTS

Contracts should define who, what, where, when, why, how much, and what happens if either party defaults. All town contracts are required, at a minimum, to address the following:

**Scope of Services** - This section provides a detailed description of the services that will be provided by the vendor.

**Term (length of time)** - This section specifies both beginning and ending dates or a project start and completion schedule.

**Maximum Amount Payable** - This section specifies the amount that the contract payments cannot exceed amount payable. Uncertainty as to the amount of the final obligation under a contract does not excuse the contract from containing a maximum amount payable.

**Relationship of Parties** - This clause clarifies the nature of the relationship between Town of Wilkesboro and the vendor. This clause confirms that the contract does not and should not be deemed to create a partnership or joint venture.

**Purchase Order Required** – The Town will not be responsible for any equipment, supplies, and/or services delivered without a purchase order and assumes no obligation for products or services shipped or delivered in excess of the quantity ordered. Any unauthorized products or services are subject to the Town's rejection and shall be returned at the vendor's expense. If an invoice is received without a purchase order listed your invoice will not be processed until a purchase order is obtained by the seller. The seller shall contact the employee placing order or Department Head for a purchase order before mailing invoice.

**Vendor Failure to Deliver** – In the event of the vendor's failure to deliver as and when specified, or to perform as and when specified, the Town reserves the right to cancel the order, or any part thereof, without prejudice to other rights, and vendor agrees that the Town may

return part of any shipment so made and may charge vendor with any loss expense sustained as a result of such failure to deliver or perform.

**Changes** – If the vendor refuses to accept a purchase order exactly as written, vendor will return it at once with explanation. Any changes to the Purchase order will be considered a "Change Order" and requires written acceptance of both parties to become effective. This will include product or service substitutions, cost changes, and delivery schedule changes.

**Cancellation** - This clause gives both parties the right to terminate the contract upon the occurrence of specified conditions or events. The Town reserves the right to cancel or otherwise rescind a purchase order based on the Town's best interest.

**Invoices** – The vendor will deliver invoices to the Town at the address or electronically at the website shown on the face of each Purchase Order. Vendor will send separate invoices for each purchase numbers and invoices must be itemized in accordance with the items listed on the purchase order.

**Taxes** – The Town pays all NC sales and use taxes. The vendor shall pay all sales and use taxes that are or become due in connection with any products or services provided hereunder and shall indemnify and save harmless the Town of any damages, costs, fees, expenses, or penalties on the account of such taxes. The vendor may charge the Town only those taxes that are set forth as a separate line item on the face of the purchase order. When a contract price is quoted, the sales tax affidavit form should be completed for these contracts along with attaching any invoices associated with the sales tax.

**Delivery / Title** – Unless otherwise agreed, delivery shall be

F. O. B. point of destination and title shall pass to the Town upon acceptance at the final delivery point. Risk of damages or loss following the shipment and prior to acceptance by the Town shall be the responsibility of the vendor.

**Right of Inspection and rejection** – Equipment, supplies, and services supplied by the vendor shall be received subject to the Town's inspection and approval either during manufacturing or delivery (with prior arrangement), or within a reasonable time after delivery, notwithstanding prior payment. If specifications or warranties are not met, material and equipment may be returned at the vendor's expense. No material or equipment returned to Vendor as defective shall be replaced except upon the Town's formal authorization.

**Non-assignment** - This clause prohibits the assignment of specific rights or of the entire contract to another party without the consent of the Town.

**Warranty / Performance** - Vendor warrants that the products and services furnished pursuant to this Purchase Order shall: (a) comply with all federal, state and local laws applicable thereto; (b) satisfy all requirements set forth on the face of this purchase order and any applicable documentation incorporated herein; (c) meet industry standards and be suitable for the purpose intended; (d) be of merchantable quality; and (e) be free from defects in title, labor, material or fabrication.

**Indemnification – Infringement** - The vendor will defend, indemnify, and save the Town harmless from any and all loss, damages, costs, fees, and expenses incurred on account of any and all claims, suits, or judgments alleging that any product or service provided under this purchase order violates any patent, copyright, trade secret, trade name, or any other intellectual property right of any nature.

**Indemnification – Damages** - If any product provided hereunder is defective in any respect whatsoever, Vendor will defend, indemnify, and save Town harmless from all loss, damages, costs, fees, and expenses incurred by reason of such defect, including without limitation all liability arising from any accidents, injuries, or damages to persons or property that may result in whole or in part from such product.

**Indemnification – Consequences of Actions** - If Vendor performs services or constructs, erects, inspects, or delivers hereunder, the vendor will indemnify and save harmless the Town from all loss, damages, costs, fees, or expenses incurred in connection with any accidents, injuries, or damages to persons or property that may result in whole or in part from the performance thereof.

**Non-appropriation clause** - non-appropriation clauses

must be included in any Town contract requiring expenditure of Town funds and entered into for terms longer than the then current fiscal year.

**Construction indemnity agreements** – NC GS § 22B-1 prohibits a party from insulating itself from its own negligence

**Strict Compliance** - The Town may at any time insist upon strict compliance with these terms and conditions notwithstanding any previous custom, practice, or course of dealing.

**Governing Law** - This clause specifies that any dispute resulting from the contract shall be determined in accordance with the laws of North Carolina.

**Certificate of Insurance** - Vendor shall secure, before delivery of any goods or services hereunder, Commercial General Liability insurance in an amount not less than \$1,000,000 bodily injury each occurrence/aggregate, \$1,000,000 property damage each occurrence/aggregate, or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate, with the Town as additional insured. The vendor shall produce an insurance certificate evidencing such coverage upon request by the Town identifying the person/office to be notified.

**Real property improvement dispute venue** - NC GS § 22B-2 prohibits making a contract subject to the laws of another state or setting exclusive venue in the other state

**Forum selection** - NC GS § 22B-3 prohibits requiring prosecution of an action or arbitration of a dispute in another state

**Jury trial waiver** - NC GS § 22B-10 prohibits requiring a party to waive its right to a jury trial (does not prohibit mutually agreed to mediation, arbitration, or other alternative dispute resolution processes)

**Incurring 3rd party debt** – Constitutional limitations on local government indemnifying obligations of other parties (incurring debt), NC Const. Art. V, Sec. 4

**Certification that bids were submitted without collusion** - NC GS § 143-54 - (a) The Director of Administration shall require bidders to certify that each bid is submitted competitively and without collusion. False certification is a Class I felony.

**Organized Labor Restrictions** - NC GS § 143-133.5 prohibits discriminating against a bidder or contractor for adhering or not adhering to an organized labor agreement

**Employment-related and public accommodation requirements** - NC GS § 160A-20.1(a) prohibits cities and counties from imposing employment-related requirements on bidders and contractors as a condition of bidding on a contract NC GS § 160A-20.1(a) for cities; NC GS § 153A-

449(a) for counties.

**E-Verify** - NC GS § 143-133.3 prohibits local governments from contracting with contractors and subcontractors not compliant with the state's E-Verify hiring requirement NC GS § 143-133.3. Contractor shall verify, by affidavit, compliance with the terms of the section upon request by the Town.

**Iran Divestment Act** – NC GS § 147-86.60 Prohibits local governments from contracting with an entity that has been identified by the NC State Treasurer's Office as engaging in Iranian investment activities

**Israel Boycott Contracting Prohibition** – NC GS § 147-86.82 Prohibits local governments from contracting with a company that has been identified by the NC State Treasurer's Office as boycotting Israel

**NC Department of Administration Debarred Vendor List** – NC GS § 143-48

**NC Division of Purchase and Contract; Contract Management Section.** - NC GS § 143-50.1.

**NC HUB Office** - NC GS § 143-48.4

**Small Jurisdiction Exception** – NC GS § 14-234(d1) If it applies, have all required procedures for contract approval been followed?

**Conflicts of Interest** – NC GS § 14-234; NC GS § 133-32; NC GS § 160A-415; NC GS § Chapter 138A; NC GS §

Chapter 120C; *See the **Town of Wilkesboro's Conflict of Interest policy and forms.***

**Pre-Audit** – NC GS § 159-28(a) see pre-audit section in this policy.

**Material Safety Data Sheets** - Current material safety data sheets (MSDS), when applicable to the order, shall be provided by the vendor in accordance with all regulations.

**Title VI of the Civil Rights Act of 1964** - "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." [Federal website.](#) [Town website.](#)

**Force Majeure** - Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. COVID-19 is no longer an "unforeseen" event, and going forward, units should be wary of attempts by contractors or vendors to excuse performance due to the disease or its effects.

Does the contract comply with **applicable local policies, grant rules, and federal regulations?**

**Other contract provisions** – *see **State contract Provisions***

### \*\*\*ADDITIONAL CONTRACT ELEMENTS FOR FEDERAL FUNDS\*\*\*

In addition to the above mentioned contract elements, these elements listed below are required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable:

See **Federal Contract Provisions from the Funding Agency**

## 13. Electronic Form and Electronic Signatures

If in **electronic form**, is the form valid AND if an **electronic signature** is used, is it in proper form?

- o Most forms of electronic transactions are valid if the parties agree - Uniform Electronic Transactions Act - Article 40, Chapter 66.
- o Electronic signatures defined and authorized, and procedural requirements for use Article 11A, Chapter 6.

## 14. Legal Reviews

Contracts for the purchase of goods and/or services create legal obligations of the Town. There are some types of contract provisions that are prohibited or disfavored. It is the Town policy for the Town Attorney to be consulted and to review of contracts obligating the Town

before agreeing, signing, and processing.

## **15. Interlocal Agreements**

Interlocal agreements are joint efforts with other governmental units that are intended to address only complicated or lasting joint relationships or joint endeavors, such as joint funding, development and/or operation of a program of facility NC GS § 160A-461.

All interlocal agreements require Town Council approval prior to execution. These agreements must contain the following elements as set forth in NC GS § 160A- 464:

- The purpose or purposes of the contract or agreement.
- The duration of the agreement.
- If a joint agency is established, its composition, organization, and nature, together with the powers conferred on it.
- The manner of appointing the personnel necessary to the execution of the undertaking.
- The method of financing the undertaking, including the apportionment of costs and revenues.
- The formula for ownership of real property involved in the undertaking, and procedures for the disposition of such property when the contract or agreement expires or is terminated.
- Methods for amending the contract or agreement.
- Methods for terminating the contract or agreement.
- Any other necessary or proper matter

## **16. DISPOSAL OF PROPERTY**

See the [University of NC School of Government Step-By-Step Procedures for Disposal of Surplus Property For North Carolina Local Governments](#) of this policy.

The Town of Wilkesboro utilizes GovDeals as our auction company.

- A. SALE OF PERSONAL PROPERTY WORTH LESS THAN \$30,000 (“SMALL ITEM” DISPOSAL)**  
for conveying personal property worth less than \$30,000 (“small item disposal”) under NC GS § 160A-266. For additional information, see [Disposing of Small Surplus Items: One Man’s Junk is Another Man’s Treasure](#).
- **Local policy** – all items to be disposed of should be reported to the Town Manager for permission and to place on the agenda for Town Council approval. Once approved, report to the Finance Director for fixed assets removal.
- B. SEALED BID**  
for conveying real and personal property by sealed bid under NC GS § 160A-268.
- C. NEGOTIATED OFFER AND UPSET BID**  
for conveying real and personal property by negotiated offer and upset bid under NC GS § 160A-269.

**D. PUBLIC AUCTION (LIVE AUCTION)**

for conveying real and personal property by live public auction under NC GS § 160A-270.

**E. ELECTRONIC AUCTION**

for conveying real and personal property by electronic auction under NC GS § 160A-270.

**F. EXCHANGE**

for conveying real and personal property by exchange with another public or private entity NC GS § 160A-271.

**G. LEASE**

for conveying real and personal property by lease under NC GS § 160A-272.

**H. CONVEYANCE TO A NON-PROFIT ORGANIZATION**

for conveying real and personal property to a non-profit organization for continued public use under NC GS § 160A-279. This page also provides information on conveying personal property to a non-profit organization under NC GS § 160A-280. For more information on donating property to non-profit organizations, see [Donating Property: Beware of Constitutional Constraints](#).

**I. CONVEYANCE TO ANOTHER UNIT OF GOVERNMENT IN NC**

for conveying real and personal property to another unit of government (either the State or a local government within North Carolina) under NC GS § 160A-274.

**J. ECONOMIC DEVELOPMENT PROPERTY**

for economic development projects under NC GS § 158-7.1. For more information on economic development property conveyances, see the School of Government's [Community and Economic Development microsite](#) and blog.

**K. COMMUNITY DEVELOPMENT PROPERTY**

forms for conveying real property for community development projects under NC GS § 160A-457. For more information on community development property conveyances, see the School of Government's [Community and Economic Development microsite](#) and blog.

**L. SECURITIES**

for the sale of stocks, bonds, and other securities owned by a local government under NC GS § 160A-276.

**17. LEASES**

Anytime a government unit enters into a lease of a capital asset (such as leasing equipment or leasing space in a building) or any other contract or agreement involving the acquisition or construction of a capital asset, it must first determine if LGC approval is required pursuant to NC GS § 159-148.

**A. REAL PROPERTY LEASES**

Real property is IMMOVABLE property – it is building, land, and anything attached to the land.

- Lease agreements or formal contracts ARE NOT REQUIRED for rental of space when the duration is brief (e.g. fourteen days (14) or less) and no property rights are conveyed.

**The Town enters into leases of real property under two circumstances:**

- 1) As **Lessee** (tenant), when the town occupies leased space in order to conduct town programs or to deliver town services, and
- 2) As **Lessor** (property owner), to authorize a third party to occupy town-owned property, such as when leasing space in town office building - *Town Manager, Department Head, and consultation from the Town Attorney will develop and process the leases on a as need basis.*

The Town Manager can approve these leases which have a term of one (1) year or less, funding must be included in the departmental annual budget appropriation.

- Leases with duration of one year or less - *The Town Manager may approve.*
- Leases for a term greater than one year - *The Town Council must approve.*
- Lease of Town Property for a term of ten years or more are treated like the sale of real property and requires special attention.

**B. PERSONAL PROPERTY LEASES**

Personal property is movable; and IS NOT fixed permanently to one location as with real property, such as land or building

- Examples of personal property include vehicles, furniture, and equipment.

**C. OPERATING LEASE**

An operating lease is a contract wherein the owner, called the Lessor, permits the Town (lessee), to rent and use an asset for a particular period which is usually a period of at least 12 months but shorter than the economic life of the asset without any transfer of ownership rights.

During the rental period, the lessee typically has unrestricted use of the asset, but is responsible for the condition of the asset at the end of the lease, when it is returned to the lessor. An operating lease is especially useful in situations where the Town needs to replace its assets on a recurring basis, and so has a need to swap out old assets for new ones at regular intervals.

**D. CAPITAL LEASE**

A capital lease is required when substantially all of the risk and benefits of ownership are assumed by the lessee. A lease MUST be capitalized if any one of the following four criteria exists:

- The lease transfers ownership of the property to the lessee by the end of the lease term.
- The lease contains a (bargain) purchase option.

- The lease term is equal to 75 percent or more of the estimated economic life of the lease property; or
- The present value of the minimum lease payments at the inception of the lease, excluding executor costs, equals at least 90 percent of the fair value of the leased property.

A **purchase option** exists when the lessee can exercise the option to purchase the property sometime during the term of the lease at an amount substantially less than the estimated fair value of the property. A “**lease-purchase**” transaction must follow the same bidding process as a straight purchase if the purchase option may be exercised during the first sixty (60) months.

#### **E. MEMORANDUM OF UNDERSTANDING**

A Memorandum of Understanding (MOU) can be used to set forth the basic principles and guidelines under which the parties will work together to accomplish their mutual goals. It is considered a preliminary document to a contract; a contract SHALL follow detailing the responsibilities of each party. MOUs MUST:

- identify the contracting parties
- spell out the subject matter of the agreement and its objectives (the contract should provide more detail)
- establish the terms of the agreement and
- must be signed by the contracting parties. All MOUs must be processed through contract control, with a few exceptions that will be documented in writing by the Procurement Office.

#### **F. REAL ESTATE**

Approval by the Wilkesboro Town Council is required for all real estate transactions except re-combinations of town-owned land. These transactions must be presented to the Wilkesboro Town Board at a public meeting for approval.

### **18. SIGNATURE AUTHORITY**

The authority to enter into contracts is assigned to the Town Council consistent with NC GS § 153A. In certain cases, the Board has delegated this authority to the Town Manager or Designee.

Contracts not included below must be approved by the Town Council prior to execution of the contract by the Town.

The Town Manager has the authority to approve and shall sign the following types of contracts 1-6 and **CANNOT** delegate signing authority for contracts:

- 1) Construction or repair projects that do not require formal competitive bid procedures (\$30,000 to \$500,000).
- 2) Purchases of apparatus, supplies, and materials or equipment that do not require formal competitive bid procedures (less than \$90,000).
- 3) Operating leases of personal property within budgeted appropriation (must not qualify as a capital lease).

- 4) Service contracts within budgeted appropriations.
- 5) Grant agreements to or from governmental units and other public, private, or non-profit organizations that are within budgeted appropriations, unless a grantor requires approval and execution by the Town Council.
- 6) Change orders and amendments to contracts previously approved by the Town Council, within appropriations, provided the dollar amount of the contract amendment does not exceed \$25,000

## 19. CARD PROGRAMS

### A. PROCUREMENT CARDS

Procurement Cards (P-Cards) may be used for

- incidental (small value) purchases of goods or services
- travel and training costs at limits approved by a Department Director or Finance Officer pursuant to the Town of Wilkesboro Procurement Card Policy.

Employees using P-Cards must comply with the requirements and procedures set forth by the Town Finance Department.

P-Cards are considered an alternative payment tool and not a procurement method. Use of a P-Card does not exempt any town employee from following the requirements and procedures set forth in this any town policy, nor does it exempt compliance with applicable statutes, regulations, governing board directives, policies, procedures, and best practices.

If the Town has an account that invoices the Town, a p-card should not be used. This often results in duplicate payments.

Refer to the **Town of Wilkesboro's P-Card Policy** for specific information related to P-Card use.

### B. FUEL CARDS

The fuel card program was established to provide a uniform method of purchasing fuel for town vehicles and equipment. Fuel cards are restricted to purchase fuel only. All employees (including board members, management, directors, department heads, supervisors, etc.) shall follow this policy.

A fuel card is issued for each town-owned vehicle and a department Miscellaneous card for fuel for equipment such as mowers, chainsaws, etc. Each card is to remain secured inside or with the vehicle and used for that vehicle ONLY. **Do not share cards with other vehicles or equipment.** If that vehicle needs a new card, the driver or department head shall contact fuel program administrator. Town hall will have 2 fuel cards in which an employee can check out until his/her new card arrives.

The correct mileage shall be keyed with each fueling. If an incorrect number is used, the employee shall correct at the next fueling. If the mileage is not corrected, the employee is considered in violation of this policy.

A fuel Personal Identification Number (PIN) should be issued by the fuel card

administrator to each Town employee approved to drive town-owned vehicles. Each driver is responsible for using the appropriate PIN to fuel vehicles, as necessary. This **PIN shall not be shared** with other employees. If a current employee needs a new PIN, that employee shall contact fuel program administrator. The department head shall contact fuel program administrator for any new employee(s).

If a vehicle is decommissioned and awaiting disposition, the fuel card shall be turned into the fuel card administrator immediately. Once a vehicle is considered surplus, the town clerk shall give the fuel card administrator the Resolution with a listing of vehicles or equipment so the fuel card can be terminated immediately.

The card is to be used to conduct of Town of Wilkesboro business only. The use of a Town of Wilkesboro fuel card SHALL ONLY be used to purchase fuel for town vehicles and equipment. Any other use outside of town operations is FRAUDULENT use.

Any trading or using another fuel card or deviation from the above policy will have penalties:

- **First violation** – The town manager, finance director, or employee's supervisor must issue one (1) *verbal warning*.
- **Second violation** – If verbal warning does not result in improved performance, town manager, finance director, or employee's supervisor, specifying the employee's performance deficiencies and the steps required to achieve satisfactory performance, must issue a *written warning*.
- **Third violation** - If performance still does not improve, the town manager, finance director, or employee's supervisor must issue *a final written warning and/or sent home without pay for a set number of day(s)*. A final written warning serves notice to the employee that corrective action must be taken immediately to avoid disciplinary action. The supervisor and the department head will record the dates of their discussions with the employee, the deficiencies discussed, and corrective actions recommended and file this information in the employee's personnel file.
- **Fourth violation** - An employee will be suspended with or without notice and the employee shall be required to leave Town property at once and remain away until further notice.

The supervisor shall follow Section Article VIII. Separation, Disciplinary Action, & Reinstatement, Section 5 once an employee is in violation of this policy.

If the Finance Department performs a fuel card audit, the department and employees shall accommodate that person with access to vehicle and cards and/or employees with PINs.

Accounts Payable (AP) will act as fuel card administrator setup vehicles, order new cards, assign PIN for employees, and the invoice processing. If AP is not available, a finance employee can be designated.

If an employee knows or suspects any deviation from this policy, it is to be reported

to Finance Director and/or Town Manager without consequences.

All employees shall sign a fuel card form stating that they understand the fuel card program procedures and agree to follow these procedures. Form is located on the next page.

*The remainder of this page was left blank intentionally.*

The following attachment is an agreement signed by all Town of Wilkesboro Employees:

**Fuel Card Policy  
Employee Agreement**

BY VIRTUE OF THIS POLICY, ALL EMPLOYEES ACKNOWLEDGE THE NATURE OF FUEL CARD POLICY USE AND ABUSE AND UNDERSTAND THAT THE TOWN HAS THE RIGHT TO AUDIT ANY INDIVIDUAL ON THE BASIS OF A MINIMAL AMOUNT OF SUSPICION.

I, \_\_\_\_\_, acknowledge that I have read and received a copy of the Town of Wilkesboro's Fuel Card Policy. I fully understand the terms of this policy and agree to abide by them. I realize that the Town has the ability perform an audit of program upon a reasonable suspicion of misuse and said employee shall willingly assist with this task. I know that any violation of this policy could lead to disciplinary action, dismissal, or even criminal prosecution.

|                                          |                                                              |
|------------------------------------------|--------------------------------------------------------------|
| <hr/><br>Employee's Signature            | <hr/><br>Witness' Signature <i>(must be a town employee)</i> |
| <hr/><br>Employee's Department or Title: | <hr/><br>Witness' Department or Title:                       |
| <hr/><br>____/____/20____<br>Date:       | <hr/><br>____/____/20____<br>Date:                           |

## 20. FEDERAL & STATE COMPLIANCE

North Carolina general statutes allow local policy to be more restrictive than set forth in general statutes. This procurement or purchasing policy is more restrictive regarding bid requirements of services and dollar thresholds for contractual signatures. Periodically, legislation results in changes to general statutes. This policy shall be automatically updated upon changes in general statutes referenced within this policy, except for bid requirements of services and dollar thresholds for contractual signatures.

Contracts funded with FEDERAL GRANT OR FEDERAL LOAN FUNDS must be procured in a manner that conforms with all applicable federal laws, policies, and standards and the user should use the **MOST RESTRICTIVE METHOD**. If you have questions on federal or state funds, please contact the granting agency for answers to your questions.

## 21. IMPLEMENTATION

This policy should be followed in its ENTIRETY, as it is used by the auditors for guidance for the annual audit. The Finance Officer is responsible for implementing and enforcing this policy and to interpret it consistent with its spirit and intent, fiscal prudence, and accountability.

## 22. MISCELLANEOUS ITEMS

### A. SHIPPING

All invoices must contain FOB Destination as they only shipping option for goods. FOB Destination means that the shipper owns the goods in transit and title passes to the recipient at the recipient's dock. The shipper is responsible for filing claims, if necessary, for loss or damage of goods.

### B. NC SALES AND USE TAX

Sections 36 and 37 of the Sales and Use Tax Bulletins (SUTB) create different sales tax rules for different types of governments.

- o The federal government is exempt from paying sales taxes on its purchases and from charging sales taxes on (most of) its sales.
- o The North Carolina State Government is exempt from paying sales taxes on (most of) its purchases but must charge sales taxes on its sales of tangible goods.
- o **Local governments (includes the Town of Wilkesboro) MUST PAY sales taxes** on taxable purchases SUTB Sect. 37-1(A) but request refunds from NC Dept. of Revenue (DOR) at the end of the year for most sales taxes paid. Just like the state, **local governments must charge sales taxes on their own sales of tangible goods** SUTB Sect. 37-1(C). But note that if a local government purchases tangible property for resale, the local government is not required to pay sales taxes on its initial purchase.

**This table summaries these different rules:**

| Type of Government | Purchases | Sales |
|--------------------|-----------|-------|
|--------------------|-----------|-------|

|                                                                      |                                            |                                               |
|----------------------------------------------------------------------|--------------------------------------------|-----------------------------------------------|
| <b>Federal</b>                                                       | <i>Exempt</i>                              | <i>Exempt<br/>(if made to<br/>authorized)</i> |
| <b>North Carolina</b>                                                | <i>Exempt (mostly)</i>                     | <i>Taxable</i>                                |
| <b>Counties and Town,<br/>Cities, &amp; other<br/>Municipalities</b> | <i>Taxable<br/>(but mostly refundable)</i> | <i>Taxable</i>                                |

For more information:

See <https://canons.sog.unc.edu/sales-tax-101-for-local-governments/> or the  
NC DOR website <https://www.ncdor.gov/documents/sales-and-use-tax-bulletins>

### **UNC SCHOOL OF GOV PUBLICATIONS**

- Basic Legal Requirements for Construction
- “Most Restrictive Rule” Procurement Requirements under the Federal Uniform Guidance for North Carolina Local Governments
- Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments
- Uniform Guidance Procurement Requirements for North Carolina Local Governments Webinar Questions and Answers

# Procurement Procedures with Federal Funds (Uniform Guidance)

## I. Purpose

The purpose of this policy is to establish guidelines that meet or exceed the procurement requirements for the purchase of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when Federal funds are being used in whole or in part to pay for the cost of the contract.

The non-Federal entity is responsible and liable for all money received. If a subaward is awarded to another entity, the non-Federal entity must enforce all procurement requirements and statutes set forth by the Federal entity or pass-through entity 2 C.F.R.200.317 – 200.327.

## II. Definitions 2 CFR 200.1 (not all inclusive)

**Subpart D** 2 C.F.R.200.317 – 200.327 applies to the “acquisition of property or service required under a Federal award or subaward. Additionally, subpart D does not expressly apply to the selection of a subrecipient. It does apply to a subrecipient’s procurement activities such as contracts.

**Contract** means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or sub-recipient purchases property or services needed to carry out the project or program under a Federal award. For additional information on sub-recipient and contractor determinations, see 200.331. See also the definition of sub-award in this section.

**Contractor** means an entity that receives a contract as defined in this section. 2 C.F.R.200.331(b).

**Micro-purchase** means a purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a non-Federal entity's small purchases as defined in 2 C.F.R. 200.320.

**Micro-purchase threshold** means the dollar amount at or below which a non-Federal entity may purchase property or services using micro-purchase procedures (see 200.320). The micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency for indirect costs.

**Non-Federal entity (NFE)** means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or sub-recipient.

**Pass-through entity (PTE)** means a non-Federal entity that provides a sub-award to a sub-recipient to carry out part of a Federal program.

**Period of performance** means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the period of performance in the Federal award per 200.211(b)(5) does not commit

the awarding agency to fund the award beyond the currently approved budget period.

**Program income** means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in 2 C.F.R. 200.307(f). (See the definition of period of performance in this section.) Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also 2 C.F.R. 200.407. See also 35 U.S.C. 200-212.

**Recipient** means an entity, usually but not limited to non-Federal entities that receives a Federal award directly from a Federal awarding agency. The term recipient does not include sub-recipients or individuals that are beneficiaries of the award.

**Sub-award** means an award provided by a pass-through entity to a sub-recipient for the sub-recipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A sub-award may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

**Sub-recipient** means an entity, usually but not limited to non-Federal entities, which receives a sub-award from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A sub-recipient may also be a recipient of other Federal awards directly from a Federal awarding agency. 2 C.F.R.200.331(a)

### III. Policy

- A. **APPLICATION OF POLICY.** This policy applies to contracts for purchases, services, and construction or repair work funded with Federal financial assistance (direct or reimbursed) which includes, but is not limited to, direct grants, USDA grants and loans, CDBG funds, FEMA disaster assistance grants, and the Highway Planning, Research, and Construction Program. The requirements of this Policy also apply to any sub-recipient of the funds.

All Federally funded projects, loans, grants, and sub-grants, whether funded in part or whole, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards (**Uniform Guidance**) codified at **2 C.F.R. Part 200** unless otherwise directed **IN WRITING** by the Federal agency or State pass-through agency that awarded the funds.

- B. **MOST RESTRICTIVE RULE.** All procurement activities involving the expenditure of Federal funds must follow the most restrictive rules of Federal, State, and local policies and procedures.
- C. **Compliance with Federal Law.** All procurement activities involving the expenditure of Federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. 200.317 through 200-327 unless otherwise directed **IN WRITING** by the Federal agency or State

pass-through agency that awarded the funds. The Town of Wilkesboro will follow all applicable local, State, and Federal procurement requirements when expending Federal funds. Should the Town of Wilkesboro have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with State and Federal law.

- D. **Contract Award.** 2 C.F.R. 200.318(h) When bids are required by law, or otherwise solicited by the Town, all contracts shall be awarded only to the lowest responsive, responsible bidder (LRRB) 2 C.F.R. 200.320 possessing the ability to perform successfully under the terms and conditions of the contract. Consideration shall be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- E. **No Evasion.** 2 C.F.R. 200.320(a)(b) No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this policy or State and Federal law.
- F. **Contract Requirements.** All contracts paid for in whole or in part with Federal funds shall be **IN WRITING**. The written contract must include or incorporate by reference the provisions required under 2 C.F.R Section 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II. Be sure to read all the requirements of the funding documents and included all the contract clauses and/or provisions.
- G. **Bonding Requirements.** 2 C.F.R. 200.326
  - A bid bond must be 5% of the bid price.
  - A performance bond must be 100% of contract price.
  - A payment bond must be 100% of contract price.
- H. **Insurance Coverage.** 2 C.F.R. 200.310 The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally owned property need not be insured unless required by the terms and conditions of the Federal award.
- I. **Contractor's Conflict of Interest.** 2 C.F.R. 200.319(b) Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, Statements of work, invitation for bids or requests for proposals **shall be excluded** from competing for such requirements.
- J. **Approval and Modification.** The Administrative Procedures contained in the Policy are administrative and may be changed by management to comply with Federal and State law.

## IV. General Procurement Standards & Procedures

**General:** The following standards and procedures and requirements apply to all Federal contract solicitations:

- A. **Compliance by Contractors.** 200.300 All solicitations should inform prospective contractors that they will need to comply with all applicable Federal laws, regulations, executive orders, FEMA requirements, and terms and conditions of the funding award.

- B. Notice of Federal Funding.** All bid solicitations must acknowledge the use of Federal funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.
- C. Prohibition on Contracting for Covered Telecommunications Equipment or Service: Huawei / ZTE Ban Clause.** 2 C.F.R. 200.216 prohibits Non-Federal Entities receiving Federal funds from entering into a contract (or extend or renew a contract) to procure or obtain equipment, services, or system that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This applies to all contractors, sub-contractors, or any sub-recipients. Although optional for the contract clauses, they must certify that “no covered telecommunications equipment or services” are part of the contract.
- D. Competitive Bids.** Purchases made through a Cooperative Purchasing Program, or the NC State Contract may be allowed ONLY if the contracts were procured in compliance with the 2 C.F.R. 200.317-327 and **WRITTEN APPROVAL** is granted by the Federal grantor agency. Documentation must be provided by the supplier demonstrating compliance. However, State Contract or Cooperative Purchasing programs may be used for purchases under the micro-purchase limit.
- E. Documentation of Procurement Procedures.** 2 C.F.R. 200.318 Documentation must be maintained by all of the Town’s departments detailing the history of all procurements. The documentation should include procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor’s responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request.
- F. Conflict of Interest.** 2 C.F.R. 200.318(c) See Section VI. Of the Uniform Guidance for policy. *See the **Town of Wilkesboro’s Conflict of Interest policy and forms.***
- G. Contractor Oversight.** 2 C.F.R. 200.318(b) The Town’s Requesting Department receiving the Federal funding must maintain oversight of the contract to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.
- H. Geographic Preference.** 2 C.F.R. 200.318(c) No geographic preferences may be imposed in awarding Federal contracts except to the extent permitted by Federal law.
- I. Necessity.** 2 C.F.R. 200.318(d) Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items (no stockpiling). The Finance Department and/or the Requesting Department should check with the Federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.

- J. Lease versus Purchase.** 2 C.F.R. 200.318(d) Under certain circumstances, it may be necessary to perform a written analysis of lease versus purchase alternatives to determine the most economical approach. Note: This comparison is necessary for most FEMA financial assistance programs following an emergency or major disaster declaration.
- K. Federal Excess and Surplus Property.** 2 C.F.R. 200.318(f) The Non-Federal Entity is encouraged to use Federal excess or surplus property in lieu of purchasing new equipment and property whenever use is feasible and reduces project costs.
- L. Responsible Contractors.** 2 C.F.R. 200.318(h) contractors must process the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to contractor integrity, compliance with public policy, record of past performance, financial and technical resources. See 2 C.F.R. 200.214.
- M. Retention of Records.** 2 C.F.R. 200.318(i) non-Federal Entity must maintain records sufficient to detail the history of procurement. Document. Document. Document. These records will include rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract pricing. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. Each federal funding instance will require its own record retention policy.  
*See the **Town of Wilkesboro's Records Retention Policy** for a specific Federal award.*
- N. Contract Requirements.** The Requesting Department must prepare a **WRITTEN CONTRACT** incorporating the provisions referenced in Section II to Part 200.
- O. Fixed Price.** 2 C.F.R. 200.318(j)(1) Solicitations must state that the bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts is prohibited. *Time and materials contracts are prohibited in most circumstances.* Time and Materials (Cost-Plus) contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A time and materials contract shall not be awarded without the express **WRITTEN PERMISSION** of the Federal agency or State pass-through agency that awarded the funds.
- P. Protests and Disputes.** 2 C.F.R. 200.318(k) Bid protests and disputes will be in accordance with "Bid Protest Procedures."
- Q. Full and Open Competition.** 2 C.F.R. 200.319(a) Solicitations shall be prepared in a way to be fair and provide open competition. The Town shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to, unnecessary supplier experience, excessive or unnecessary bonding; specifying a brand name without allowing for "or equal" products, or other unnecessary requirement that have the effect of restricting competition. In this Uniform Guidance policy see section III. F.
- R. Clear Specifications.** 2 C.F.R. 200.319(d)(1) All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured,

and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.

- S. **Use of Brand Names.** 2 C.F.R. 200.319(d)(1) When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how to reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and ***“OR EQUAL”*** must be included in the description.
- T. **Pre-Qualification.** 2 C.F.R. 200.319(e) Lists of all pre-qualified bidders must be kept current and must include enough qualified sources to ensure maximum open and free competition.
- U. **Debarment and Suspension.** 2 C.F.R. 200.321 Non-Federal entities, contractors, and sub-contractor are subject to the Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 180 and the Homeland Security’s regulations at 2 C.F.R. Part 3000 (non-procurement Debarment and Suspension). See ***Town of Wilkesboro’s Debarment and Suspension*** policy.
- V. **Small, Minority, and Women’s Businesses & Labor Surplus Firms.** 2 C.F.R. 200.321 Steps 1-5. Must take all steps necessary affirmative steps to ensure participation.
- W. **Dividing Contract for M/WBE Participation.** 2 C.F.R. 200.321(3) If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.
- X. **Domestic Sourcing.** 2 C.F.R. 200.322 Encourages local government using Federal funds to provide a preference for the purchase goods and products produced mainly in the United States, as appropriate and to the extent allowed by law. This is required in the contract clauses. Avoid all State and local preferences 2 C.F.R. 200.319(c).
- Y. **Recovered Materials.** 2 C.F.R. 200.323 Contractors must comply with section 6002 of the Solid Waste Act, as amended by Resource Conservation and Recovery Act. A \$10,000 threshold applies to procuring agency or contractor as a whole rather than to agency subgroups such as regional offices or subagencies of a larger department or agency.
- Z. **Cost Estimate.** 2 C.F.R. 200.324 For all procurements costing \$10,000 or more, the Finance Department and/or Requesting Department shall develop an *“estimate of the cost”* of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer/manager.

## V. Specific Procurement Procedures

Town departments shall comply with this Section in soliciting bids and proposals for all Federal Contracts.

### A. Types of Procurement Contracts

1. Contracts for construction or repair work ("**Construction Contracts**");
2. Contracts for the procurement of apparatus, supplies, materials, or equipment ("**Purchase Contracts**");
3. Contracts for the procurement of architectural, engineering, or surveying services ("**AES Contracts**"); and
4. Contracts for the procurement of services other than A&E Contracts ("**Service Contracts**").

### B. Solicitation requirements depending on the type of Federal Contract, which types include:

1. **INFORMAL**
  - A. Micro-purchases
  - B. Small purchases
2. **FORMAL**
  - A. Sealed Bidding
  - B. Proposals
3. **NONCOMPETITIVE**

- **MICRO PURCHASE THRESHOLD** (optional) 2 C.F.R. 200.32(a)(1)(iv)(C)  
*Non-Federal entities must self-certify on an annual basis.* Local Government in NC may self-certify the micro-purchase thresholds.

#### **MICRO PURCHASE THRESHOLD CERTIFICATION MUST INCLUDE:**

1. A justification for the threshold
2. A clear Identification of the Threshold
3. Supporting Documentation of any of the following:
  - a. Qualification as a low-risk auditee for most recent audit in accordance with 1 C.F.R. 200.520;
  - b. An annual internal institution risk assessment to identify, mitigate, and manage financial risks; OR
  - c. For public institutions, a higher threshold consistent with State law.

## 1. INFORMAL

### A. MICRO-PURCHASE

- **Purchase Contracts \$0 up to \$10,000,**
- **Construction/Repair/Facility Improvement/Renovation \$0 up to \$10,000, and**
- **Service Contracts (except for A/E professional services) \$0 up to \$50,000**  
Shall be procured using the Uniform Guidance "**MICRO-PURCHASE**" procedure 2 C.F.R. 200.320(a)

**PROCEDURES ARE AS FOLLOWS:**

- \_\_\_ No bidding is required
- \_\_\_ Price must be considered fair and reasonable
- \_\_\_ To the extent practicable, purchases must be distributed among qualified suppliers
- \_\_\_ Contract must be in writing (this could be in the form of a purchase order)

**B. SMALL-PURCHASES**

- **Purchase Contracts \$10,000 up to \$90,000 and**
- **Service Contracts (except for A/E Professional Services) \$50,000 - \$90,000**

Shall be procured using the Uniform Guidance “**SMALL-PURCHASE**” procedure 2 C.F.R. 200.320(b)

**Procedures are as follows:**

- \_\_\_ Cost or price analysis is NOT required prior to soliciting bids
- \_\_\_ Obtain written price quotes from an adequate number of suppliers or sources (which shall not be less than two (2) quotes) Check specific grant as some grant agencies may require more than two (2) quotes
- \_\_\_ Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. 200.321 by posting on the State’s IPS and HUB websites/bid posting boards.
- \_\_\_ Award contract as a Fixed Price. A Not to Exceed basis is permissible for service contracts only where obtaining a fixed price is not feasible.
- \_\_\_ Award to lowest responsive, responsible bidder
- \_\_\_ Contract must be in writing (purchase contracts may be in the form of a purchase order; service contracts and construction repair require use of contract template)
- \_\_\_ Cannot use a cooperative purchasing program as an Exception to the Bidding
- \_\_\_ If less than two bids are received, re-advertisement is necessary. If upon readvertisement only one bid is received, the bid can be accepted and opened.

- **Construction/Repair/Facility Improvement/Renovation \$10,000 up to \$250,000**

Shall be procured using the Uniform Guidance “**SMALL PURCHASE**” procedure (2 C.F.R. 200.320(b))

**Procedures are as follows:**

- \_\_\_ Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
- \_\_\_ Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. 200.321 by posting on the State’s IPS and HUB websites/bid posting boards.

- \_\_\_ Obtain written price quotes from an adequate number of suppliers or sources (typically means two (2); however, verify with granting agency)
- \_\_\_ Award Contract on a fixed-price or not to exceed basis
- \_\_\_ Award to lowest responsive, responsible bidder
- \_\_\_ Governing Board approval is not required
- \_\_\_ Must have written contract with Federal contract provisions included
- \_\_\_ If less than two bids are received, re-advertisement is necessary. If upon readvertisement only one bid is received, the bid can be accepted and opened.

## 2. FORMAL

### SEALED BIDDING

- **Service Contracts (\$90,000 up to \$250,000) and**

- **Purchase Contracts (\$90,000 and above)**

Shall be procured using a combination of the most restrictive requirements of the Uniform Guidance “**SEALED BID**” procedure (2 C.F.R. 200.320(c)) and State formal bidding procedures (NC GS § 143-129)

**Procedures are as follows:**

- \_\_\_ Cost or price analysis is required prior to soliciting bids
- \_\_\_ Complete specifications or purchase description must be available to all bidders
- \_\_\_ Public Advertisement: (Electronic Advertising is authorized)
- ❖ ***Legal notice must reserve to the governing board the right to reject any or all bids only for “sound documented reasons.”***
- \_\_\_ Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. 200.321 by posting on the any Federal websites such as U.S. Small Business Administration (SBA) and U.S. Department of Commerce’s Minority Business Development Agency and North Carolina Interactive Purchasing System (IPS) **and** NC DOA-Historical Underutilized Businesses (HUB)-websites/bid posting boards.
- \_\_\_ Solicit from adequate number of known suppliers
- \_\_\_ Bids must be submitted sealed
- \_\_\_ Public Bid Opening
- \_\_\_ Must have two (2) sealed bids submitted to open
- \_\_\_ **If less than two bids are received, re-advertisement is necessary. If upon readvertisement, if only one bid is received, the bid can be accepted and opened (per SOG).**
- \_\_\_ Bids may only be rejected for “sound documented reasons”
- \_\_\_ Award contract as a firm fixed price. A Not to Exceed basis is permissible for service contracts only where obtaining a fixed price is not feasible.
- \_\_\_ Award to lowest, responsive, responsible bidder
- \_\_\_ Contract must be in writing (purchase contracts may be in the form of a purchase order; service contracts and construction repair require use of contract template)

- \_\_\_\_\_ Cannot use a cooperative purchasing program as an Exception to the Bidding
- \_\_\_\_\_ Governing board approval is not required (per local policy, governing board has delegated award authority to Town Manager)

- **Service Contracts (except for A/E Professional Services) \$250,000 and above**

Shall be procured using the Uniform Guidance “**COMPETITIVE PROPOSAL**” procedure (2 C.F.R. 200.320(d)) when the “**SEALED BID**” procedure is not appropriate for the particular type of service being sought.

***Note:** RFP’s (Competitive Proposals) can only be used when conditions are not appropriate for the use of sealed bids such as service contracts. This can be used for all types of contracts \$250,000 and over.*

**Procedures are as follows for competitive proposal method:**

- \_\_\_\_\_ Publicly advertised. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an “adequate number” of qualified firms.
- \_\_\_\_\_ Solicit from adequate number of qualified firms.
- \_\_\_\_\_ Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. 200.321 by posting on the any Federal websites such as U.S. Small Business Administration (SBA) and U.S. Department of Commerce’s Minority Business Development Agency and North Carolina Interactive Purchasing System (IPS) **and** NC DOA-Historical Underutilized Businesses (HUB)-websites/bid posting boards.
- \_\_\_\_\_ Identify evaluation criteria and relative importance of each criterion (criteria weight) in the RFP.
- \_\_\_\_\_ All responses must be considered to the maximum extent practical.
- \_\_\_\_\_ Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
- \_\_\_\_\_ Award the contract to the responsible firm with most advantageous proposal must take into account price and other factors identified in the RFP.
- \_\_\_\_\_ Governing board approval is required per local policy.
- \_\_\_\_\_ Award the contract on a firm fixed-price or cost-reimbursement basis
- \_\_\_\_\_ Must have written contract with Federal contract provisions included.
- \_\_\_\_\_ Cannot use a cooperative purchasing program as an Exception to the Bidding
- \_\_\_\_\_ Do NOT have to re-advertise if only one response is received.

- **Construction/Repair/Facility Improvement/Renovation \$250,000 up to \$500,000\***

Shall be procured using the Uniform Guidance “**SEALED BID**” procedure 2 C.F.R. 200.320(c)

**Procedures are as follows:**

- \_\_\_\_\_ Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
- \_\_\_\_\_ Complete specifications must be made available to all bidders
- \_\_\_\_\_ Public Advertisement: Advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids (formal advertisement in a

newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). The advertisement must State the date, time, and location of the public bid opening, and indicate where specifications may be obtained

- \_\_\_\_\_ Solicit from adequate number of known suppliers
- \_\_\_\_\_ Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. 200.321 by posting on the any Federal websites such as U.S. Small Business Administration (SBA) and U.S. Department of Commerce's Minority Business Development Agency and North Carolina Interactive Purchasing System (IPS) and NC DOA-Historical Underutilized Businesses (HUB)-websites/bid posting boards.
- \_\_\_\_\_ Bids must be submitted sealed
- \_\_\_\_\_ Public Bid Opening
- \_\_\_\_\_ Must have two (2) sealed bids submitted prior to opening
- \_\_\_\_\_ Original 5% Bid Bond (a bid that does not contain a bid bond cannot be counted toward the two (2) bid requirement
- \_\_\_\_\_ Performance and Payment Bonds for 100% of contract price
- \_\_\_\_\_ Bids may only be rejected for "sound documented reasons"
- \_\_\_\_\_ Contract awarded on firm-fixed price basis
- \_\_\_\_\_ Award to lowest responsive, responsible bidder
- \_\_\_\_\_ Must have written contract with Federal contract provisions included
- \_\_\_\_\_ Governing Board approval is not required
- \_\_\_\_\_ If less than two bids are received, re-advertisement is necessary. If upon readvertisement, if only one bid is received, the bid can be accepted and opened (per SOG).

**\* Building Projects over \$300,000**

**Note:** Construction or repair contracts involving a building \$300,000 and above must also include:

1. Formal HUB (historically underutilized business) participation required under NC GS § 143-128.2, including local government outreach efforts and bidder good faith efforts shall apply.
2. Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under NC GS § 143-128(a).
3. The project shall be bid using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under NC GS § 143-129(a1).

- **Construction/Repair/Facility Improvement/Renovation \$500,000 and above**

Shall be procured using a combination of the most restrictive requirements of the Uniform Guidance "**SEALED BID**" procedure (2 C.F.R. 200.320(c)) and State formal bidding procedures (NC GS § 143-129)

**Procedures are as follows:**

- \_\_\_\_\_ Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
- \_\_\_\_\_ Complete specifications must be made available to all bidders
- \_\_\_\_\_ Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under NC GS § 143-128(a).

- \_\_\_\_\_ The project shall be bid using a statutorily authorized bidding method (separate prime, single-prime, or dual bidding) as required under NC GS § 143-129(a1).
- \_\_\_\_\_ Public Advertisement: (Electronic Advertising is authorized) o Legal notice must reserve to the governing board the right to reject any or all bids only for “sound documented reasons.” – Solicit from adequate number of known suppliers
- \_\_\_\_\_ Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. 200.321 by posting on the any Federal websites such as U.S. Small Business Administration (SBA) and U.S. Department of Commerce’s Minority Business Development Agency and North Carolina Interactive Purchasing System (IPS) and NC DOA-Historical Underutilized Businesses (HUB)-websites/bid posting boards.
- \_\_\_\_\_ Good Faith MBE Requirements/Affidavits must be submitted
- \_\_\_\_\_ Bids must be submitted sealed and in paper form.
- \_\_\_\_\_ Public Bid Opening
- \_\_\_\_\_ Must have three (3) sealed bids submitted before opening
- \_\_\_\_\_ Original 5% Bid Bond (a bid that does not contain a bid bond cannot be counted toward the three (3) bid requirement) Bid Bonds may not be faxed or emailed. Bid Bonds must be original and submitted with the Bid.
- \_\_\_\_\_ Performance and Payment Bonds for 100% of contract price
- \_\_\_\_\_ Bids can only be rejected for “sound documented reasons”
- \_\_\_\_\_ Contract awarded on firm-fixed Price basis
- \_\_\_\_\_ Award to lowest, responsive, responsible bidder
- \_\_\_\_\_ Must have written contract with Federal contract provisions included
- \_\_\_\_\_ Governing Board approval is required (cannot be delegated)
- \_\_\_\_\_ If less than three bids are received, re-advertisement is necessary. If upon readvertisement less than three bids are received, bid(s) can be accepted and opened.

- **Professional Services (Architectural and Engineering Services) \$10,000 - \$250,000**  
Professional Services under \$50,000, for the purchase of services subject to the **QUALIFICATIONS-BASED SELECTION PROCESS** in the Mini-Brooks Act may be exempt pursuant to NC GS § 143-64.32 as long as the annual self-certification has been included in the annual Budget Ordinance. If the self-certification was not done, the micro-purchase threshold shall be \$10,000.00.

**Procedures are as follows:**

- \_\_\_\_\_ Shall be procured using the State “Mini-Brooks Act” requirements (NC GS § 143-64.31)
- \_\_\_\_\_ Issue a ***Request for Qualifications (RFQ)*** to solicit qualifications from qualified firms
- \_\_\_\_\_ Advertisement: Solicit only - Newspaper is not required.
- \_\_\_\_\_ Price (other than unit cost) shall not be solicited in the RFQ.
- \_\_\_\_\_ Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. 200.321 by posting on the any Federal websites such as U.S. Small Business Administration (SBA) and U.S. Department of Commerce’s Minority Business Development Agency and North Carolina Interactive Purchasing System (IPS) and NC DOA-Historical Underutilized Businesses (HUB)-websites/bid posting boards.
- \_\_\_\_\_ Evaluate the qualifications of respondents based on the evaluation criteria developed by the Finance Department and/or Requesting Department.
- \_\_\_\_\_ State licensure requirements apply
- \_\_\_\_\_ Rank respondents based on qualifications and select the best qualified firm.

- \_\_\_ Price cannot be a factor in the evaluation.
- \_\_\_ Preference may be given to in-State (but not local) firms.
- \_\_\_ Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
- \_\_\_ Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.
- \_\_\_ Must be a fixed price or not to exceed contract type for services
- \_\_\_ Governing board approval is not required
- \_\_\_ Must have written contract with Federal contract provisions included
- \_\_\_ Do NOT have to re-advertise if only one response is received.

- **Professional Services (Architectural and Engineering Services) \$250,000 and over**  
 Shall be procured shall be procured using the Uniform Guidance “**COMPETITIVE PROPOSAL**” procedure 2 C.F.R. 200.320(d)(5)

**Procedures are as follows:**

- \_\_\_ Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms
- \_\_\_ Advertisement: Solicit only
- \_\_\_ Newspaper is not required).
- \_\_\_ Price (other than unit cost) shall not be solicited in the RFQ.
- \_\_\_ Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. 200.321 by posting on the any Federal websites such as U.S. Small Business Administration (SBA) and U.S. Department of Commerce’s Minority Business Development Agency and North Carolina Interactive Purchasing System (IPS) and NC DOA-Historical Underutilized Businesses (HUB)-websites/bid posting boards.
- \_\_\_ Identify the evaluation criteria and relative importance of each criterion (the criteria weight) in the RFQ.
- \_\_\_ Proposals must be solicited from an “adequate number of qualified sources” (*an individual Federal grantor agency may issue guidance interpreting “adequate number”*).
- \_\_\_ Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
- \_\_\_ Consider all responses to the publicized RFQ to the maximum extent practical.
- \_\_\_ Evaluate qualifications of respondents based on the evaluation criteria developed by the Finance Department and/or Requesting Department
- \_\_\_ Rank respondents based on qualifications and select the most qualified firm.
- \_\_\_ Preference may be given to in-State (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
- \_\_\_ Price cannot be a factor in the initial selection of the most qualified firm.
- \_\_\_ Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
- \_\_\_ Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.
- \_\_\_ State licensure requirements apply
- \_\_\_ Must be a fixed price or not to exceed contract type for services

- \_\_\_\_\_ Governing board approval is required (per local policy)
- \_\_\_\_\_ Must have written contract with Federal contract provisions included

**Note 1:** *Geographic preference can be given (in-State) as long as there is an appropriate number of qualified firms given the size of the project.*

**Note 2:** *RFQ process cannot be used for general consulting services or other services not defined by State law or PDAT Supplement, Section V-15 even if those services can be performed by an architectural or engineering firm.*

### 3. NONCOMPETITIVE 2 C.F.R. 200.320

**NON-COMPETITIVE** contracts are allowed *only* under the following conditions and with the **WRITTEN APPROVAL** of the Federal agency or State pass-through agency that awarded the Federal funds:

- **Sole Source.** A contract may be awarded without competitive bidding when the item is available from only one source. The Finance Department and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the governing board.
- **Public Exigency.** A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding. A cost analysis is still required.
- **Inadequate Competition.** A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.
- **Federal Contract.** A contract may be awarded without competitive bidding when the purchase is made from a Federal contract available on the U.S. General Services Administration schedules of contracts.

**NOTE:** Cannot use this exception for FEMA Public Assistance. FEMA advises against this and requires bidding out. Can be used for all other Federal funding/grants as long as approval has been given by the grantor.

- **Awarding Agency Approval.** A contract may be awarded without competitive bidding with the express written authorization of the Federal agency or State pass-through agency that awarded the Federal funds so long as awarding the contract without competition is consistent with State law.

## VI. CONFLICT OF INTEREST WITH USE OF FEDERAL FUNDS

### A. Purpose

The purpose of this policy is to establish conflicts of interest guidelines that meet or exceed the requirements under State law and local policy when procuring goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects paid for in part or whole by Federal funds and required under 2 C.F.R. 200.318(c)(1).

See the **Town of Wilkesboro's Conflict of Interest policy and forms.**

## **VII. VIOLATION**

Violating this policy will result in the Town losing the funding in part or whole.

- A.** The Employee will be subject to discipline up to and including termination.
- B.** Contractors violating this policy will result in termination of the contract, may not be eligible for future contract awards, and/or including disbarment from future town contracts for 5 year period.

# APPENDIXES

1. Website Event Form
2. Employee Expense Form
3. Fixed Asset Transfer or Surplus Sheet
4. Emergency Purchase Authorization Request Form
5. Awarding contracts to Lowest Responsive, Responsible Bidder Flowchart
6. Conflicts of Interest Decision Tree
7. Gifts and Favors Decision Tree
8. Purchase Contract Chart
9. Building Construction and Repair Contract Chart
10. Construction and Repair Contracts Chart
11. Procurement Methods – State Law
12. Procurement Methods – Uniform Guidance
13. Procurement Methods Purchase and Service Contracts-State, UG & Most Restrictive
14. UNC SOG Uniform Guidance Most Restrictive Rule 7 pages
15. Microsite – Federal Procurement Requirements 3 pages
16. Comparison of Federal Uniform Guidance and State Procurement Requirements for NC Local Governments Chart– 17 pages
17. Property Disposal Charts – 10 pages
18. Sample Resolution to Authorize the Use of Electronic Advertisement only



## Town of Wilkesboro Event Form

|                                                                                                                                                                    |                                                                        |                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------------|
| Event Name:                                                                                                                                                        |                                                                        |                                                                      |
| Location of Event:                                                                                                                                                 |                                                                        |                                                                      |
| Date:                                                                                                                                                              | Start Time:<br><input type="checkbox"/> AM <input type="checkbox"/> PM | End Time:<br><input type="checkbox"/> AM <input type="checkbox"/> PM |
| Contact person for more information:                                                                                                                               |                                                                        |                                                                      |
| Contact's Telephone:                                                                                                                                               | Contact's email:                                                       |                                                                      |
| Short description of event:                                                                                                                                        |                                                                        |                                                                      |
| Persons or organizations sponsoring event:                                                                                                                         |                                                                        |                                                                      |
| Image(s) for event: <input type="checkbox"/> No <input type="checkbox"/> Yes If yes: email to <a href="mailto:mbrown@wilkesboronc.org">mbrown@wilkesboronc.org</a> |                                                                        |                                                                      |
| Person submitting:                                                                                                                                                 |                                                                        | Date:                                                                |



# Town of Wilkesboro

P. O. Box 1056  
Wilkesboro, NC 28697  
(336) 838-3951 fax (336) 838-7616

Invoice No. YEAR-

Please start using the invoice number above  
& starting with YEAR-XX (2 digits).

## EXPENSE STATEMENT

### Employee

| Employee _____         |                        | Department _____ |       |           |      |       |       |           | Time Frame         |       |
|------------------------|------------------------|------------------|-------|-----------|------|-------|-------|-----------|--------------------|-------|
| Mail Address _____     |                        | Job Title _____  |       |           |      |       |       |           | From               |       |
| City, State, Zip _____ |                        | Date _____       |       |           |      |       |       |           | To                 |       |
| Date                   | Account -<br>Line Item | Description      | Accom | Transport | Fuel | Meals | Phone | Entertain | Other<br>(specify) | TOTAL |
|                        |                        |                  |       |           |      |       |       |           |                    |       |
|                        |                        |                  |       |           |      |       |       |           |                    |       |
|                        |                        |                  |       |           |      |       |       |           |                    |       |
|                        |                        |                  |       |           |      |       |       |           |                    |       |
| COLUMN TOTALS          |                        |                  |       |           |      |       |       |           |                    |       |

|                 |  |                                                                                                |  |                                                |  |                   |  |
|-----------------|--|------------------------------------------------------------------------------------------------|--|------------------------------------------------|--|-------------------|--|
| Approvals _____ |  | Notes _____                                                                                    |  | Request type _____                             |  | Sub Total         |  |
| Req # R _____   |  | Current mileage reimbursement rate is _____                                                    |  | <input checked="" type="radio"/> Reimbursement |  | Subtract Advances |  |
| P O # _____     |  | Effective 01/01/2020 This forms requires a requisition number in order to process for payment. |  | <input type="radio"/> Payment Needed           |  | TOTAL             |  |



***Town of Wilkesboro  
Fixed Asset  
Transfer / Surplus Sheet***

**Circle your choice:    Transfer    Surplus**

| <b><i>From:</i></b> |  |                |  |
|---------------------|--|----------------|--|
| Name:               |  | Department:    |  |
| Asset #:            |  | Serial Number: |  |
| Description:        |  |                |  |

| <b><i>To:</i></b> |  |             |  |
|-------------------|--|-------------|--|
| Name:             |  | Department: |  |
| Location:         |  |             |  |
| Reason:           |  |             |  |

**Finance Director**

Approved (Y/N)

Signature \_\_\_\_\_

\_\_\_\_\_

**Town Manager**

Entered Fixed Assets

Signature \_\_\_\_\_

\_\_\_/\_\_\_/\_\_\_

# TOWN OF WILKESBORO

## Emergency Purchase Authorization Request

REQUISITION NO: \_\_\_\_\_

### Contact Information

|                          |                        |
|--------------------------|------------------------|
| Date:                    | Requestor:             |
| Location of Emergency:   | Requesting Department: |
| Required Goods/Services: | Contact No.:           |

### Nature of Emergency

Describe Type (threat to public's life, health, welfare or significant loss of property) and Details of Emergency (Attach additional detail, if necessary, and all available documentation justifying emergency declaration.):

### Vendor(s) Information

|                                                      |                            |
|------------------------------------------------------|----------------------------|
| Proposed Vendor (attach detail if multiple vendors): | Estimated Cost (if known): |
| Describe How & Why Recommended Vendor(s) Selected:   |                            |

#### EMERGENCY PURCHASES:

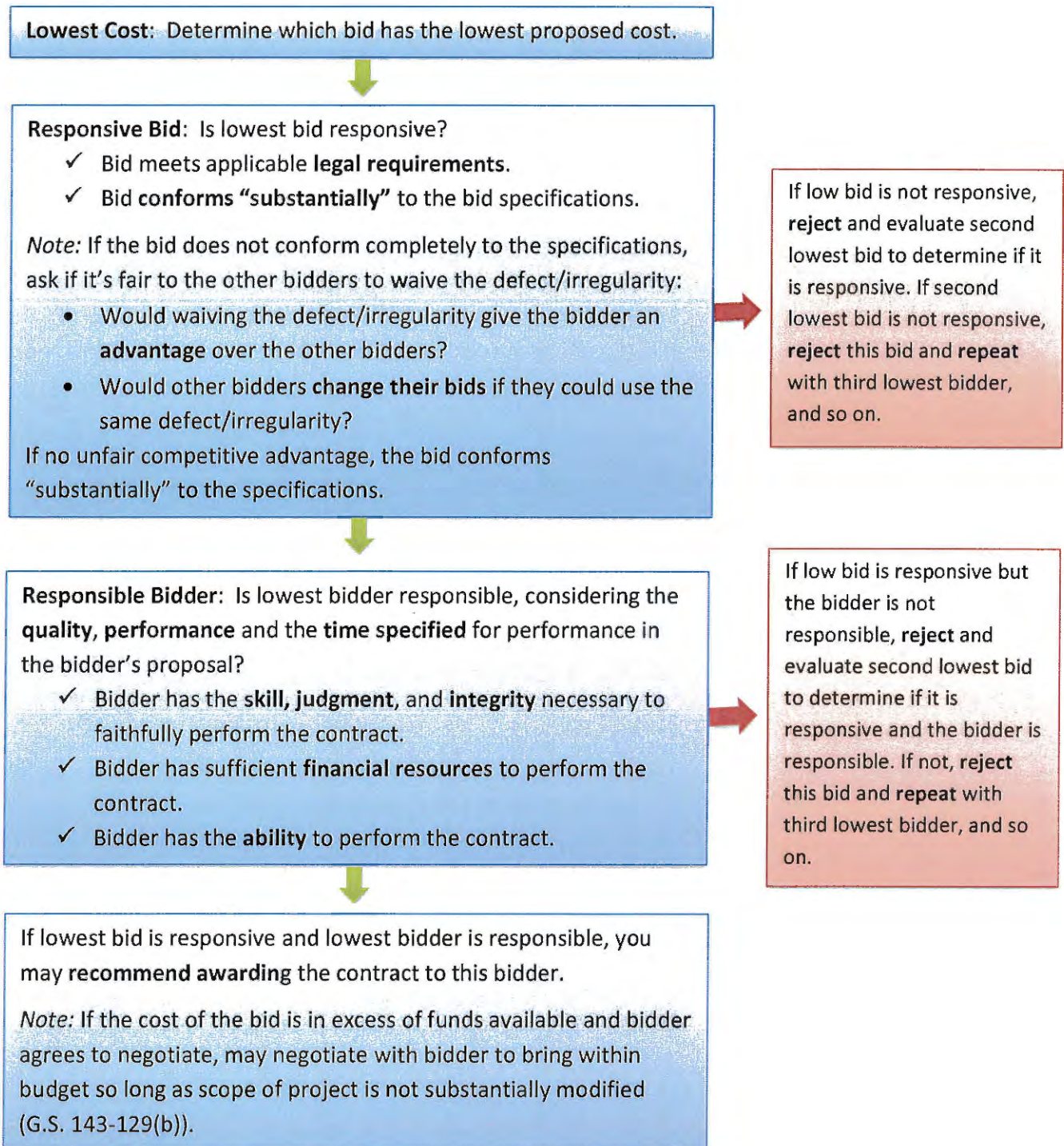
**(a) Town Manager.** In case of an apparent emergency requiring immediate purchase of supplies or contractual service, the town manager shall be empowered to authorize the procurement director to secure by open market procedure at the lowest obtainable price, any supplies or contractual services not exceeding \$5,000.00. The town manager has the authority to act in the case of an emergency that might affect the health, safety and welfare of the town. Such action shall be reported at the next meeting of Wilkesboro Town Council when supplies or services exceed \$5,000.00.

**(b) Head of Department.** In case of actual emergency, and with the prior consent of the town manager and the pre-audit of the finance director, the town department head may purchase directly any supplies whose immediate procurement is essential to prevent delays in the work of the using agency that may vitally affect the life, health or convenience of citizens. The department head shall send to the finance director a requisition and a copy of the delivery record, together with a full written report of the circumstances of the emergency.

| Department Head | Finance Director | Town Manager |
|-----------------|------------------|--------------|
| SIGNATURE:      | SIGNATURE:       | SIGNATURE:   |
| DATE:           | DATE:            | DATE:        |

TO BE FILED WITH THE PAYMENT PACKET – CHECK, PURCHASE ORDER, INVOICE, RECEIVING DOCUMENT(S), THIS FORM, ETC.

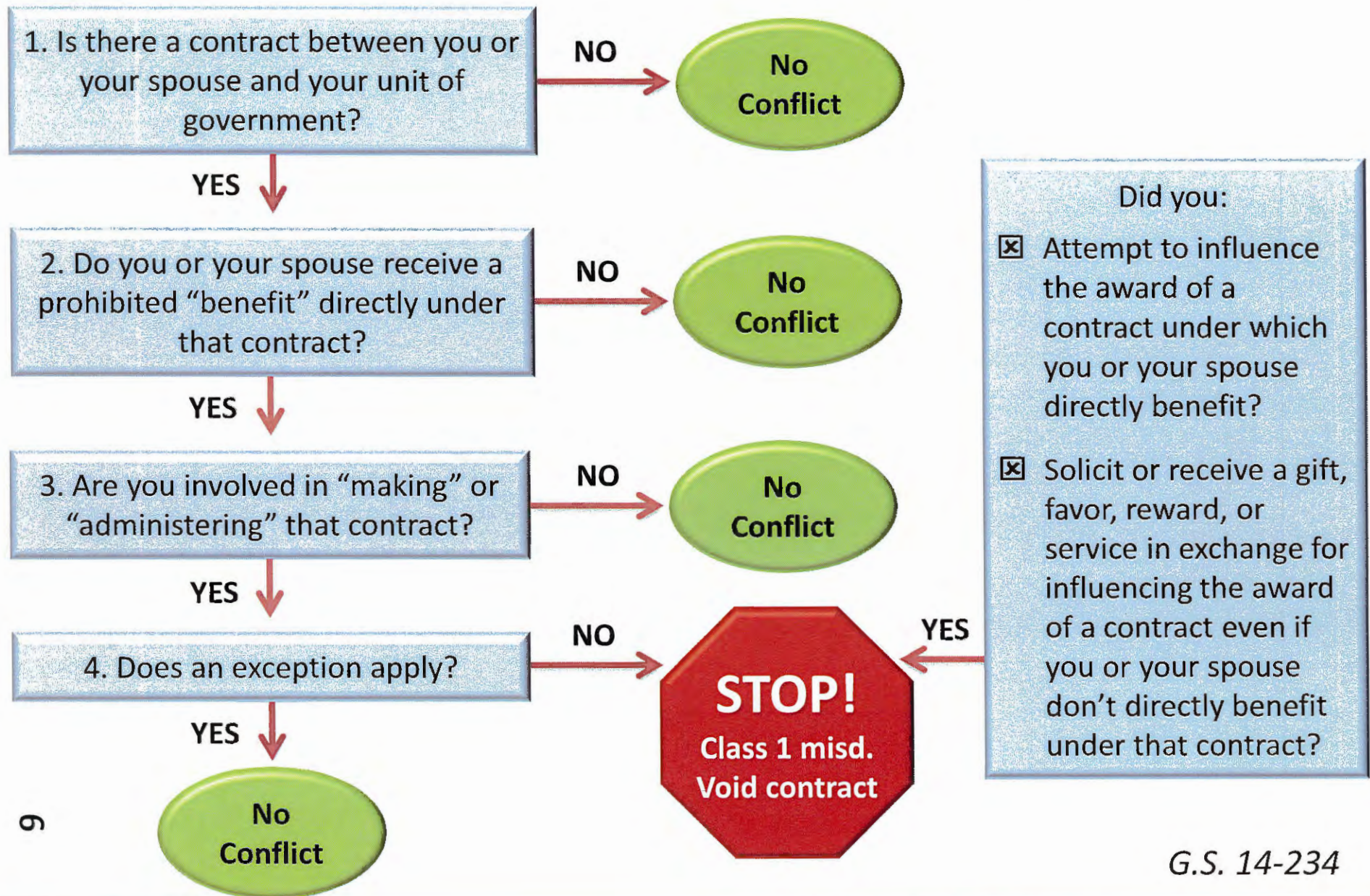
## Awarding Competitively Bid Contracts Lowest Responsive Responsible Bidder Flowchart



### References:

G.S. 143-128, 143-129, 143-131; *Professional Food Services Management v. North Carolina Department of Administration*, 109 N.C. App. 265, 426 S.E.2d 447 (1993); *Kinsey Contracting Co. v. City of Fayetteville*, 106 N.C. App. 383, 416 S.E.2d 607, disc. review denied, 332 N.C. 345, 431 S.E.2d 149 (1992). For additional information, see Frayda S. Bluestein, "Understanding the Responsiveness Requirement in Competitive Bidding," Local Government Law Bulletin No. 102 (May 2002), available at <http://www.sog.unc.edu/pubs/electronicversions/pdfs/lglb102.pdf>.

# Conflicts of Interest in Contracting Decision Tree



G.S. 14-234

# Gifts & Favors Decision Tree

1. Is the giver of the gift ("prohibited giver") a:

- Past (within the previous 12 months),
- Current, or
- Potential future vendor or contractor with your unit?

NO

**CAN accept the gift**

YES

2. Are you involved in preparing or administering a contract (or inspecting or supervising a construction project) with the prohibited giver on behalf of your unit?

NO

**CAN accept the gift**

YES

3. Is there an exception?\*

NO

**STOP!**  
Class 1 misd.

YES

**CAN accept the gift**

**\*Exceptions:**

1. Honoraria
2. Souvenirs/advertising items of nominal value
3. Meals at banquets
4. Gifts to professional organizations
5. Non-business customary gifts from family and friends

*G.S. 133-32*

## North Carolina Public Procurement Requirements: Purchase Contracts

| Contract amount: \$0 → \$30,000 → \$90,000 →                |                                                                                                                                |                                                                                                                                                |                                                                                                                                                                                     |
|-------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Requirements:                                               | No Bidding Requirements                                                                                                        | Informal Bidding Requirements                                                                                                                  | Formal Bidding Requirements                                                                                                                                                         |
| <b>Advertisement</b><br>(G.S. 143-129)                      | G.S. – no ads required<br><i>Local policies may require specific method/timing of ad</i>                                       |                                                                                                                                                | G.S. – newspaper or electronic ads (electronic only requires board approval) for full 7 days before bid opening<br><i>Local policies may require extra time / locations for ads</i> |
| <b>Minimum # of bids</b><br>(G.S. 143-132)                  | G.S. – no minimum<br><i>Local policies may require a minimum</i>                                                               |                                                                                                                                                |                                                                                                                                                                                     |
| <b>Form of bids</b><br>(G.S. 143-129, 143-131)              | G.S. – no specific form required (email, phone, fax, mail all acceptable)<br><i>Local policies may require a specific form</i> |                                                                                                                                                | G.S. – bids must be sealed<br><i>Local policies must comply with G.S.</i>                                                                                                           |
| <b>Record of bids</b><br>(G.S. 143-131)                     | G.S. – not required<br><i>Local policies may require a record</i>                                                              | G.S. – must keep a record of all bids received<br><i>Local policies must comply with G.S.</i>                                                  | G.S. – because bids are public, no separate record is required<br><i>Local policies must comply with G.S.</i>                                                                       |
| <b>Bid opening</b><br>(G.S. 143-129, 143-129.9, 143-131)    | G.S. – public bid opening not required<br><i>Local policies may require public bid opening</i>                                 |                                                                                                                                                | G.S. – public bid opening required, but may use reverse auction or electronic bidding instead<br><i>Local policies must comply with G.S.</i>                                        |
| <b>Bid bonds</b><br>(G.S. 143-129)                          | G.S. – bonds not required<br><i>Local policies may require bonds</i>                                                           |                                                                                                                                                |                                                                                                                                                                                     |
| <b>Performance/payment bonds</b><br>(G.S. 44A-26, 143-129)  | G.S. – bonds not required<br><i>Local policies may require bonds</i>                                                           |                                                                                                                                                |                                                                                                                                                                                     |
| <b>HUB participation goals</b><br>(G.S. 143-128.2, 143-131) | G.S. – not required<br><i>Local policies may require good faith efforts/goals – check with your attorney</i>                   |                                                                                                                                                |                                                                                                                                                                                     |
| <b>Board approval</b><br>(G.S. 143-129, 143-131)            | G.S. – not required<br><i>Local policies may require board approval</i>                                                        |                                                                                                                                                | G.S. – governing board approval required; governing board may delegate approval authority to manager or other employee                                                              |
| <b>Standard of award</b><br>(G.S. 143-129, 143-131)         | G.S. – no standard given<br><i>Local policies may require a specific standard</i>                                              | G.S. – award to lowest responsive, responsible bidder<br><i>Local policies must comply with G.S.</i>                                           |                                                                                                                                                                                     |
| <b>Public records</b><br>(G.S. 132-1, 132-6, 143-131)       | G.S. – bids become public record when received<br><i>Local policies must comply with G.S.</i>                                  | G.S. – record of bids not subject to public inspection until contract award<br><i>Local policies may permit public inspection before award</i> | G.S. – bids become public record once opened<br><i>Local policies must comply with G.S.</i>                                                                                         |

Source: Youens, Eileen, *Local Government Purchasing and Contracting Update: Statutory Requirements and Local Policies*, Local Government Law Bulletin #118, UNC School of Government, February 2009  
Refer to NC General Statute citation ("G.S.") for specific details and exceptions.

## North Carolina Public Procurement Requirements: Building Construction and Repair Contracts

| Contract amount: \$0 → \$30,000 → \$300,000 → \$500,000 → |                                                                                                                                                                  |                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                |                                                                                                                                                                                |
|-----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Requirements:                                             | No Bidding Requirements                                                                                                                                          | Informal Bidding Requirements                                                                                                                                                                                            | HUB & Construction Method Requirements                                                                                                                                                                                                                         | Formal Bidding Requirements                                                                                                                                                    |
| Advertisement<br>(G.S. 143-129)                           | G.S. – no ads required<br><i>Local policies may require specific method/timing of ads</i>                                                                        |                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                | G.S. – newspaper or electronic ads for full 7 days before bid opening (board approval for electronic only)<br><i>Local policies may require extra time / locations for ads</i> |
| Minimum # of bids<br>(G.S. 143-132)                       | G.S. – no minimum<br><i>Local policies may require a minimum</i>                                                                                                 |                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                | G.S. – minimum of three bids is required<br><i>Local policies may require more than three bids</i>                                                                             |
| Form of bids<br>(G.S. 143-129, 143-131)                   | G.S. – no specific form required (email, phone, fax, mail all acceptable)<br><i>Local policies may require a specific form</i>                                   |                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                | G.S. –bids must be sealed<br><i>Local policies <u>must</u> comply with G.S.</i>                                                                                                |
| Record of bids<br>(G.S. 143-129, 143-131)                 | G.S. – not required<br><i>Local policies may require a record</i>                                                                                                | G.S. – must keep a record of all bids received<br><i>Local policies <u>must</u> comply with G.S.</i>                                                                                                                     |                                                                                                                                                                                                                                                                | G.S. – because bids are public, no separate record is required. <i>Local policies <u>must</u> comply with G.S.</i>                                                             |
| Bid opening<br>(G.S. 143-129, 143-131)                    | G.S. – public bid opening not required<br><i>Local policies may require a public bid opening</i>                                                                 |                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                | G.S. – public bid opening required<br><i>Local policies <u>must</u> comply with G.S.</i>                                                                                       |
| Bid bonds/deposit<br>(G.S. 143-129)                       | G.S. – bid bonds not required<br><i>Local policies may require bid bonds</i>                                                                                     |                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                | G.S. – bid bond/deposit (5% of bid amount) required<br><i>Local policies may require more than 5%</i>                                                                          |
| Performance/payment bonds<br>(G.S. 44A-26, 143-129)       | G.S. – performance and payment bonds are not required. <i>Local policies may require bonds</i>                                                                   | G.S. – Performance and payment bonds are required (100% of bid amount) for contracts costing more than \$50,000 that are part of a project costing more than \$300,000. <i>Local policies <u>must</u> comply with GS</i> |                                                                                                                                                                                                                                                                |                                                                                                                                                                                |
| HUB participation goals<br>(G.S. 143-128.2, 143-131)      | G.S. – not required unless part of State-funded project worth \$100,000 or more<br><i>Local policies may require good faith efforts/goals for other projects</i> | G.S. – document good faith efforts; report to HUB<br><i>Local policies <u>must</u> comply with G.S.</i>                                                                                                                  | G.S. – good faith efforts to reach goals; bidders must submit affidavits so local government can verify bidders' good faith efforts; report to HUB<br><i>Local policies <u>must</u> comply with G.S.</i>                                                       |                                                                                                                                                                                |
| Separate specifications<br>(G.S. 143-128)                 | G.S. – separate specs not required <i>Local policies may require separate specs</i>                                                                              |                                                                                                                                                                                                                          | G.S. – separate specs required for plumbing, electrical, HVAC, and general<br><i>Local policies may require additional specs</i>                                                                                                                               |                                                                                                                                                                                |
| Licensed contractor<br>(G.S. 87-1, 87-1.1, 143-139.1)     | G.S. – must use licensed general contractor if part of a project worth more than \$30K<br><i>Local policies <u>must</u> comply with G.S.</i>                     |                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                |                                                                                                                                                                                |
| Construction methods<br>(G.S. 143-128)                    | G.S. – no specific methods must be used<br><i>Local policies may require specific methods</i>                                                                    |                                                                                                                                                                                                                          | G.S. – must use single-prime, separate-prime, dual prime, or construction management at risk; alternate methods may only be used if approved by the State Building Commission or authorized by local act<br><i>Local policies <u>must</u> comply with G.S.</i> |                                                                                                                                                                                |
| Board approval<br>(G.S. 143-129, 143-131)                 | G.S. – not required <i>Local policies may require board approval</i>                                                                                             |                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                | G.S. – board approval required; cannot be delegated<br><i>Local policies <u>must</u> comply with G.S.</i>                                                                      |
| Standard of award<br>(G.S. 143-129, 143-131)              | G.S. – no standard given<br><i>Local policies may require a specific standard</i>                                                                                | G.S. – award to lowest responsive, responsible bidder<br><i>Local policies <u>must</u> comply with G.S.</i>                                                                                                              |                                                                                                                                                                                                                                                                |                                                                                                                                                                                |
| Public records<br>(G.S. 132-1, 132-6, 143-131)            | G.S. – bids become public record when received. <i>Local policies <u>must</u> comply with G.S.</i>                                                               | G.S. – record of bids not subject to public inspection until contract award<br><i>Local policies may permit public inspection before award</i>                                                                           |                                                                                                                                                                                                                                                                | G.S. – bids become public record once opened<br><i>Local policies <u>must</u> comply with G.S.</i>                                                                             |

Source: Youens, Eileen, *Local Government Purchasing and Contracting Update: Statutory Requirements and Local Policies*, Local Government Law Bulletin #118, UNC School of Government, February 2009.  
Refer to NC General Statute citation ("G.S.") for specific details and exceptions.

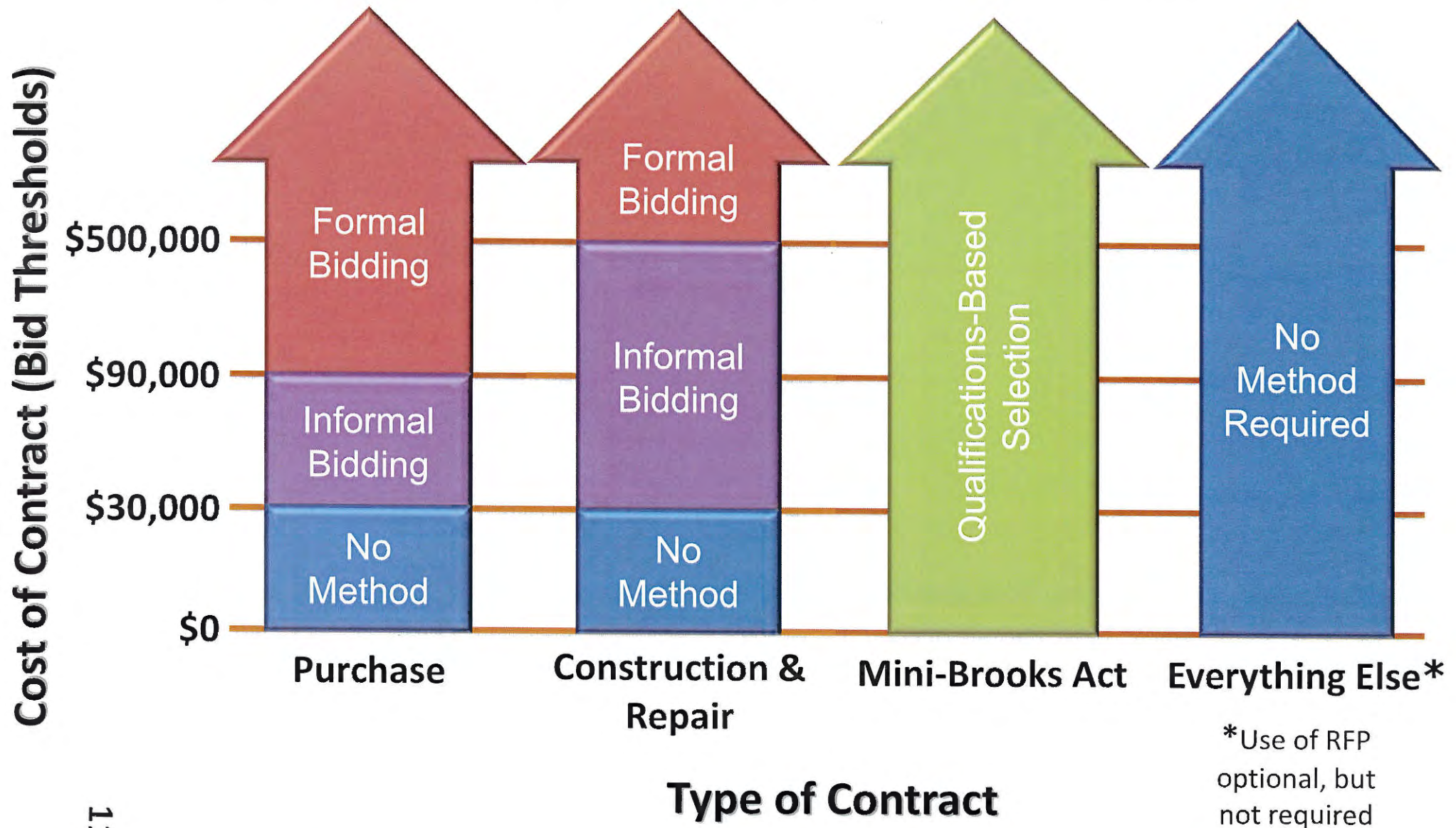
## North Carolina Public Procurement Requirements: Construction and Repair Contracts

| Contract amount: \$0 —————→ \$30,000 —————→ \$500,000 —————→ |                                                                                                                                                         |                                                                                                                                                               |                                                                                                                                                                                |
|--------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Requirements:                                                | No Bidding Requirements                                                                                                                                 | Informal Bidding Requirements                                                                                                                                 | Formal Bidding Requirements                                                                                                                                                    |
| <b>Advertisement</b><br>(G.S. 143-129)                       | G.S. – no ads required<br><i>Local policies may require specific method/timing of ad</i>                                                                |                                                                                                                                                               | G.S. – newspaper or electronic ads for full 7 days before bid opening (board approval for electronic only)<br><i>Local policies may require extra time / locations for ads</i> |
| <b>Minimum # of bids</b><br>(G.S. 143-132)                   | G.S. – no minimum<br><i>Local policies may require a minimum</i>                                                                                        |                                                                                                                                                               | G.S. – minimum of three bids is required<br><i>Local policies may require more than three bids</i>                                                                             |
| <b>Form of bids</b><br>(G.S. 143-129, 143-131)               | G.S. – no specific form required (email, phone, fax, mail all acceptable)<br><i>Local policies may require a specific form</i>                          |                                                                                                                                                               | G.S. – bids must be sealed<br><i>Local policies must comply with G.S.</i>                                                                                                      |
| <b>Record of bids</b><br>(G.S. 143-129, 143-131)             | G.S. – not required<br><i>Local policies may require a record</i>                                                                                       | G.S. – must keep a record of all bids received<br><i>Local policies must comply with G.S.</i>                                                                 | G.S. – because bids are public, no separate record is required<br><i>Local policies must comply with G.S.</i>                                                                  |
| <b>Bid opening</b><br>(G.S. 143-129, 143-131)                | G.S. – public bid opening not required<br><i>Local policies may require public bid opening</i>                                                          |                                                                                                                                                               | G.S. – public bid opening required<br><i>Local policies must comply with G.S.</i>                                                                                              |
| <b>Bid bonds/deposit</b><br>(G.S. 143-129)                   | G.S. – bid bonds not required<br><i>Local policies may require bid bonds</i>                                                                            |                                                                                                                                                               | G.S. – bid bond/deposit (5% of bid amount) are required<br><i>Local policies may require more than 5%</i>                                                                      |
| <b>Performance/payment bonds</b><br>(G.S. 44A-26, 143-129)   | G.S. – performance and payment bonds are not required<br><i>Local policies may require bonds</i>                                                        | G.S. – Performance and payment bonds are required (100% of bid amount) for contracts costing more than \$300,000<br><i>Local policies must comply with GS</i> |                                                                                                                                                                                |
| <b>HUB participation goals</b><br>(G.S. 143-128.2, 143-131)  | G.S. – not required<br><i>Local policies may require good faith efforts/goals – consult local attorney</i>                                              |                                                                                                                                                               |                                                                                                                                                                                |
| <b>Separate specifications</b><br>(G.S. 143-128)             | G.S. – separate specifications not required<br><i>Local policies may require separate specifications</i>                                                |                                                                                                                                                               |                                                                                                                                                                                |
| <b>Licensed contractor</b><br>(G.S. 87-1, 87-1.1, 143-139.1) | G.S. – must use a licensed general contractor if the contract is part of a project worth more than \$30K<br><i>Local policies must comply with G.S.</i> |                                                                                                                                                               |                                                                                                                                                                                |
| <b>Construction methods</b><br>(G.S. 143-128)                | G.S. – no specific methods must be used<br><i>Local policies may require specific methods – consult local attorney</i>                                  |                                                                                                                                                               |                                                                                                                                                                                |
| <b>Board approval</b><br>(G.S. 143-129, 143-131)             | G.S. – not required<br><i>Local policies may require board approval</i>                                                                                 |                                                                                                                                                               | G.S. – board approval required; cannot be delegated<br><i>Local policies must comply with G.S.</i>                                                                             |
| <b>Standard of award</b><br>(G.S. 143-129, 143-131)          | G.S. – no standard given<br><i>Local policies may require a specific standard</i>                                                                       | G.S. – award to lowest responsive, responsible bidder<br><i>Local policies must comply with G.S.</i>                                                          |                                                                                                                                                                                |
| <b>Public records</b><br>(G.S. 132-1, 132-6, 143-131)        | G.S. – bids become public record when received<br><i>Local policies must comply with G.S.</i>                                                           | G.S. – record of bids not subject to public inspection until contract award<br><i>Local policies may permit public inspection before award</i>                | G.S. – bids become public record once opened<br><i>Local policies must comply with G.S.</i>                                                                                    |

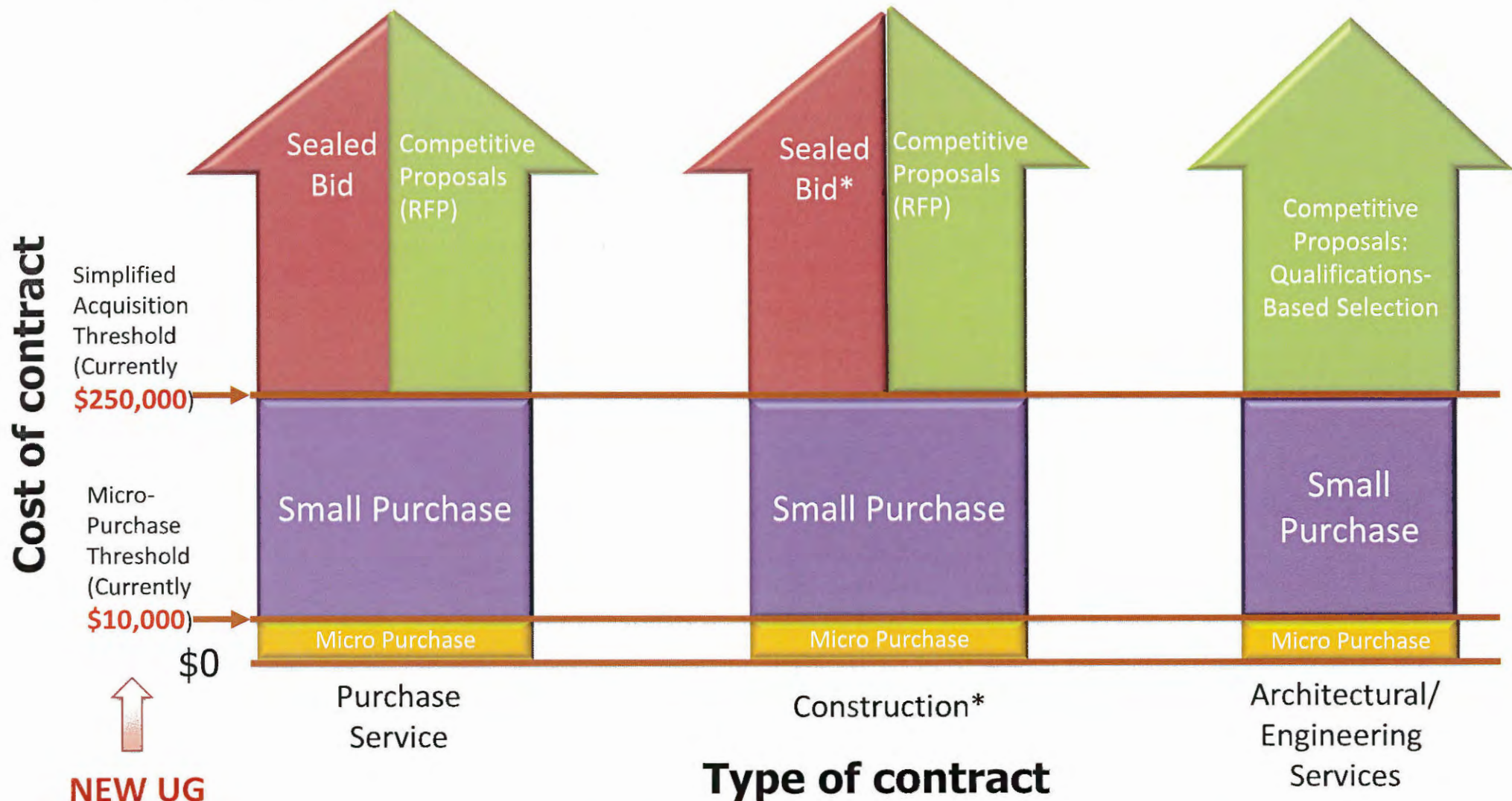
\* \* \* See next page for additional requirements for construction and repair contract involving **buildings** \* \* \*

Source: Youens, Eileen, *Local Government Purchasing and Contracting Update: Statutory Requirements and Local Policies*, Local Government Law Bulletin #118, UNC School of Government, February 2009.  
Refer to NC General Statute citation ("G.S.") for specific details and exceptions.

# Procurement Methods – State Law

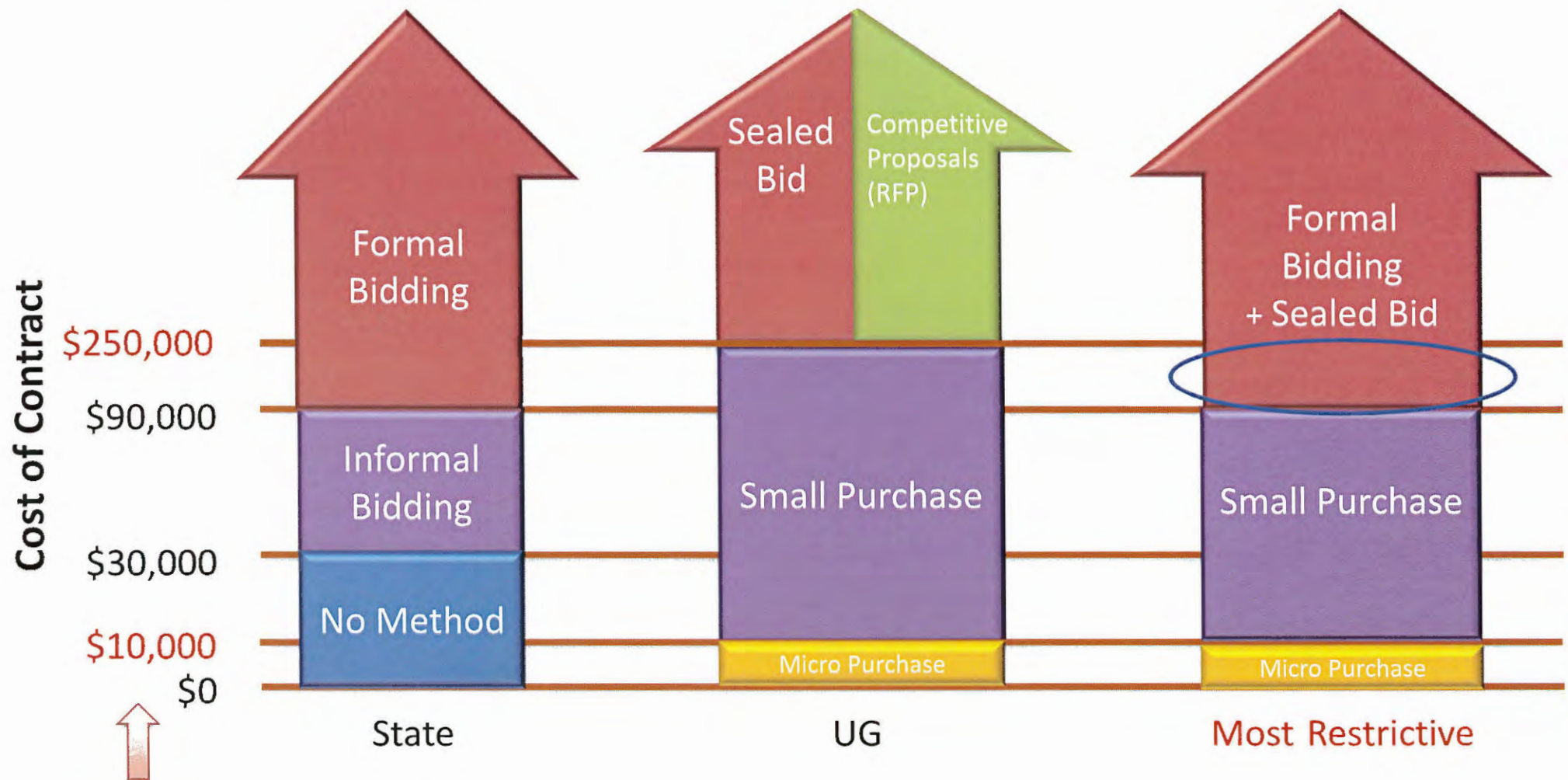


# Procurement Methods – UG



\* **Sealed bid** is preferred method for construction; may use **competitive proposals** when sealed bidding not appropriate

# Purchase AND Service Contracts



**NEW UG  
THRESHOLDS!**

13

*Even when generally following federal rules, some specific state requirements may still apply and vice versa.*



## **“Most Restrictive Rule” Procurement Requirements under the Federal Uniform Guidance for North Carolina Local Governments**

This document applies the “most restrictive rule” to procurement requirements for North Carolina local governments when expending federal financial assistance (grant and loan funds) subject to the federal Uniform Guidance (2 C.F.R. 200, Subpart D) (“UG”). When expending federal grant and loan funds, local governments are required to follow their “own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.” (2 C.F.R. §200.318(a)) In other words, local governments must comply with the “most restrictive” procurement requirements of both federal and state law as well as their own local policies.

For each category of contract listed below, the bidding requirements summarized are those which are the most restrictive under both North Carolina state law and the UG. **Local governments should consult with their federal grantor agency to confirm the applicability of the UG and any additional requirements imposed by the grantor agency.** Local governments should also consult with their own attorneys to ensure compliance with all contract requirements. **To the extent that a local government’s local procurement policies impose requirements that are more restrictive than either the UG or state law, local policies must also be followed.**

|                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>SERVICE CONTRACTS (except for A/E professional services) AND PURCHASE CONTRACTS</b><br>(purchasing apparatus, supplies, materials, or equipment) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|

### Costing less than \$10,000

Follow the UG “micro-purchase” procedure (2 C.F.R. § 200.320(a)):

- Contract can be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
- To the extent practicable, must distribute micro-purchases among qualified suppliers.

### Costing \$10,000 up to \$90,000

Follow the UG “small purchase” procedure (2 C.F.R. § 200.320(b)):

- Obtain price or rate quotes from an “adequate number” of qualified sources (note that federal grantor agencies might issue guidance interpreting “adequate number”).
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)
- Cost or price analysis is not required prior to soliciting bids.

## "Most Restrictive Rule" Procurement Requirements under the Federal Uniform Guidance for North Carolina Local Governments

- Award contract on a fixed-price or not-to-exceed basis.
- Contract must be in writing and include applicable UG contract provisions.
- Award the contract to the lowest responsive, responsible bidder.
- Document procurement procedures (similar to keeping a record of bids as required under state law for informal bidding; see G.S. 143-131).
- Do not divide the contract for the purpose of evading competitive bidding requirements.

### Costing \$90,000 and above

Follow combination of state formal bidding procedure (G.S. 143-129) and UG "sealed bid" procedure requirements (2 C.F.R. § 200.320(c)):

- Cost or price analysis is required prior to soliciting bids.
- Complete specifications or purchase description must be made available to all bidders.
- Formally advertise bid in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. Advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids for "sound documented reasons."
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)
- Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement; bids must be submitted sealed; the local government must receive a minimum of 2 bids in order to open all bids.
- Award contract on a firm fixed-price basis.
- Contract must be in writing and include applicable UG contract provisions.
- Award the contract to the lowest responsive, responsible bidder; governing board approval is required unless the governing board has delegated award authority to an individual official or employee.
- Document procurement procedures.
- Do not divide the contract for the purpose of evading competitive bidding requirements.

*Note Regarding Service Contracts Costing \$90,000 and above: Local government service contracts are not subject to state competitive bidding requirements. If a local government does not require competitive proposals (RFPs) for service contracts under its local policy, it may choose to follow the UG small purchase procedure for service contracts costing \$10,000 up to \$250,000, and then follow the UG sealed bid or competitive proposal method for service contracts costing \$250,000 or more. If the local policy regarding service contracts is more restrictive, the local policy should be followed.*

## “Most Restrictive Rule” Procurement Requirements under the Federal Uniform Guidance for North Carolina Local Governments

### CONSTRUCTION AND REPAIR CONTRACTS

#### Costing less than \$10,000

Follow the UG “micro-purchase” procedure (2 C.F.R. § 200.320(a)):

- Contract can be awarded without soliciting pricing or bids if the price of the contract is considered to be fair and reasonable.
- To the extent practicable, must distribute micro-purchases among qualified suppliers.

#### Costing \$10,000 up to \$250,000

Follow the UG “small purchase” procedure (2 C.F.R. § 200.320(b)) (*note: some federal agencies may require the “sealed bid” method for contracts in this category*):

- Obtain price or rate quotes from an “adequate number” of qualified sources (note that federal grantor agencies might issue guidance interpreting “adequate number”)
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers (2 C.F.R. § 200.321).
- Cost or price analysis is not required prior to soliciting bids.
- Award contract on a fixed-price or not-to-exceed basis.
- Contract must be in writing and include applicable UG contract provisions.
- Award the contract to the lowest responsive, responsible bidder.
- Document procurement procedures (similar to keeping a record of bids as required under state law for informal bidding; see, G.S. 143-131).
- Do not divide the contract for the purpose of evading competitive bidding requirements.

#### Costing \$250,000 up to \$500,000

Follow the UG “sealed bid” procedure requirements (2 C.F.R. § 200.320(c)):

- Cost or price analysis is required prior to soliciting bids (typically this cost estimate will be provided by the project designer).
- Complete specifications or purchase description must be made available to all bidders.
- Publically advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids (formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). Advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)
- Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement; bid must be submitted sealed; local government must receive a minimum of 2 bids in order to open all bids.

## "Most Restrictive Rule" Procurement Requirements under the Federal Uniform Guidance for North Carolina Local Governments

- 5% bid bond is required of all bidders; performance and payment bonds of 100% of the contract price is required of the winning bidder.
- Award contract on a firm fixed-price basis.
- Contract must be in writing and include applicable UG contract provisions.
- Award the contract to the lowest responsive, responsible bidder; the unit may reject any and all bids only for "sound documented reasons."
- Document procurement procedures.
- Do not divide the contract for the purpose of evading competitive bidding requirements.

### Costing \$500,000 or more

Follow combination of state formal bidding procedure (G.S. 143-129) and UG "sealed bid" procedure requirements (2 C.F.R. § 200.320(c)):

- Cost or price analysis is required prior to soliciting bids (typically this cost estimate will be provided by the project designer).
- Complete specifications or purchase description must be made available to all bidders.
- Formally advertise bid in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. Advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)
- Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement; bids must be submitted sealed and in paper form; local government must receive a minimum of 3 bids in order to open all bids.
- 5% bid bond is required of all bidders (a bid that does not include a bid bond cannot be counted toward the 3-bid minimum requirement); performance and payment bonds of 100% of the contract price is required of the winning bidder.
- Award contract on a firm fixed-price basis.
- Contract must be in writing and include applicable UG contract provisions.
- Award the contract to the lowest responsive, responsible bidder; governing board approval is required and cannot be delegated; governing board may reject and all bids only for "sound documented reasons."
- Document procurement procedures.
- Do not divide the contract for the purpose of evading competitive bidding requirements.

## “Most Restrictive Rule” Procurement Requirements under the Federal Uniform Guidance for North Carolina Local Governments

### Projects involving a building costing \$300,000 or more

In addition to the requirements listed above for the applicable cost category, also comply with additional state requirements:

- Formal HUB (historically underutilized business) participation requirements, including bidder good faith efforts. (G.S. 143-128.2)
- Separate specifications must be drawn for the HVAC, electrical, plumbing, and general (G.S. 143-128(a))
- Project must be bid using an authorized bidding method (separate-prime, single-prime, or dual bidding). (G.S. 143-129(a1))
- Local government must adopt dispute resolution procedures (*this requirement applies to ALL construction or repair projects involving a building, regardless of cost*). (G.S. 143-128(g))

|                                                                   |
|-------------------------------------------------------------------|
| <b>CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES (A/E)</b> |
|-------------------------------------------------------------------|

### Costing under \$250,000

Follow the state “Mini-Brooks” qualifications-based selection procedure (G.S. 143-64.31)

- Issue RFQ to solicit qualifications from qualified firms.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)
- Evaluate qualifications of respondents.
- Rank respondents based on qualifications and select best qualified firm; price cannot be a factor in the evaluation
- Negotiate fair and reasonable compensation.
- Award contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.
- Contract must be in writing and include applicable UG contract provisions.
- Preference may be given to in-state firms.
- NOTE: The authority to exempt contracts costing less than \$50,000 under G.S. 143-64.32 is not allowed under the UG.

### Costing \$250,000 or more

Follow the UG “competitive proposal” procedure (2 C.F.R. § 200.320(d)(5))

- Publicly advertise Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required).
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)

## "Most Restrictive Rule" Procurement Requirements under the Federal Uniform Guidance for North Carolina Local Governments

- Identify evaluation criteria and relative importance of each criteria in the RFQ.
- Proposals must be solicited from an "adequate number of qualified sources"; note that an individual federal grantor agency may issue guidance interpreting "adequate number."
- Must have written method for conducting technical evaluations of proposals and selecting the best qualified firm.
- Consider all responses to the publicized RFQ to the maximum extent practical.
- Evaluate qualifications of respondents to rank respondents and select the most qualified firm.
- Price cannot be a factor in the initial selection of the most qualified firm.
- Once the most qualified firm is selected, fair and reasonable compensation can then be negotiated.
- Award contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.
- Contract must be in writing and include applicable UG contract provisions.
- State licensure requirements apply.
- May use in-state geographic preferences for procuring A/E services, provided that this leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.

### COMPETITIVE PROPOSAL PROCEDURE

In addition to contracts for A/E services, a limited number of other contracts may be entered into under the UG "competitive proposal" procedure (2 C.F.R. § 200.320(d)):

- Contracts for services costing \$250,000 and above if the conditions are not appropriate for the "sealed bid" procedure (*Note: Some federal grantor agencies will approve use of competitive proposal procedure for contracts costing under \$250,000; local governments should consult with their federal grantor agency or state pass-through agency*).
- Contracts for information technology goods and services that would qualify under G.S. 143-129.8.
- Contracts for construction or repair using the design-build or design-build bridging construction delivery method. (G.S. 143-128.1A, -128.1B). If using the competitive proposal method for this category of contracts, state requirements will also apply.

Because of more restrictive state bidding requirements, contracts for the purchase of goods or construction and repair using a traditional bidding method (single-prime, multi-prime, or dual bidding) cannot be procured under the competitive proposal procedure.

## “Most Restrictive Rule” Procurement Requirements under the Federal Uniform Guidance for North Carolina Local Governments

Before using the competitive proposal procedure, confirm with the federal grantor agency.

### Competitive Proposal Procedures:

- Request for Proposals (RFP) must be publicly advertised. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an “adequate number” of qualified firms.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)
- Identify evaluation criteria and relative importance of each criteria in the RFQ.
- Consider all responses to the publicized RFQ to the maximum extent practical.
- Must have written method for conducting technical evaluations of proposals and selecting a contractor.
- Award contract to the responsible firm with most advantageous proposal taking into account price and other factors identified in the RFP. Governing board approval is not required.
- Award contract on a fixed-price or cost-reimbursement basis.
- Contract must be in writing and include applicable UG contract provisions.

## MICROSITE: Local Government Purchasing and Contracting

### FEDERAL PROCUREMENT REQUIREMENTS by Norma R. Houston

The information on this page provides guidance on compliance with the federal Uniform Guidance procurement requirements (2 C.F.R. Part 200, Subpart D) which went into effect on July 1, 2018. These requirements apply to most categories of federal grant and loan funds. When spending federal grant and loan funds, local governments should confirm with their federal grantor agency whether the Uniform Guidance requirements apply and what, if any, additional requirements the federal grantor agency has imposed. Local governments also should consult with their attorneys and auditors to ensure full compliance with the Uniform Guidance requirements.

**NOTE: EFFECTIVE JUNE 20, 2018, OMB HAS INCREASED THE UNIFORM GUIDANCE BID THRESHOLDS.** The micro-purchase threshold is increased from \$3,500 to \$10,000, and the simplified acquisition thresholds is increased from \$150,000 TO \$250,000. A copy of the OMB MEMORANDUM M-18-18 is available in the procurement requirements summaries section of this page. The resources of this page have been updated to reflect the new bid thresholds.

### UNIFORM GUIDANCE (FULL TEXT OF 2 CFR PART 200):

-  **CFR-2014-title2-vol1-part200.pdf**  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/CFR-2014-title2-vol1-part200.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/CFR-2014-title2-vol1-part200.pdf)
-  **Electronic version of Uniform Guidance available at e-CFR**  
[https://www.ecfr.gov/cgi-bin/text-idx?SID=04e61f4e0a8317140a9ec150bb2ac195&mc=true&node=pt2.1.200&rgn=div5#\\_top](https://www.ecfr.gov/cgi-bin/text-idx?SID=04e61f4e0a8317140a9ec150bb2ac195&mc=true&node=pt2.1.200&rgn=div5#_top)

### PROCUREMENT REQUIREMENTS SUMMARIES:

-  **OMB memorandum M-18-18 increasing UG bid thresholds** (effective June 20, 2018)  
<https://www.whitehouse.gov/wp-content/uploads/2018/06/M-18-18.pdf>
-  **Memo #2018-06 UG Procurement Standards final R1.pdf** (guidance from the NC Treasurer's Office on federal Uniform Guidance requirements)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Memo%20%232018-06%20UG%20Procurement%20Standards%20final%20R1.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Memo%20%232018-06%20UG%20Procurement%20Standards%20final%20R1.pdf)
-  **Federal and State Procurement Comparison Chart - General.pdf** (comparison of state and federal procurement requirements)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Federal%20and%20State%20Procurement%20Comparison%20Chart%20-%20General\\_8.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Federal%20and%20State%20Procurement%20Comparison%20Chart%20-%20General_8.pdf)
-  **Most Restrictive Rule summary.pdf** (summary of most restrictive bidding requirements under both UG and state law based on type of contract and cost)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Most%20Restrictive%20Rule%20summary\\_1.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Most%20Restrictive%20Rule%20summary_1.pdf)

<https://www.sog.unc.edu/resources/microsites/local-government-purchasing-and-contracting/>

## **SAMPLE POLICIES AND FORMS:**

-  **Sample UG Procurement Policy.docx** (sample procurement policy developed by the School of Government)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Sample%20UG%20Procurement%20Policy\\_2.docx](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Sample%20UG%20Procurement%20Policy_2.docx)
-  **Sample UG Conflicts and Gifts Policy.docx** (sample conflicts of interest and gift policy developed by the School of Government)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Sample%20UG%20Conflicts%20and%20Gifts%20Policy\\_0.docx](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Sample%20UG%20Conflicts%20and%20Gifts%20Policy_0.docx)
-  **Compliance statement for local procurement policies.docx** (sample compliance statement for local government procurement policies)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Compliance%20statement%20for%20local%20procurement%20policies.docx](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Compliance%20statement%20for%20local%20procurement%20policies.docx)
-  **Price Analysis Sample Form.pdf** (price analysis form used by GoTriangle)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Price%20Analysis%20Sample%20Form.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Price%20Analysis%20Sample%20Form.pdf)
-  **Price Analysis 2 Sample Form.pdf** (price analysis form used by GoTriangle)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Price%20Analysis%202%20Sample%20Form.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Price%20Analysis%202%20Sample%20Form.pdf)
-  **Cost Analysis Template Form.xls** (cost analysis excel worksheet used by GoTriangle)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Cost%20Analysis%20Template%20Form.xls](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Cost%20Analysis%20Template%20Form.xls)
-  **Independent Estimate Guide HCDE internal (swl 7.22.15).docx** (example of independent estimate analysis form provided bu Dr. Jesus Amezuca of the Harris County Department of Education, Texas. If using this form, it should be modified to reflect North Carolina law)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Independent%20Estimate%20Guide\\_HCDE%20internal%20%28swl%207.22.15%29.docx](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Independent%20Estimate%20Guide_HCDE%20internal%20%28swl%207.22.15%29.docx)
-  **Cost or Price Analysis Form HCDE internal (swl revised 7.22.15).docx** (example of cost or price analysis form provided bu Dr. Jesus Amezuca of the Harris County Department of Education, Texas. If using this form, it should be modified to reflect North Carolina law)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Cost%20or%20Price%20Analysis%20Form\\_HCDE%20internal%20%28swl%20revised%207.22.15%29.docx](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Cost%20or%20Price%20Analysis%20Form_HCDE%20internal%20%28swl%20revised%207.22.15%29.docx)

## **CONTRACT PROVISIONS:**

-  **Contract Provisions Appendix II.docx** (full text of required contract provisions under 2 CFR Part 200, Appendix II)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Contract%20Provisions%20Appendix%20II.docx](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Contract%20Provisions%20Appendix%20II.docx)
-  **Contract provisions short version.docx** (sample short form contract provision developed by the School of Government)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Contract%20provisions%20short%20version.docx](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Contract%20provisions%20short%20version.docx)
-  **Vendor Contract Provisions Certifications inc EDGAR HCDE internal (swl 7.7.15).docx** (sample contract provisions provided by Dr. Jesus Amezcua of the Harris County Department of Education, Texas. Local governments should consult with their attorneys in developing contract provisions)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Vendor%20Contract%20Provisions\\_Certifications\\_inc%20EDGAR\\_HCDE%20internal%20%28swl%207.7.15%29.docx](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Vendor%20Contract%20Provisions_Certifications_inc%20EDGAR_HCDE%20internal%20%28swl%207.7.15%29.docx)

## PRESENTATIONS:

-  **UG Procurement Requirements - updated webinar presentation slides.pdf** (presentation slides from School of Government webinar conducted April 24, 2018; updated June 24, 2018 to reflect increase in UG bid thresholds)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/UG%20Procurement%20Requirements%20-%20Updated%20webinar%20presentation%20slides.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/UG%20Procurement%20Requirements%20-%20Updated%20webinar%20presentation%20slides.pdf)
-  **UG webinar Q&A - april2018.pdf** (questions and answers from the School of Government webinar conducted on April 24, 2018)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/UG%20webinar%20Q%26A%20-%20april2018.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/UG%20webinar%20Q%26A%20-%20april2018.pdf)
-  **UG - CAGP Regional Training 2018.pdf** (FAQ's and M/WBE solicitation requirements presented at CAGP regional training fall 2018)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/UG%20-%20CAGP%20Regional%20Training%202018.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/UG%20-%20CAGP%20Regional%20Training%202018.pdf)
-  **UG MWBE Requirements - Coordinators Network June2018 - presentation slides.pdf** (M/WBE solicitation requirements and state HUB requirements)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/UG%20MWBE%20Requirements%20-%20Coordinators%20Network%20June2018%20-%20presentation%20slides.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/UG%20MWBE%20Requirements%20-%20Coordinators%20Network%20June2018%20-%20presentation%20slides.pdf)

## FEMA REQUIREMENTS AND RESOURCES:

More information on FEMA requirements is available at the School of Government's Emergency Management microsite <https://www.sog.unc.edu/resources/microsites/nc-emergency-management>

-  **Federal and State Procurement Comparison Chart - FEMA.pdf** (comparison of UG and FEMA procurement requirements with state law)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Federal%20and%20State%20Procurement%20Comparison%20Chart%20-%20FEMA\\_0.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Federal%20and%20State%20Procurement%20Comparison%20Chart%20-%20FEMA_0.pdf)
-  **FEMA UG Procurement Requirements webinar presentation slides - june2018.pdf** (slides from School of Government webinar on FEMA procurement requirements updated June 24, 2018 to reflect increase in UG bid thresholds)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/FEMA%20UG%20Procurement%20Requirements%20webinar%20presentation%20slides%20-%20june2018\\_1.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/FEMA%20UG%20Procurement%20Requirements%20webinar%20presentation%20slides%20-%20june2018_1.pdf)
-  **FEMA Required Contract Clauses 2 C F R § 200 326 and 2 C F R Part 200 Appendix II FINAL VERSION.pdf** (contract clauses required by FEMA)  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/FEMA%20Required%20Contract%20Clauses%202%20C%20F%20R%20200%20326%20and%202%20C%20F%20R%20Part%20200%20Appendix%20II%20FINAL%20VERSION.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/FEMA%20Required%20Contract%20Clauses%202%20C%20F%20R%20200%20326%20and%202%20C%20F%20R%20Part%20200%20Appendix%20II%20FINAL%20VERSION.pdf)
-  **Top 10 FEMA Grant Procurement Mistakes.pdf**  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/Top%2010%20FEMA%20Grant%20Procurement%20Mistakes.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/Top%2010%20FEMA%20Grant%20Procurement%20Mistakes.pdf)
-  **2017 FEMA Schedule of Equipment Rates 508 FINAL.pdf**  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/2017\\_FEMA\\_Schedule\\_of\\_Equipment\\_Rates\\_508\\_FINAL.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/2017_FEMA_Schedule_of_Equipment_Rates_508_FINAL.pdf)
-  **FEMAPricingGuideforRecipientsandSubrecipients.pdf**  
[https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general\\_media/FEMAPricingGuideforRecipientsandSubrecipients\\_0.pdf](https://www.sog.unc.edu/sites/www.sog.unc.edu/files/general_media/FEMAPricingGuideforRecipientsandSubrecipients_0.pdf)

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

This document compares procurement and contracting requirements for local governments under the federal Uniform Guidance (UG) requirements and that under North Carolina state law. Because this document provides only a summary of federal and state law, local governments should consult with their attorneys and their federal grantor agency to ensure compliance with all applicable laws and regulations.

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | STATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Scope</b></p> <p>Most categories of federal financial assistance (grants and loans) are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance, or UG), codified at 2 C.F.R. Part 200, including Appendix II (required contract clauses) ("UG"). Subpart D (§§200.318-326) sets out procurement standards under federal grants which apply to contracts for services, goods (such as supplies and equipment), and construction or repair. Note that federal agencies may adopt additional requirements and issue guidance interpreting the UG. Local governments should consult directly with their grantor agency for information on agency-specific requirements. UG requirements apply to most – but not all – categories of federal funds. Some categories of federal funds, such as human resources entitlement funds, are exempt. Local governments should assume that the UG applies unless given specific guidance otherwise by their federal grantor agency.</p> <p><i>2 C.F.R. § 200.100; §200.101</i></p> <p>Local governments must follow local policies and applicable state law except to the extent that federal requirements are more restrictive than local policies and state law. If there is an overlap with local, state, and federal rules, and none of the rules are more restrictive than another, the federal rules will apply.</p> <p><i>2 C.F.R. § 200.318(a)</i></p> | <p>State law procurement requirements apply when state or local funds are used, and still apply even when federal funds are used except to the extent that state law is inconsistent with federal law. Most procurement requirements applicable to local governments are provided for under Article 8 of Chapter 143 of the North Carolina General Statutes; specific sections are cited within this document</p> <p>Many local governments have adopted local procurement policies. In addition to complying with state law, a local government must comply with its own procurement policies. Local procurement policies cannot be inconsistent with state or federal law.</p> <p>For more information on local government procurement requirements, see the School of Government's local government procurement website at <a href="http://www.ncpurchasing.unc.edu">www.ncpurchasing.unc.edu</a>.</p> |
| <p style="text-align: center;"><b>Follow the "Most Restrictive Rule" for contracts involving federal funds:</b><br/> <b><i>When comparing state and federal procurement requirements, comply with the requirement that is most restrictive.</i></b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | STATE                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><i>Pre-Solicitation Requirements</i></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                           |
| Maintain a contract administrative system for oversight of contract compliance.<br><i>2 C.F.R. § 200.318(b)</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Not required under state law.                                                                                                                             |
| Avoid unnecessary/duplicative purchases<br><i>2 C.F.R. § 200.318(d)</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Not required under state law.                                                                                                                             |
| Consider consolidating or breaking out procurements to achieve a more economical purchase.<br><i>2 C.F.R. § 200.318(d)</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Not required under state law; note that a contract cannot be divided for the purpose of avoiding competitive bidding requirements.<br><i>G.S. 143-133</i> |
| Analyze benefits of purchase versus lease where appropriate.<br><i>2 C.F.R. § 200.318(d)</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Not required under state law.                                                                                                                             |
| <b>Procurement of Recovered Materials</b> <ul style="list-style-type: none"> <li>Applies to: <ul style="list-style-type: none"> <li>Items where the purchase price exceeds \$10,000 or the value of the quantity procured during the prior fiscal year exceeded \$10,000</li> <li>Items designated by the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247</li> </ul> </li> <li>Requirement: <ul style="list-style-type: none"> <li>Procure such items that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition</li> </ul> </li> </ul> <b>Solid Waste Management Services</b> <ul style="list-style-type: none"> <li>Requirement: Procure solid waste management services in a manner that maximizes energy and resource recovery</li> </ul> <b>Affirmative Procurement Program</b> <ul style="list-style-type: none"> <li>Requirement: Establish an affirmative procurement program for procurement of recovered materials as designated by the EPA</li> </ul> <i>2 C.F.R. § 200.322</i> | Not required under state law.                                                                                                                             |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                            | STATE                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Encouraged to use inter-local and cooperative agreements where appropriate.<br><i>2 C.F.R. § 200.318(e)</i>                                                                                                                                                                                                                                                                        | Not required under state law; interlocal agreements authorized under Article 20 of G.S. Chapter 160A.                                                                                                                                                                                        |
| Encouraged to use federal surplus property where feasible instead of purchasing new property.<br>( <a href="http://www.surpluspropertydivision.com/">http://www.surpluspropertydivision.com/</a> )<br><i>2 C.F.R. § 200.318(f)</i>                                                                                                                                                 | Not required under state law; related exceptions to competitive bidding requirements for purchase contracts include: <ul style="list-style-type: none"> <li>• Purchases from other units of government <i>G.S. 143-129(e)(1)</i></li> <li>• Used items <i>G.S. 143-129(e)(10)</i></li> </ul> |
| Encouraged to use value engineering for construction contracts where applicable.<br><i>2 C.F.R. § 200.318(g)</i>                                                                                                                                                                                                                                                                   | Not required under state law.                                                                                                                                                                                                                                                                |
| Local government is responsible for resolution of all disputes related to the procurement and contract in accordance with good administrative practice and sound business judgment; bid protest procedures not required.<br><i>2 C.F.R. § 200.318(k)</i>                                                                                                                           | Bid protest procedures not required under state law; dispute resolution procedure required for all construction/repair contracts regardless of cost. <i>G.S. 143-128(f1)</i>                                                                                                                 |
| <b>Cost and Price Requirements</b>                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                              |
| Must perform a cost or price analysis for every procurement action above the simplified acquisition threshold (currently \$250,000) or local/state equivalent threshold if more restrictive; requirement also applies to contract modifications. The method and degree of the cost or price analysis is dependent on the facts of the procurement.<br><i>2 C.F.R. § 200.323(a)</i> | Not required under state law.                                                                                                                                                                                                                                                                |
| Must conduct an independent estimate of costs for every procurement action in excess of the simplified acquisition threshold (\$250,000) prior to receiving bids or proposals.<br><i>2 C.F.R. § 200.323(a)</i>                                                                                                                                                                     | Not required under state law.                                                                                                                                                                                                                                                                |
| Must negotiate profit as a separate element of price for each contract when price competition is lacking and in all cases where a cost analysis is performed.<br><i>2 C.F.R. § 200.323(b)</i>                                                                                                                                                                                      | Not required under state law.                                                                                                                                                                                                                                                                |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | STATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Cost or prices based on estimated costs for contracts are only allowable if they are allowable under the cost principles part of the UG located at 2 C.F.R. §§ 200.400-475.<br><i>2 C.F.R. § 200.323(c)</i>                                                                                                                                                                                                                                                                                                                                             | Not required under state law.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Procurement Procedures – General</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>Must ensure full and open competition and avoid measures that restrict competition, including:</p> <ul style="list-style-type: none"> <li>• Unreasonable requirements</li> <li>• Unnecessary experience and bonding requirements</li> <li>• Noncompetitive pricing between companies</li> <li>• Noncompetitive awards to consultants on retainer</li> <li>• Organizational conflicts of interest</li> <li>• Specifying only brand name without permitting equal products</li> <li>• Arbitrary actions</li> </ul> <p><i>2 C.F.R. § 200.319(a)</i></p> | <p>Must comply with all applicable procurement requirements:</p> <ul style="list-style-type: none"> <li>• Purchase and construction/repair contracts in informal bidding range are subject to informal bidding requirements. <i>G.S. 143-131</i></li> <li>• Purchase and construction/repair contracts in the formal bidding range are subject to formal bidding requirements. <i>G.S. 143-129</i></li> <li>• Construction/repair contracts involving buildings costing \$300,000 or more are subject to additional bidding requirements. <i>G.S. 143-128</i></li> <li>• Engineer, architect, survey, and alternative construction delivery methods contracts are subject to the qualifications-based selection process under the Mini-Brooks Act. <i>G.S. 143-64.31</i></li> <li>• Others as applicable under state law.</li> <li>• Limitations on brand name specifications for construction/repair contracts. <i>G.S. 133-3</i></li> </ul> |
| <p>Must have written selection procedures that:</p> <ul style="list-style-type: none"> <li>• incorporate a clear and accurate description of good/service; and</li> <li>• identify all bidder/proposer requirements and all evaluation criteria</li> </ul> <p><i>2 C.F.R. § 200.319(c)</i></p>                                                                                                                                                                                                                                                          | <p>No similar requirement in state law; purchase and construction/repair contracts in the formal bidding range subject to certain public notice requirements under <i>G.S. 143-129(b)</i>; optional RFP procedure for procuring information technology goods and services must include evaluation criteria in the RFP. <i>G.S. 143-129.8</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>If prequalified bidder lists are used, enough qualified firms must be included to ensure maximum competition; cannot preclude potential bidders from qualifying during the solicitation period.</p> <p><i>2 C.F.R. § 200.319(d)</i></p>                                                                                                                                                                                                                                                                                                              | <p>Prequalification not statutorily authorized for purchase contracts or contracts subject to Mini-Brooks Act; bidders may be prequalified for construction projects. <i>G.S. 143-135.8</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | STATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b><u>Procurement Methods</u></b></p> <p><b><u>"Micro-Purchase"</u></b></p> <ul style="list-style-type: none"> <li>• Applies to: <ul style="list-style-type: none"> <li>○ All purchase of goods, service contracts, and construction or repair projects</li> <li>○ Up to the micro-purchase threshold (currently \$10,000) or the equivalent local/state threshold if more restrictive</li> </ul> </li> <li>• Process: Can award contract without competition if price is considered fair and reasonable</li> <li>• Must distribute micro-purchases equitably among qualified suppliers to the extent practicable</li> <li>• Cannot divide contract to lower cost below micro-purchase threshold to avoid competitive bidding requirements</li> </ul> <p><i>2 C.F.R. §§ 200.67, 200.320(a)</i></p> <p><b><u>"Small Purchase" Procedure</u></b></p> <ul style="list-style-type: none"> <li>• Applies to: <ul style="list-style-type: none"> <li>○ All purchase of goods, service contracts, and construction or repair projects</li> <li>○ Up to the simplified acquisition threshold (currently \$250,000) or the equivalent local/state threshold if more restrictive; <u>and</u></li> <li>○ Fixed price or not-to-exceed contract type.</li> </ul> </li> <li>• Process: Obtain price or rate quotes from an adequate number of qualified sources (note: a specific federal grantor agency may issue guidance interpreting "adequate number"); cost or price analysis is not required prior to bidding.</li> <li>• Standard of Award: Lowest cost responsible bidder</li> <li>• Cannot divide contract to bring contract cost under the threshold; changes to contract must fall within scope of original contract.</li> </ul> <p><i>2 C.F.R. §§ 200.88, 200.320(b)</i></p> | <ul style="list-style-type: none"> <li>• No comparable provision in state law.</li> <li>• Purchase and construction contracts costing less than \$30,000 are not subject to state competitive bidding requirements.</li> <li>• Regardless of cost, service contracts are not subject to state competitive bidding requirements.</li> <li>• Cannot divide a contract for the purpose of evading competitive bidding requirements. <i>G.S. 143-133</i></li> </ul> <p><b><u>Informal Bidding Procedure</u></b></p> <ul style="list-style-type: none"> <li>• Applies to: <ul style="list-style-type: none"> <li>○ Purchase of goods costing between \$30,000 and \$90,000</li> <li>○ Construction/repair contracts costing between \$30,000 and \$500,000</li> </ul> </li> <li>• Process: Secure informal bids and keep record of bid; no minimum number of bids required to award contract</li> <li>• Standard of Award: Lowest responsive, responsible bidder</li> <li>• Cannot divide contract for purposes of evading competitive bidding requirements.</li> </ul> <p><i>G.S. 143-131</i></p> |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | STATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p><u>"Sealed Bid" Procedure</u></p> <ul style="list-style-type: none"> <li>• Applies to:               <ul style="list-style-type: none"> <li>○ Purchase and service contracts costing more than the simplified acquisition threshold (currently \$250,000) or the equivalent local/state threshold if more restrictive</li> <li>○ Preferred method for construction contracts costing above the simplified acquisition threshold.</li> </ul> </li> <li>• Conditions for sealed bidding to be feasible               <ul style="list-style-type: none"> <li>○ A complete, adequate, and realistic specification or purchase description is available;</li> <li>○ At least 2 responsible bidders are willing and able to effectively compete;</li> <li>○ Procurement lends itself to a firm fixed price contract and selection can be made principally on the basis of price</li> </ul> </li> <li>• Process:               <ul style="list-style-type: none"> <li>○ Conduct price/cost analysis prior to advertising for bids</li> <li>○ Public advertisement providing sufficient time for bidders to respond before bid opening</li> <li>○ Complete specifications/plans made available to bidders</li> <li>○ At least 2 responsible bidders required for bid opening</li> <li>○ Solicit bids from "adequate number of known suppliers"</li> <li>○ Public bid opening at date and time advertised</li> <li>○ Contract awarded on a firm-fixed-price basis in writing</li> <li>○ Determination of the lowest price must include consideration of factors such as discounts, transportation costs, and lifecycle costs</li> <li>○ Can reject any and all bids for "sound documented reasons"</li> </ul> </li> <li>• Standard of Award: Lowest responsive, responsible bidder<br/><i>2 C.F.R. §§ 200.88, 200.320(c)</i></li> </ul> | <p><u>Formal Bidding Procedure</u></p> <ul style="list-style-type: none"> <li>• Applies to:               <ul style="list-style-type: none"> <li>○ Purchase of goods costing \$90,000 or more</li> <li>○ Construction/repair contract costing \$500,000 or more</li> </ul> </li> <li>• Process:               <ul style="list-style-type: none"> <li>○ Public advertisement for at least 7 full days between the date of the advertisement and the bid opening</li> <li>○ Availability of specifications/plans included in public advertisement</li> <li>○ No minimum number of bids required for purchase contracts; construction/repair contracts require a minimum of 3 bids for opening</li> <li>○ Public bid opening at date and time advertised</li> <li>○ Unit of government reserves the right to reject all bids</li> <li>○ Additional requirements apply if the project involves a building and costs \$300,000 or more</li> <li>○ Contracts must be in writing</li> </ul> </li> <li>• Standard of Award: Lowest responsive, responsible bidder<br/><i>G.S. 143-129</i></li> </ul> |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | STATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <p><u>"Competitive Proposal" Procedure</u></p> <ul style="list-style-type: none"> <li>Applies to: <ul style="list-style-type: none"> <li>Any contract costing more than the simplified acquisition threshold (currently \$250,000) or the equivalent local/state threshold if more restrictive when conditions are not appropriate for the use of sealed bids (such as need for innovative IT proposals or a design-build construction project)</li> </ul> </li> <li>Procedure: <ul style="list-style-type: none"> <li>Request for Proposals (RFP) must be publicly advertised</li> <li>Evaluation criteria and relative importance identified in RFP</li> <li>Any responses to the publicized RFP must be considered to the maximum extent practical</li> <li>Proposals solicited from an "adequate number of qualified sources"</li> <li>Must have written method for conducting technical evaluations of proposals and selecting a contractor</li> </ul> </li> <li>Standard of Award: Responsible firm with most advantageous proposal, taking into account price and other factors identified in the RFP</li> </ul> <p><a href="#">2 C.F.R. § 200.320(d)</a></p> | <ul style="list-style-type: none"> <li>No similar procedure in state law that generally applies to procurement; purchase and construction/repair contracts subject to informal and formal competitive bidding requirements.</li> <li>Qualifications-based selection process required for procuring architectural, engineering, surveying, and construction management-at risk contracts. <a href="#">G.S. 143-64.31</a></li> <li>Optional RFP process authorized for procuring combination of information technology goods and services. <a href="#">G.S. 143-129.8</a></li> <li>RFP process may be used to procure service contracts (service contracts entered into by local governments are not subject to state competitive bidding requirements).</li> <li>Alternative construction delivery methods authorized: <ul style="list-style-type: none"> <li>design-build <a href="#">G.S. 143-128.1A</a></li> <li>design-build bridging <a href="#">G.S. 143-128.1B</a></li> <li>public-private partnership <a href="#">G.S. 143-129.1C</a></li> </ul> </li> </ul> |
| <p><u>Competitive Proposals Procedure for Soliciting Architectural and Engineering (A/E) Services</u></p> <p>Applies to:</p> <ul style="list-style-type: none"> <li>Architectural and Engineering professional services</li> <li>Required above the simplified acquisition threshold (currently \$250,000) or the equivalent local/state threshold if more restrictive; can be used for contracts below that amount</li> </ul> <p>Procedures:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p><u>Qualifications-Based Selection (QBS) Procedure for Soliciting Architectural, Engineering, Surveying, and Construction Management At-Risk Services</u></p> <p>Applies to:</p> <ul style="list-style-type: none"> <li>Architectural, Engineering, Surveying, and Construction Management At-Risk professional services</li> <li>Regardless of cost</li> </ul> <p>Procedures:</p> <ul style="list-style-type: none"> <li>Request for Qualifications (RFQ) is announced to solicit competitive proposals from qualified firms</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | STATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <ul style="list-style-type: none"> <li>Request for Qualifications (RFQ) is issued to solicit competitive proposals from qualified firms</li> <li>RFQs must be publicly advertised</li> <li>Any responses to the publicized RFQ must be considered to the maximum extent practical</li> <li>Proposals solicited from an “adequate number of qualified sources”; note that an individual federal grantor agency may issue guidance interpreting “adequate number.”</li> <li>Must have written method for conducting technical evaluations of proposals and selecting a contractor</li> <li>Qualifications of respondents are evaluated to select the most qualified firm</li> <li>Evaluation criteria and relative importance must be identified in the RFQ; however; price is not a factor in the initial selection of the most qualified firm</li> <li>Once the most qualified firm is selected, fair and reasonable compensation can then be negotiated</li> <li>State licensure requirements apply</li> <li>May use local geographic preferences for the procurement of these specific services, provided that this leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract</li> </ul> <p>Limitations:</p> <ul style="list-style-type: none"> <li>Competitive proposal method for selecting A/E services can only be used for architectural and engineering professional services</li> <li>Cannot be used for other services even if those services can be performed by architectural and engineering firms (such as general consulting services)</li> </ul> <p><i>2 C.F.R. §§ 200.319(b); 200.320(d)(5))</i></p> | <ul style="list-style-type: none"> <li>Qualifications of respondents are evaluated to select the most qualified firm</li> <li>Price cannot be considered a factor in the initial selection of the most qualified firm</li> <li>Once the most qualified firm is selected, fair and reasonable compensation can then be negotiated</li> <li>State licensure requirements apply</li> <li>Preference given for in-state (not local) firms over out-of-state firms</li> </ul> <p>Exception:</p> <ul style="list-style-type: none"> <li>Units of local government may exempt themselves in writing from the QBS requirements if the estimated cost of the contract is less than \$50,000. <i>NOTE: State exemption not recognized under federal law.</i></li> </ul> <p><i>G.S. 143-64.31, -64.32</i></p> |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | STATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <b><u>Exceptions to Procurement Requirements</u></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p>Some programs are exempt from the Uniform Rules requirements such as human services entitlement programs and certain block grants. Local governments should carefully review grant documents to determine whether specific funds are subject to federal procurement requirements.</p> <p><u>2 C.F.R. § 200.100-101</u></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p>See <u>G.S. 143-129(e)</u> for exceptions to competitive bidding requirements for certain purchases and construction/repair contracts. A chart of competitive bidding exceptions available at <a href="http://www.ncpurchasing.unc.edu">www.ncpurchasing.unc.edu</a> under "Tools."</p>                                                                                                                                                                                                                                                                                                                            |
| <p><b><u>"Non-Competitive Proposal" Procedure</u></b></p> <p>Applies to:</p> <ul style="list-style-type: none"> <li>• Solicitation from just one source that fits within one of the following four exceptions: <ul style="list-style-type: none"> <li>○ Item available from only one source;</li> <li>○ Public exigency or emergency will not permit a delay that would result from competitive process;</li> <li>○ Award agency expressly authorizes noncompetitive procurement in response to a written request; or</li> <li>○ Competition deemed inadequate after soliciting from a number of sources using one of the other procurement methods identified in 2 C.F.R. § 200.320(a)-(d) (micro-purchase procedures; small purchase procedures; sealed bidding; or competitive proposals).</li> </ul> </li> </ul> <p>Procedures:</p> <ul style="list-style-type: none"> <li>• Perform independent cost estimate</li> <li>• Perform cost or price analysis if procurement is above the simplified acquisition threshold (currently \$250,000 or the equivalent local/state threshold if more restrictive)</li> <li>• Submit procurement documentation to awarding agency</li> <li>• Negotiate profit as a separate element of the contract price</li> </ul> <p><u>2 C.F.R. § 200.320(f)</u></p> | <p>Related exceptions to competitive bidding requirements under state law:</p> <ul style="list-style-type: none"> <li>• "Sole-source" exception for purchases when (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. <u>G.S. 143-129(e)(6)</u></li> <li>• Emergency purchases and construction/repair contracts in cases of special emergency involving the health and safety of the people or their property. <u>G.S. 143-129(e)(2)</u></li> </ul> |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | STATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <p><u>Using another entity's contracting process:</u> Federal rules do not allow exceptions to the requirements of full and open competition applicable to local governments for using another entity's contracting process:</p> <ul style="list-style-type: none"> <li>• Use of state purchasing program (state contract) is only allowed if state contracts were procured in compliance with the rules applicable to local governments under 2 C.F.R. §§ 200.318-326</li> <li>• Assignment of contract rights (also known as "piggybacking") not allowed</li> <li>• Purchases from group purchasing programs generally not allowed unless qualified as interlocal cooperation.</li> </ul> | <p><u>Using another entities' contracting process:</u> Exceptions to competitive bidding requirements when using another entity's contracting process are:</p> <ul style="list-style-type: none"> <li>• Group purchasing programs <i>G.S. 143-129(e)(3)</i></li> <li>• State and federal contracts <i>G.S. 143-129(e)(9), (9a)</i></li> <li>• Piggy-backing exception <i>G.S. 143-129(g)</i></li> </ul>                                                                                                                                                                  |
| <b>Contract Award Requirements</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>Must award contracts to responsible contractor possessing the ability to perform successfully under the contract, including such factors as integrity, compliance with public policy, record of past performance, and financial and technical resources.<br/><i>2 C.F.R. § 200.318(h)</i></p>                                                                                                                                                                                                                                                                                                                                                                                            | <p>Award to lowest responsive, responsible bidder "taking into consideration quality, performance and the time specified in the proposals for the performance of the contract"; standard of award applied to contracts for purchases and construction/repair in the informal and formal bidding ranges.<br/><i>G.S. 143-129(b); G.S. 143-131</i></p>                                                                                                                                                                                                                     |
| <p>Maintain records of procurement, including rationale for method of procurement, selection of contract type, contractor selection or rejection, and basis for contract price.<br/><i>2 C.F.R. § 200.318(i)</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>No similar requirement in state statutes; record of bids is required for purchase and construction/repair contracts in the informal bidding range (<i>G.S. 143-131</i>), and similar documentation recommended for formal purchase and construction/repair contracts. All bid documents are public records under state Public Records laws and are subject to the records retention schedule developed by the NC Department of Cultural Resources<br/><a href="http://www.records.ncdcr.gov/local/default.htm">http://www.records.ncdcr.gov/local/default.htm</a></p> |
| <p>Cannot award contracts or sub-contracts to companies debarred or suspended by federal or state agency ( <a href="https://www.sam.gov">https://www.sam.gov</a> (federal), <a href="http://www.pandc.nc.gov/actions.asp">http://www.pandc.nc.gov/actions.asp</a> (state)).<br/><i>2 C.F.R. § 200.318(h)</i></p>                                                                                                                                                                                                                                                                                                                                                                            | <p>No similar requirement in state law; no authority for local governments to debar or suspend bidders.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>Contractors, designers, vendors, or suppliers who assist in developing or drafting specifications, requirements, statements of</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <p>No similar prohibition in state law.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | STATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| work, or solicitations for a contract cannot bid on or be awarded the contract.<br><i>2 C.F.R. § 200.319(a)</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Limit use of time and materials contracts to when no other contract is suitable <u>and</u> contract includes a ceiling price that the contractor exceeds at its own risk.<br><i>2 C.F.R. § 200.318(j)</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | While not specifically prohibited under state law, “time-and-materials” contracts are not consistent with the lowest responsive, responsible bidder standard of award for contracts subject to state competitive bidding requirements.                                                                                                                                                                                                                                                                                                                                                                                                             |
| Cannot award “cost plus percentage of cost or percentage of construction cost contracts.”<br><i>2 C.F.R. § 200.323(d)</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | While not specifically prohibited under state law, “cost-plus” contracts are not consistent with the lowest responsive, responsible bidder standard of award for contracts subject to state competitive bidding requirements.                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Local Preferences</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Cannot use in-state or local geographic preferences (except for architectural/engineering services).<br><i>2 C.F.R. § 200.319(b)</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Local preferences not authorized by state statute for any contracts; purchase and construction/repair contracts in the informal and formal bidding ranges must be awarded to the lowest responsive, responsible bidder regardless of geographic location.                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Minority Business Requirements</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>Applies to:</p> <ul style="list-style-type: none"> <li>Generally applies to all contracts regardless of type and cost above the micro-purchase threshold. There may be exceptions depending on facts and circumstances if the procurement fits within the sole source, exigent/emergency circumstances, or federal agency approval exception under 2 C.F.R. §§ 200.320(f)(1)-(3)</li> </ul> <p>Procedures:</p> <p>Take affirmative steps to encourage small and minority firms and women-owned business participation (but no preferences), including <u>all</u> of the following:</p> <ul style="list-style-type: none"> <li>Include on solicitation lists</li> <li>Solicit when such firms are potential bidders</li> <li>Divide total contract requirements where economically feasible to enable more minority participation</li> </ul> | <p>Applies to:</p> <ul style="list-style-type: none"> <li>Building construction and repair projects subject to informal and formal competitive bidding requirements</li> </ul> <p>Procedures:</p> <ul style="list-style-type: none"> <li>Informal good faith solicitation and HUB reporting requirements by local governments for building construction/repair contracts costing between \$30,000 and \$300,000</li> <li>Formal good faith solicitation and reporting requirements by local governments and prime contractors for building construction/repair contracts costing \$300,000 and more.</li> </ul> <p><i>G.S. 143-128.2, -131</i></p> |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | STATE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <ul style="list-style-type: none"> <li>Establish delivery schedules to encourage participation</li> <li>Use SBA and Minority Business Development Agency of US Dept. of Commerce</li> <li>Require prime contractors to take the same affirmative steps.</li> </ul> <p><i>2 C.F.R. § 200.321</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Bonding Requirements</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>Applies to:</p> <ul style="list-style-type: none"> <li>Construction or facility improvement contracts costing more than the simplified acquisition threshold (currently \$250,000) or the equivalent local/state threshold if more restrictive</li> <li>State bonding requirements may be followed in lieu of federal requirements only if the federal grantor agency determines that the federal government's interests are adequately protected.</li> </ul> <p>Bonds Required:</p> <ul style="list-style-type: none"> <li>Bid bond of 5% of bid price for all bidders; and</li> <li>Performance and payment bonds for 100% of contract price for winning bidder</li> </ul> <p>For all other projects:</p> <ul style="list-style-type: none"> <li>Follow local/state bonding requirements</li> </ul> <p><i>2 C.F.R. § 200.325</i></p> | <p>Applies to:</p> <ul style="list-style-type: none"> <li>Construction and repair contracts</li> </ul> <p>Bonds Required:</p> <ul style="list-style-type: none"> <li>Bid Bond – 5% of bid price required for construction/repair bids costing \$500,000 or more</li> <li>Performance and Payment Bonds – 100% of contract price for each contract costing \$50,000 or more that is part of a construction project costing \$300,000 or more</li> </ul> <p><i>G.S. 143-129(b),(c)</i></p> |
| <b>Contract Provisions</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>Include all applicable contract provisions:</p> <ul style="list-style-type: none"> <li>Remedies for breach of contract: Applies to contracts above the simplified acquisition threshold (currently \$250,000) or the equivalent local/state threshold if more restrictive</li> <li>Termination for Cause and Convenience: Applies to contracts above \$10,000</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>No comparable requirement under state law.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                        |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | STATE |
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| <ul style="list-style-type: none"> <li>• Equal Employment Opportunity: Applies to “federally assisted construction contracts” as defined by 41 C.F.R. § 60-1.3, except as otherwise provided under 41 C.F.R. pt. 60</li> <li>• Bacon-Davis Act wage requirements: Applies to all construction contracts above \$2,000</li> <li>• Copeland “Anti-Kickback” Act (40 U.S.C. 3145): Applies to all construction contracts above \$2000</li> <li>• Contract Work Hours and Safety Standards Act: Applies to contracts above \$100,000 involving the employment of mechanics or laborers</li> <li>• Clean Air Act and Federal Water Pollution Control Act: Applies to contracts above \$150,000</li> <li>• Debarment and Suspension: Applies to all contracts and subcontracts</li> <li>• Byrd Anti-Lobbying Amendment: Applies to contracts above \$100,000</li> <li>• Procurement of Recovered Materials: Applies to procurement of prime contracts and subcontracts</li> </ul> <p>Additional provisions often required:</p> <ul style="list-style-type: none"> <li>• Changes: Applies to all contracts</li> <li>• Access to Records: Applies to all contracts</li> <li>• Compliance with Federal Law, Regulations, and Executive Orders: Applies to all contracts</li> <li>• No Obligation by Federal Government: Applies to all contracts</li> <li>• Program Fraud and False or Fraudulent Statements or Related Acts: Applies to all contracts</li> <li>• Socioeconomic Contracting: May want to include as a provision in prime contracts since prime contractors must take the same affirmative steps regarding socioeconomic contracting per 2 C.F.R. § 200.321(b)(6)</li> </ul> <p><i>2 C.F.R. § 200.326; 2 C.F.R. pt. 200, App. II</i></p> |       |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | STATE                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Access to Records</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                |
| <p>Solicitation Documents</p> <ul style="list-style-type: none"> <li>Requirement: Must make technical specifications on proposed procurements available to federal or state agency upon request</li> <li>Timing: Generally prior to the time the specification is incorporated into a solicitation document</li> </ul> <p>Procurement Documents</p> <ul style="list-style-type: none"> <li>Requirement: Must make procurement documents, such as requests for proposals or invitations for bids or independent cost estimates, available to state or federal agency upon request</li> <li>May be exempted from review if state or federal agency determines the recipient's procurement system complies with the UG procurement standards</li> </ul> <p><i>2 C.F.R. §200.324</i></p> | <p>No comparable requirement under state law. All bid documents are public records under state Public Records laws and are subject to the records retention schedule developed by the NC Department of Cultural Resources <a href="http://www.records.ncdcr.gov/local/default.htm">http://www.records.ncdcr.gov/local/default.htm</a>.</p>                     |
| <b>Disposal of Property</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                |
| <p>Disposal instructions provided by federal granting agency.</p> <p><i>2 C.F.R. §200.310-316</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>Most local governments are subject to the property disposal requirements of Article 12, Chapter 160A.</p>                                                                                                                                                                                                                                                   |
| <b>Conflicts of Interest (See detailed charts on pages 15-16)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                |
| <p>Develop and follow a written code of standards of conduct addressing conflicts of interest and gifts from contractors. Written standards of conduct must provide for disciplinary actions for violations of such standards. Actual, apparent, or potential conflicts of interest must be disclosed in writing to the federal award agency.</p> <p><i>2 C.F.R. § 200.318(c)(1); 2 C.F.R. § 200.112</i></p>                                                                                                                                                                                                                                                                                                                                                                         | <ul style="list-style-type: none"> <li>Governing boards must have a local code of ethics</li> <li><i>G.S. 14-234</i> prohibits conflicts of interest in public contracting</li> <li><i>G.S. 133-32</i> prohibits certain gifts from contractors</li> <li><i>G.S. 14-234.1</i> prohibits use of confidential information for personal pecuniary gain</li> </ul> |
| <p>Written standards of conduct must also cover organizational conflicts of interest if the local government has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe.</p> <p><i>2 C.F.R. § 200.318(c)(2)</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>No comparable requirement under state law; local governments may impose conflicts of interest requirements on grant recipients as a condition of award of grant funds.</p>                                                                                                                                                                                  |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

| FEDERAL                                                                                                                                                                    | STATE                                                                                                                                                                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Violations of standards of conduct may result in loss of federal funds and disciplinary action under local policy.<br><i>See 2 C.F.R. § 200.318(c); 2 C.F.R. § 200.338</i> | Violations of statutory prohibitions punishable as a Class 1 misdemeanor; in addition, a contract entered into in violation of G.S. 14-234 is void and unenforceable. |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

### Conflicts of Interest (UG vs. state law)

|                       | Federal (UG)<br>(2 C.F.R. § 200.318(c)(1))                                                                                                                                           | State<br>(G.S. 14-234(a)(1))                                                                                                                                                                             |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Who is covered        | Officers, employees, and agents of recipient and subrecipient                                                                                                                        | Officers, employees                                                                                                                                                                                      |
| Who else is covered   | Spouse, immediate family, partners, current or soon-to-be employer                                                                                                                   | Spouse                                                                                                                                                                                                   |
| What kind of interest | Real or apparent financial or other interest or personal tangible benefit                                                                                                            | Direct benefit                                                                                                                                                                                           |
| Exceptions            | Financial interest that is not substantial                                                                                                                                           | <ol style="list-style-type: none"> <li>1. Banks &amp; utilities</li> <li>2. Friendly condemnation</li> <li>3. Spouse employment</li> <li>4. Public assistance</li> <li>5. Small jurisdictions</li> </ol> |
| Penalties             | <ol style="list-style-type: none"> <li>1. Loss of federal funds</li> <li>2. Disciplinary action</li> <li>3. Other remedies for noncompliance listed at 2 C.F.R. § 200.338</li> </ol> | <ol style="list-style-type: none"> <li>1. Class 1 misdemeanor</li> <li>2. Void Contract</li> </ol>                                                                                                       |

## Comparison of Federal Uniform Guidance and State Procurement Requirements For North Carolina Local Governments

### Gift Ban (UG vs. state law)

|                     | Federal (UG)<br>(2 C.F.R. § 200.318(c)(1))                                                                                                                                           | State<br>(G.S. 133-32)                                                                                                                                                                                      |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Prohibited giver    | Current or future contractor or vendor                                                                                                                                               | Past (w/in 1 year), present, or future contractor or vendor                                                                                                                                                 |
| Prohibited receiver | All officers, employees, agents of recipients and subrecipients                                                                                                                      | Officers and employees involved in: <ol style="list-style-type: none"> <li>1. Preparing plans</li> <li>2. Awarding or administering contracts</li> <li>3. Inspecting or supervising construction</li> </ol> |
| Exceptions          | Unsolicited gift of nominal value                                                                                                                                                    | <ol style="list-style-type: none"> <li>1. Honoraria</li> <li>2. Nominal advertising items</li> <li>3. Meals at banquets</li> <li>4. Professional groups</li> <li>5. Family and friends</li> </ol>           |
| Penalties           | <ol style="list-style-type: none"> <li>1. Loss of federal funds</li> <li>2. Disciplinary action</li> <li>3. Other remedies for noncompliance listed at 2 C.F.R. § 200.338</li> </ol> | Class 1 misdemeanor                                                                                                                                                                                         |

For more information, see the US Chief Financial Officers uniform guidance website (<https://cfo.gov/grants/uniform-guidance/>) and the SOG's local government procurement website ([www.ncpurchasing.unc.edu](http://www.ncpurchasing.unc.edu))

## Property Disposal Options For North Carolina Local Governments

| General Disposal Methods                                                                                                                  | Personal Property<br>UNDER \$30,000 | Personal Property<br>OVER \$30,000 | ALL Real<br>Property     |
|-------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|------------------------------------|--------------------------|
| <b>Sale</b>                                                                                                                               |                                     |                                    |                          |
| Competitive sale by public auction ( <i>G.S. 160A-270</i> ); sealed bid ( <i>G.S. 160A -268</i> ), or upset bid ( <i>G.S. 160A-269</i> )  | Yes                                 | Yes                                | Yes                      |
| Private negotiated sale with governing board approval ( <i>G.S. 160A-266(b) and 160A-277</i> ), or by local policy ( <i>160A-266(c)</i> ) | Yes                                 | No                                 | No                       |
| <b>Exchange</b>                                                                                                                           |                                     |                                    |                          |
| Exchange with public and private entities ( <i>G.S. 160A-271</i> )                                                                        | Yes                                 | Yes                                | Yes                      |
| <b>Lease</b>                                                                                                                              |                                     |                                    |                          |
| Lease with term over 10 years treated as sale of property ( <i>G.S. 160A-272</i> )                                                        | Yes                                 | Yes                                | Yes                      |
| <b>Discard</b>                                                                                                                            |                                     |                                    |                          |
| Discard because has no value, unable to sell, or poses threat to public health or safety ( <i>G.S. 160A-266(d)</i> )                      | Yes                                 | Yes                                | No                       |
| Raffle surplus property ( <i>G.S. 14-309.15</i> )                                                                                         | Yes                                 | Yes<br>(\$125,000 limit)           | Yes<br>(\$500,000 limit) |
| <b>Donate</b>                                                                                                                             |                                     |                                    |                          |
| Donate to non-profits, sister cities, and other units of government – does not apply to schools ( <i>G.S. 160A-280</i> )                  | Yes                                 | Yes                                | No                       |
| Donate or sell to public and private entities for continued public use – cities and counties only ( <i>G.S. 160A-279</i> )                | Yes                                 | Yes                                | Yes                      |
| <b>Convey to other units of government</b>                                                                                                |                                     |                                    |                          |
| Convey to other units of government in NC under conditions “deemed wise” by governing boards ( <i>G.S. 160A-274</i> )                     | Yes                                 | Yes                                | Yes                      |
| <b>Trade-In</b>                                                                                                                           |                                     |                                    |                          |
| Trade-in included as part of bidding process for purchases of apparatus, supplies, materials, or equipment ( <i>G.S. 143-129.7</i> )      | Yes                                 | Yes                                | No                       |

## Property Disposal Options For North Carolina Local Governments

| Special Conveyances Not Requiring Competitive Sale                                                                                                            | Personal Property<br>UNDER \$30,000 | Personal Property<br>OVER \$30,000 | All Real<br>Property |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|------------------------------------|----------------------|
| Sell artistic, historic, or scenic property to non-profit or trust for conservation or preservation ( <i>G.S. 160A-266(b)</i> )                               | Yes                                 | Yes                                | Yes                  |
| Lease property for affordable housing ( <i>G.S. 160A-278</i> )                                                                                                | No                                  | No                                 | Yes                  |
| Sell property for affordable housing <ul style="list-style-type: none"> <li>Counties (<i>G.S. 153A-378</i>)</li> <li>Cities (<i>G.S. 160A-279</i>)</li> </ul> | No                                  | No                                 | Yes                  |
| Lease or sell property for economic development projects ( <i>G.S. 158-7.1</i> )                                                                              | No                                  | No                                 | Yes                  |
| Sell, exchange, or transfer property for community development projects – cities only ( <i>G.S. 160A-457</i> )                                                | No                                  | No                                 | Yes                  |
| Lease, sell or convey property to fire department & rescue squad for facilities ( <i>G.S. 160A-277</i> )                                                      | No                                  | No                                 | Yes                  |
| Retiring law enforcement officer's weapon and badge ( <i>G.S. 20-187.2</i> )                                                                                  | Yes                                 | No                                 | No                   |

### **Special Considerations for Public School Property** (real and personal):

- Must be sold for valuable consideration (cannot be donated)
- Must be offered first to county board of commissioners for fair market price or negotiated price
- If county does not purchase, can be sold using property disposal procedures under Article 12 of Chapter 160A (*G.S. 115C-518*)
- Real property can be leased to another governmental unit for one dollar (\$1) per year (*G.S. 160A-274(c)*)

### **Special Considerations for Seized and Abandoned Property** (personal):

- Seized or abandoned personal property held by law enforcement must be disposed of according to procedures set out in Article 2 of Chapter 15 (*G.S. 15-11 through 15-17*)

## Step-By-Step Procedures for Disposal of Surplus Property For North Carolina Local Governments

| Method                         | Type of Property                   | Procedural Requirements                                        |                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                         |
|--------------------------------|------------------------------------|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Competitive Sales              |                                    |                                                                |                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                         |
| Sealed bids<br>(G.S. 160A-268) | Real property<br>Personal property | Step 1: Board adopts resolution authorizing sale by sealed bid | Step 2: Publish advertisement for sealed bids at least 30 days before the bid opening for real property; 7 days for personal property                                | Step 3: Receive and open sealed bids                                                                                                                                                                                                                                                                      | Step 4: Award to highest responsive, responsible bidder or reject all bids                                                                                                              |
| Upset bids<br>(G.S. 160A-269)  | Real property<br>Personal property | Step 1: Unit received offer to purchase property               | Step 2: Board adopts resolution accepting offer and authorizing upset bid procedure; offeror deposits 5% of bid amount with clerk while upset procedure takes places | Step 3: Publish advertisement for upset bids. Qualifying upset bid must be an amount at least 10% of the first \$1000 of the original offer and 5% of the remainder. Bidders must submit qualifying upset bids within 10 days after date of advertisement and be accompanied by a 5% bid bond or deposit. | Step 4: If qualifying upset bid received, repeat advertisement and upset bid process until no additional qualifying upset bid is received, then award to highest bid or reject all bids |

| Method                                                                                          | Type of Property                               | Procedural Requirements                                                                                                                 |                                                                                                                                                                          |                                                                               |                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------|------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Public auction – <u>real</u> property<br>(G.S. 160A-270); may be live or electronic auction     | Real property                                  | <b>Step 1:</b> Board adopts resolution authorizing sale by auction                                                                      | <b>Step 2:</b> Publish advertisement of auction at least 30 days before auction is conducted. (If <i>electronic</i> auction, board may authorize electronic-only notice) | <b>Step 3:</b> Conduct auction                                                | <b>Step 4:</b> Report highest bid to board; must accept or reject within 30 days of date bid is reported to board; complete sale to highest bidder at any time after board approval |
| Public auction – <u>personal</u> property<br>(G.S. 160A-270); may be live or electronic auction | Personal property                              | <b>Step 1:</b> Board adopts resolution authorizing official to dispose of property at public auction                                    | <b>Step 2:</b> Publish advertisement of auction at least 10 days before auction is conducted. (If <i>electronic</i> auction, board may authorize electronic-only notice) | <b>Step 3:</b> Conduct auction                                                | <b>Step 4:</b> Complete sale to highest bidder (board approval of sale not required)                                                                                                |
| <b><i>“Small Item” Sales (Personal Property Valued Less Than \$30,000)</i></b>                  |                                                |                                                                                                                                         |                                                                                                                                                                          |                                                                               |                                                                                                                                                                                     |
| Private sale with board approval (authority to conduct sale not delegated)<br>(G.S. 160A-267)   | Personal property valued at less than \$30,000 | <b>Step 1:</b> Board adopts resolution authorizing an official or employee to dispose of property by private sale at a negotiated price | <b>Step 2:</b> Publish notice of sale at least once                                                                                                                      | <b>Step 3:</b> Complete sale no sooner than 10 days after notice is published |                                                                                                                                                                                     |

Sample resolutions and advertisements available online at [www.ncpurchasing.unc.edu](http://www.ncpurchasing.unc.edu) (click on “Forms”).

Reference: Lawrence, David M., *Local Government Property Transactions in North Carolina* (2nd ed., 2000)

| Method                                                                                                       | Type of Property                               | Procedural Requirements                                                                                                                                                                                                |                                                                                                                                                                                      |                                                                        |  |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|--|
| Private sale without board approval of each sale (authority to conduct sale delegated)<br>(G.S. 160A-266(c)) | Personal property valued at less than \$30,000 | <b>Step 1:</b> Board adopts policy authorizing an official or employee to conduct sales. Policy must be designed to secure fair market value for property sold.                                                        | <b>Step 2:</b> Official or employee negotiates and conducts private sales. Must keep a record of property sold and the sale price. Board approval and published notice not required. |                                                                        |  |
| <b>Leases</b>                                                                                                |                                                |                                                                                                                                                                                                                        |                                                                                                                                                                                      |                                                                        |  |
| Leases – total term more than 10 years<br>(G.S. 160A-272)                                                    | Real property<br>Personal property             | Must use one of the competitive sale procedures for real property—sealed bid, upset bid, or public auction. <i>(If leasing real property for housing for low- and/or moderate-income persons, may use GS 160A-278)</i> |                                                                                                                                                                                      |                                                                        |  |
| Leases – total term more than 1 year and less than 10 years<br>(G.S. 160A-272)                               | Real property<br>Personal property             | <b>Step 1:</b> Publish notice at least 30 days before <i>regular</i> meeting of the board at which resolution authorizing lease will be considered                                                                     | <b>Step 2:</b> At a <i>regular</i> meeting, board adopts resolution authorizing lease                                                                                                | <b>Step 3:</b> Execute lease at any time after board adopts resolution |  |
| Leases – total term one year or less<br>(G.S. 160A-272)                                                      | Real property<br>Personal property             | No procedural requirements – board may delegate authority to approve leases                                                                                                                                            |                                                                                                                                                                                      |                                                                        |  |

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Reference: Lawrence, David M., *Local Government Property Transactions in North Carolina* (2nd ed., 2000)

| Method                                           | Type of Property                                                                                | Procedural Requirements                                                                                                                                                                                    |                                                                                                                                                                          |                                                                                          |                                                                            |
|--------------------------------------------------|-------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| Leases for affordable housing<br>(G.S. 160A-278) | Real property, but only to construct housing for the benefit of low and moderate income persons | <b>Step 1:</b> Publish notice at least 10 days before <i>regular</i> meeting of the board at which resolution authorizing lease will be considered                                                         | <b>Step 2:</b> At a <i>regular</i> meeting, board adopts resolution authorizing lease                                                                                    | <b>Step 3:</b> Execute lease at any time after board adopts resolution                   |                                                                            |
| <b>Special Conveyances</b>                       |                                                                                                 |                                                                                                                                                                                                            |                                                                                                                                                                          |                                                                                          |                                                                            |
| Exchange<br>(G.S. 160A-271)                      | Real property<br>Personal property                                                              | <b>Step 1:</b> Unit develops a tentative agreement for exchange of property for full and fair consideration                                                                                                | <b>Step 2:</b> Publish notice at least 10 days before <i>regular</i> meeting of the board at which resolution authorizing exchange will be considered                    | <b>Step 3:</b> At a <i>regular</i> meeting, board adopts resolution authorizing exchange | <b>Step 4:</b> Complete exchange at any time after board adopts resolution |
| Trade-in<br>(G.S. 143-129.7)                     | Personal property                                                                               | <b>Step 1:</b> Unit follows competitive bidding requirements to solicit bids for new item(s); bid specifications must include notice for bidders to submit trade-in price for purchasing unit's used items | <b>Step 2:</b> Unit awards bid to lowest responsive, responsible bidder taking into account price offered for new items and trade-in price offered for unit's used items |                                                                                          |                                                                            |

| Method                                                                      | Type of Property                                                                                                                            | Procedural Requirements                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                               |                                                                                           |                                                                                 |
|-----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| Economic development projects<br>(G.S. 158-7.1(d))                          | Real property, but only for economic development activities listed in G.S. 1587.1(b)                                                        | <b>Step 1:</b> Unit determines the probable average hourly wage to be paid to workers by the business to be located at the property to be conveyed and the fair market value of the interest. The consideration for the conveyance may not be less than that value. | <b>Step 2:</b> Publish notice at least 10 days before <i>regular</i> meeting of the board at which the resolution authorizing sale or lease will be considered                                                                                                | <b>Step 3:</b> At <i>regular</i> meeting, board adopts resolution approving sale or lease | <b>Step 4:</b> Complete sale or lease at any time after board adopts resolution |
| Community development projects<br>(G.S. 160A-457)<br><br><i>Cities only</i> | Real property, but only for sale to a redeveloper in accordance with a community development program as described in G.S. 160A-456 and -457 | <b>Step 1:</b> Publish notice of sale once a week for two successive weeks, first notice must be published not less than 10 days nor more than 25 days preceding the public hearing                                                                                 | <b>Step 2:</b> Board conducts public hearing on the sale. At the public hearing the appraised value of the property to be sold, exchanged or transferred shall be disclosed; the consideration for the conveyance shall not be less than the appraised value. | <b>Step 3:</b> Board adopts resolution approving the sale, exchange, or transfer          | <b>Step 4:</b> Complete conveyance at any time after board adopts resolution    |

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Reference: Lawrence, David M., *Local Government Property Transactions in North Carolina* (2nd ed., 2000)

| Method                                                               | Type of Property                                                                                                                                               | Procedural Requirements                                                                                                                                 |                                                                                                          |                                                                              |  |
|----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|--|
| Conveyance to other governments in North Carolina<br>(G.S. 160A-274) | Real property<br>Personal property                                                                                                                             | <b>Step 1:</b> Board adopts resolution approving the conveyance; no other procedures required                                                           |                                                                                                          |                                                                              |  |
| Artistic/historic properties<br>(G.S. 160A-266(b))                   | Real or personal property, but only the type of property described in G.S. 160A-266(b) and only if conveyed to a nonprofit in accordance with G.S. 160A-266(b) | <b>Step 1:</b> Board adopts resolution authorizing an official or employee to dispose of property by private sale at a negotiated price                 | <b>Step 2:</b> Publish notice summarizing contents of resolution once after resolution is adopted        | <b>Step 3:</b> Complete sale at least 10 days after notice is published      |  |
| Fire departments and rescue squads (G.S. 160A-277)                   | Real property, but only for constructing or expanding fire department or rescue squad facilities                                                               | <b>Step 1:</b> Publish notice at least 10 days before <i>regular</i> meeting of the board at which resolution authorizing conveyance will be considered | <b>Step 2:</b> At <i>regular</i> meeting, board adopts resolution authorizing lease, sale, or conveyance | <b>Step 3:</b> Complete conveyance at any time after board adopts resolution |  |

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| Method                                                                                                             | Type of Property                                                                                                                                                | Procedural Requirements                                                                                                          |                                                                                                       |                                                                               |  |
|--------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|--|
| Conveyance to nonprofit organizations<br><i>(G.S. 160A-279)</i><br><br><b><i>Cities and counties only</i></b>      | Real or personal property, but only if conveyed to an entity carrying out a public purpose for which that the city or county is authorized to appropriate funds | <b>Step 1:</b> Board adopts resolution authorizing an appropriate official or employee to convey property                        | <b>Step 2:</b> Publish notice summarizing contents of resolution once after the resolution is adopted | <b>Step 3:</b> Complete conveyance at least 10 days after notice is published |  |
| Conveyance without monetary consideration<br><i>(G.S. 160A-280)</i><br><br><b><i>Does not apply to schools</i></b> | Personal property only, conveyed to a governmental unit, sister city (as defined in G.S. 160A-280), nonprofit, or charter school                                | <b>Step 1:</b> Post public notice at least 5 days before meeting of the board at which resolution authorizing will be considered | <b>Step 2:</b> Board adopts resolution approving conveyance                                           | <b>Step 3:</b> Complete conveyance at any time after board adopts resolution  |  |

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Resolution to Authorize the Use of Electronic Advertisement  
for Contracts Subject to G.S. 143-129.

Whereas, contracts for construction or repair work, and for the purchase of apparatus, supplies, materials, and equipment that meet the monetary threshold established in G.S. 143-129 must be publicly advertised; and

Whereas, G.S. 143-129(b) authorizes the governing board to allow the use of electronic advertisement as an alternative to advertisement in a newspaper of general circulation; and

Whereas, in some cases, advertisement in the newspaper may be the most effective method of obtaining competition, but in other cases, advertisement by electronic means may be a more effective and efficient method of reaching prospective bidders; and

Whereas, it is in all cases important to provide citizens an opportunity to obtain information about major contracts to be awarded by this entity;

Therefore, the [governing board] of [the jurisdiction] resolves:

The [manager or other designated official] or his or her designee is authorized to advertise solicitations for bid using electronic means in lieu of placing an advertisement in a newspaper of general circulation whenever he or she determines it to be the most effective and efficient method of obtaining competition for a contract.

Advertisement by newspaper and electronic means may be used together or in the alternative, and the requirements of G.S. 143-129(b) shall be met as long as one of the methods used meets the specific requirements and minimum time for advertisement under that statute.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 200\_.