

Nash County

PROCUREMENT POLICY



Effective: July 1, 2018

**NASH COUNTY
PROCUREMENT POLICY
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I. INTRODUCTION

This Policy is intended for use as a guide to Nash County's purchasing methods and practices. This policy establishes rules and regulations to govern all purchases and contracts by Nash County. It also implements a system of internal controls that provide reasonable assurance that the County is in compliance with Federal Guidelines, North Carolina General Statutes and local policies. All County personnel shall be subject to the provisions within the Policy. These procedures may be modified at any time as deemed necessary.

It is the policy of the County to comply with competitive bidding rules and regulations as required by the North Carolina general statutes, federal and state laws, and/or County 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 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 County Procurement. Refer to Nash County Cash Disbursement and Procurement Procedures for detailed instructions.

II. EQUAL OPPORTUNITY

It is the policy of Nash County to: (1) provide minorities equal opportunity to participate in all aspects of the County contracting and purchasing program, including but not limited to, participation in procurement contracts, professional and other service contracts, and construction contracts; (2) 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.

III. CONFLICT OF INTEREST POLICY

The policies of Nash County require that all business shall be transacted in compliance with law 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.

Nash County'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.

Conflict of Interest

In addition to the prohibition against self-benefiting from a public contract under G.S. 14-234, no officer, employee, or agent of the Nash County 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:

1. the employee, officer, or agent involved in the selection, award, or administration of a contract;
2. any member of his or her immediate family;
3. his or her partner; or
4. an organization which employs or is about to employ any of these parties.

Any officer, employee, 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.

Gifts and Favors

In addition to the prohibition against accepting gifts and favors from vendors and contractors under G.S. 133-32, officers, employees, and agents of the Nash County 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:

1. promotional items;
2. honorariums for participation in meetings; or
3. 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.

Benefit From Confidential Information

It is unethical and unlawful for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person, NCGS § 14-234.

Violation

Employees violating this policy will be subject to discipline up to and including termination. Contractors violating this policy will result in termination of the contract and may not be eligible for future contract awards.

IV. APPROPRIATIONS AND ENCUMBRANCES

Under the Local Government Budget and Fiscal Control Act, all expenditures must be supported by an appropriation. In G.S. 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 (i) an encumbrance has been previously created for the transaction or (ii) 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 and agreements or contracts that have not been completed for which the County 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 or County evident.

Refer to the *Nash County Purchase Order Policy and Electronic Transaction Guidelines*.

V. COMPETITION

Public bidding promotes competition, reduces the risks of fraud, 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 County's purchasing governance, the County must seek competitive offers from qualified suppliers unless the items can be obtained through existing contracts established by North Carolina State Purchasing and Contracts Division. Nash County participates in North Carolina State Contracts whenever feasible and cost-effective.

Nash County has a decentralized process for purchasing in which individual departments identify their needs, obtain competitive pricing, and follow sound and legal purchasing practices, however, the County is not bound by any commitment to a vendor by a department. Assistance is provided from the Facilities Director with construction, repair and renovation projects and the Purchasing Agent in the Finance Office for all other purchasing to ensure legal procedural guidelines are followed including documentation, advertising, analysis and acceptance.

A. Bidding

Bidding promotes competition. There are two types of bidding that the County regularly uses, formal and informal. 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 (procurement of “services” is covered in section V.B. below). 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 Request for Proposal (RFP) process. RFIs do not, as a rule, result in an award to a vendor. Bid processes differ based on the type and the anticipated amount of the contract.

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

Informal bidding is required when the estimated cost is \$10,000 (County Policy) or more, but less than \$90,000 for materials, supplies and equipment; and \$30,000 or more, but less than \$500,000 for construction, renovation and repair contracts (N.C.G.S. §143-131). NC General Statutes and County policy require the following for informal bids:

- Written documentation to support the competitive process by contacting more than one vendor. Any verbal pricing or quotes from a vendor must be documented in writing. Refer to the Quote Summary Sheet.
- A waiver of competition may be granted for purchases between \$10,000 and \$30,000 in special situations, but must be approved by either the Purchasing Agent or Finance Director and documented.
- Informal bids are for items less than \$90,000 and are confidential until bid award.
- Purchases of multiple units must be bid according to the aggregate total, rather than the unit total.

Formal bidding is required where the estimated cost for materials, supplies and equipment is \$90,000 or more; and when the estimated cost for construction, renovation and repairs contracts is \$500,000 or more (N.C.G.S. §143-129). NC General Statutes and County policy require the following for formal bids:

- Require written specifications, legal advertisements, sealed bids, and in some situations a bid bond is required. Once bids are opened, these bids are available for public inspection.
- Every effort will be made to obtain at least three (3) bids.
- 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 (N.C.G.S. §143-129(b)).
- The Nash County Board of County Commissioners will approve formal bid awards based on recommendation by the Department purchasing. The County Manager is authorized to sign awarded contracts.
- The Nash County Board of County Commissioners reserves the right to reject any and all bids.
- 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.
- Awards are to be made to the “lowest responsible, responsive bidder or bidders taking into consideration quality, performance and the time specified in the proposals for the performance of the contract” (N.C.G.S. §143-129(b)). In the event the lowest 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.

Construction, renovation and repair contracts of \$500,000 or more require formal bidding. A construction project involves (1) A vertically constructed or erected building or facility for public use or for conducting the business of the citizenry; or (2) horizontal (surface or sub-surface) construction that is part of or done to support the construction of buildings or facilities. Renovation and repair projects are those that affect or change either the (1) building structure or support, exterior or interior or (2) the building’s systems that make the building useful (such as HVAC, electrical, plumbing, life safety and are an integral part of the building).

- Three bids are required for formal construction, renovation and repair bids. If at least three are not received, a second bidding process must be made. Bids may be opened on the second process regardless of the number of bids received (N.C.G.S. §143-132(a)).
- Formal construction, renovation and repair contracts must contain a bid deposit equal to, not less than, five percent of the bid amount. The deposit may only be in the following forms: cash, cashier's check, certified check, or bid bond executed by a surety licensed in North Carolina (N.C.G.S. §143-129(b)).
- Contracts resulting from formal bids for construction, renovation and repair require the Board of Commissioners approval.
- For All construction, renovation and repair contracts exceeding \$30,000, a licensed contractor must be used
- Minority & Women Owned Business Enterprises (MWBE) must be solicited for all construction, renovation and repair contracts \$30,000 and above (N.C.G.S. §143-131(b)).
- At the completion of a construction, renovation and repair project that has MWBE requirements, the department must submit a MWBE Reporting form to the Facilities Director who will report MWBE information for each project to the North Carolina Office of Historically Underutilized Business (G.S. 143-128.3).

The information reported shall consist of:

- The verifiable percentage goal
- The type and total dollar value of the project
- Minority business utilization by minority business category
- Trade (the type of contractor, i.e., general contractor, plumbing, etc.)
- Total dollar value of contracts awarded to each minority group for each project 600-3
- The applicable good faith effort guidelines or rules used to recruit minority business participation
- Good faith documentation accepted by the county from the successful bidder

B. Services

Non-professional or professional services (other than construction/repair and the procurement of professional services performed by architects, engineers, surveyors, and construction managers at risk is governed by G.S. 143-64.31, sometimes referred to as the "Mini-Brooks Act."), are distinguished by the provision of personal performance rather than the delivery of a tangible item.

County 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 County. It is the policy of the County to attempt to obtain at least three (3) competitive quotes before a service contract is awarded.

The competition process may be informal or formal. It may be an RFP, simple written quotes, or other methods that accurately reflect the competition process. Award should be based on the best overall, justifiable solution, which may include cost and other factors.

For contracts estimated to be \$50,000 or more, the Purchasing Agent 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.
- Service Contracts with a contract term longer than one-year period must have express written consent of the County Manager.
- Contracts for services should be subjected to competition every three to five years unless a business case justifies otherwise. Verbal quotes will not be accepted as meeting the competition requirement.

C. Design/Consultant Selection Services (Construction Repair/Mini-Brooks Act Services)

In certain cases, the County employs the services of an architect, engineer, surveyor, or construction manager at-risk to provide services on certain projects. Firms and/or individuals are to be selected based on “best qualified” criteria. The procurement of these services is defined by N.C.G.S. §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 Board of County Commissioners. (N.C.G.S. §143-64.32). County departments must consult with the Facilities Director when considering these services.

D. Request for Proposals (RFP)

The County uses RFPs as a competitive process or as an alternative to the standard bidding process. Typically, RFPs are used in situations where (1) detailed specifications cannot be or are difficult to develop; or (2) when obtaining a goal or providing a solution to a problem/issue is the main objective. N.C.G.S. §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 architectural services, engineering surveying and construction managers at-risk. These require additional advertisement, MWBE, and approval requirements. (See Section V. A)

E. Exceptions to the bidding requirements

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

- Purchases from other governmental agencies (G.S. 143-129(e)(1))
- Competitive group purchasing (G.S. 143-129(e)(3))
- Gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil or natural gas – informal bids are required (G.S. 143-129(e)(6))
- Sole sources; requires Board of Commissioners approval and specific criteria must be met (G.S. 143-129(e)(6)).
- Information technology goods and services purchased through the state Office of Information Technology (G.S. 143-129(e)(7)) or using RFPs (G.S. 143-129.8).
- Purchase from State contracts
- Used apparatus, supplies, materials or equipment; does not apply to remanufactured, prefabricated or demo items (G.S. 143-129(e)(10)).
- Piggybacking previously bid contracts; requires Board of Commissioners approval and 10-day prior notice (G.S. 143-129(g)).
- Purchases from nonprofit work centers for the blind and severely disabled (G.S. 143-129.5).

The following exceptions to the bidding requirements apply to **purchase or construction, renovation and repair** contracts:

- Special emergencies involving the health and safety of the people or their property (G.S. 143-129 (e)(2)).
- Guaranteed energy savings contracts; requirements of G.S. 143-64.17 through 143-64.17G apply to these projects (G.S. 143-129(e)(8)).
- Solid Waste Management Facilities (G.S. 143-129.2).
- Change order work (G.S. 143-129(e)(4)).
- Construction management at risk projects; requirements of G.S. 143-128.1 apply to these projects (G.S. 143-129(e)(11)).
- (“Force account work”) where work must be performed by labor on the permanent payroll, and does not exceed \$125,000 for the total project cost including all direct and indirect costs of labor, materials, supplies, equipment; or the labor on the project does not exceed \$50,000; must be approved by the governing board, (G.S. 143-135).
- Projects using unemployment-relief labor paid for in whole or part with state or federal funds (G.S. 143-129(d)).
- Contracts with NC Department of Transportation for street construction and repair (G.S. 136-41.3).

Exceptions to bidding requirements shall be specifically documented by General Statute as noted above either on the purchase order or contract documents.

VI. CONTRACTS

Contracts are to be used for all types of purchases when the services or labor portion is the greater amount of the transaction and the amount paid to the vendor will exceed \$5,000 with a business entity, corporation or governmental entity and \$1,000 with an individual, including an individual engaging in a business or under an assumed name or Doing Business As.

Services shall not begin until a fully executed contract is in place and reviewed by legal before agreeing, signing or processing it.

Multi-year contracts, defined as more than 12 months or crossing fiscal years, require County Manager approval. Each year of the contract must be budgeted and approved through the budget process in order for funding to be carried over. (Also see Purchase Order Policy).

A. Required Contract Elements

Contracts should define who, what, where, when, why, how much, and what happens if either party defaults. All County 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. 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 Nash County and the vendor. This clause confirms that the contract does not and should not be deemed to create a partnership or joint venture.

Cancellation

This clause gives both parties the right to terminate the contract upon the occurrence of specified conditions or events.

Indemnification

This clause protects the County from any legal issues related to the vendor performing the contract.

Non-assignment

This clause prohibits the assignment of specific rights or of the entire contract to another party without the consent of the County.

Governing Law

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

Insurance

In order to control risks arising from the activities resulting from a business contract, the County requires all contractors have the following insurance at all times during the term of the Agreement (exceptions may be granted on a case-by-case basis):

- Provide and maintain in force commercial general liability insurance covering bodily injury (including death) and property damage (including contractual liability covering the Undersigned's indemnity obligations) under a policy or policies providing combined single limit coverage of not less than One Million Dollars (\$1,000,000.00) for each occurrence with Two Million Dollars (\$2,000,000.00) coverage on an annual aggregate basis, together with worker's compensation and employer's liability insurance in such amounts as shall be required by law from time to time.
- All such insurance shall contain an endorsement naming Nash County as additional insured.
- The insurance shall be primary with respect to any claim arising from or related to the performance or non-performance of the obligations under the terms of the Agreement.
- A Certificate from an insurance company licensed to do business in the State of North Carolina shall be delivered to Nash County evidencing the required insurance coverage, which Certificate shall state that such insurance coverage may not be materially changed or cancelled without at least thirty (30) days prior written notice by certified mail to Nash County, identifying the person/office to be notified.

E-Verify

As a condition of payment for services rendered under this agreement, contractor shall fully comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (N.C.G.S). Further, if the contractor provides the services to the County utilizing a subcontractor, Contractor shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Contractor shall verify, by affidavit, compliance with the terms of the section upon request by the County.

B. Pre-Audit

North Carolina General Statutes require that if an obligation is evidenced by a contract or agreement requiring the payment of money or by purchase order for supplies and materials, the contract, agreement or purchase order shall include on its face a certificate stating that the instrument has been pre-audited to ensure compliance (N.C.G.S. §159-28(a)).

C. Legal Reviews

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

D. 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 (N.C.G.S. §160A-461). All interlocal agreements require Board of Commissioners approval prior to execution. These agreements must contain the following elements as set forth in N.C.G.S §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

E. Leases

Anytime a 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 G.S. 159-148.

Real Property Leases

Real property is immovable **property** – it is building or 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 or less) and no property rights are conveyed.

The County enters into leases of real property under two circumstances:

- 1) As Lessee (tenant), when the County occupies leased space in order to conduct County programs or to deliver County services, and
- 2) As Lessor (property owner), to authorize a third party to occupy County-owned property, such as when leasing space in County office buildings.

Department Head and Building Facility Director with consultation from the County Attorney will develop and process the leases. The County Manager can approve these leases which have a term of one year or less, funding must be included in the departmental annual budget appropriation.

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

Personal Property Leases

Personal property is movable; that is, the asset is not fixed permanently to one location as with real **property**, such as land or buildings. Examples of **personal property** include vehicles, furniture and equipment.

Operating Lease

An operating lease is a contract wherein the owner, called the Lessor, permits the County (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 County 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.

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:

- (1) The lease transfers ownership of the property to the lessee by the end of the lease term;
- (2) The lease contains a (bargain) purchase option;
- (3) The lease term is equal to 75 percent or more of the estimated economic life of the lease property; or
- (4) 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.

F. 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 should follow detailing the responsibilities of each party. MOUs must (1) identify the contracting parties, (2) spell out the subject matter of the agreement and its objectives (the contract should provide more detail) (3) establish the terms of the agreement and (4) 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.

G. Real Estate

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

VII. SIGNATURE AUTHORITY

The authority to enter into contracts is assigned to the Board of Commissioners consistent with N.C.G.S. §153A-13. In certain cases, the Board has delegated this authority to the County Manager or Designee.

Contracts not included below must be approved by the Board of Commissioners prior to execution of the contract by the County.

The County Manager has the authority to approve and shall sign the following types of contracts:

- Construction or repair projects that do not require formal competitive bid procedures (\$30,000 to \$500,000).
- Purchases of apparatus, supplies and materials or equipment that do not require formal competitive bid procedures (less than \$90,000).
- Operating leases of personal property within budgeted appropriation (must not qualify as a capital lease).
- Service contracts within budgeted appropriations.
- 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 Board of Commissioners.
- Change orders and amendments to contracts previously approved by the Board of Commissioners, within appropriations, provided the dollar amount of the contract amendment does not exceed \$25,000

The County Manager may delegate signing authority to a department head if the contract is less than \$50,000 and for 12 months or less.

Department Head:

Department Heads must sign all contracts in addition to the County Manager, regardless of the amount, duration or type of service. Department Heads cannot delegate their signature authority.

VIII. CARD PROGRAMS**A. Credit Cards (Procurement Cards)**

Procurement Cards (P-Cards) may be used for incidental (small value) purchases of goods or services as well as some travel and training costs at limits approved by a Department Director or designee pursuant to the Nash County Procurement Card Policies and Procedures. Employees using P-Cards must comply with the requirements and procedures set forth by the County Finance Department.

P-Cards are considered an alternative payment tool and not a procurement method. Use of a P-Card does not exempt any County employee from following the requirements and procedures set forth in this Policy or other County policies, nor does it exempt compliance with applicable statutes, regulations, governing board directives, policies, procedures and best practices. Employees who have been issued a P-Card may initiate transactions in-person, by telephone, or internet, within the limits set forth in the Procurement Card Policy. The designated shipping of items purchased for the County shall be received at a County address.

Refer to the Nash County Electronic Transaction Guidelines and the Nash County 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 County vehicles. The Fuel Program Administrator in the Finance Office is responsible for administration of the program. A fuel card is issued for each County-owned vehicle and specific county equipment. Each card is to remain secured inside the vehicle.

A Fuel Personal Identification Number (PIN) should be issued to each County employee approved to drive County-owned vehicles. Each driver is responsible for using the appropriate PIN to fuel vehicles as necessary. Fuel cards are restricted to purchase of fuel only and shall be used as designated. Drivers may be held personally liable for any other charges incurred on the card (i.e. automated car washes, etc.) The card is to be used in the conduct of Nash County business only. The use of a Nash County card to acquire or purchase fuel for other than the official use of Nash County is fraudulent use.

Refer to the Nash County Fuel Card Policy for specific information related to Fuel Card use.

IX. FEDERAL & STATE COMPLIANCE

North Carolina general statutes allow local policy to be more restrictive than set forth in general statutes. This 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 loan funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards.

X. IMPLEMENTATION

The Finance Director is responsible for implementing and enforcing this Policy and to interpret it consistent with its spirit and intent, fiscal prudence and accountability. The Finance Director is authorized to prescribe additional administrative instructions for implementing the above policy.

XI. RELATED POLICIES, PROCEDURES AND PUBLICATIONS

Nash County Procurement Card Program Policy and Procedures
Nash County WEX Fuel Card Program Policy and Procedures
Nash County Purchase Order Policy
Nash County Cash Handling Policy
Nash County Procurement and Cash Disbursement Procedures
Nash County Fixed Asset Policy and Procedures

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

ATTACHMENT:

Nash County Uniform Guidance Procurement Policy

NOTE: For individual contracts, departments should consult their grant award documents and with their federal grantor agency to determine whether additional procurement requirements apply.

I. Purpose

The purpose of this Policy is to establish guidelines that meet or exceed the procurement requirements for purchases 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.

II. 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). The requirements of this Policy also apply to any subrecipient of the funds.

All federally funded projects, loans, grants, and sub-grants, whether funded in part or wholly, 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. 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 § 200-326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. Nash County will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should Nash County have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.

C. Contract Award. All contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract.

D. No Evasion. 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.

E. 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 § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.

F. Contractors' Conflict of Interest. 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.

G. Approval and Modification. The administrative procedures contained in this Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

III. General Procurement Standards and Procedures:

The Requesting Department with assistance from the Purchasing Agent in the County Finance Office shall procure all contracts in accordance with the requirements of this Section of the Policy.

A. Necessity. Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. 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.

B. Clear Specifications. 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.

C. 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.

D. Compliance by Contractors. All solicitations shall inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.

E. Fixed Price. Solicitations must state that 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 are prohibited. Time and materials contracts are prohibited in most circumstances. Time and materials 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 express written permission of the federal agency or state pass-through agency that awarded the funds.

F. Use of Brand Names. 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.

G. Lease versus Purchase. Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach.

H. Dividing Contract for M/WBE Participation. 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.

I. Documentation. Documentation must be maintained by the Requesting Department detailing the history of all procurements. The documentation should include the 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.

J. Cost Estimate. For all procurements costing \$250,000 or more, the Requesting Department along with the Purchasing Agent in Finance 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.

K. Contract Requirements. The Requesting Department must prepare a written contract incorporating the provisions referenced in Section II.C of this Policy.

L. Debarment. No contract shall be awarded to a contractor included on the federally debarred bidder's list.

M. Contractor Oversight. The 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.

N. Open Competition. Solicitations shall be prepared in a way to be fair and provide open competition. The procurement process 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 requirements that have the effect of restricting competition.

O. Geographic Preference. No contract shall be awarded on the basis of a geographic preference.

IV. Specific Procurement Procedures

The Requesting Department with assistance from the Purchasing Agent in the County Finance Office shall solicit bids in accordance with the requirements under this Section of the Policy based on the type and cost of the contract.

A. Service Contracts (except for A/E professional services) and **Purchase Contracts costing less than \$10,000** shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:

1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
2. To the extent practicable, purchases must be distributed among qualified suppliers.
3. Contract must be in writing (this could be in the form of a purchase order)

B. Service Contracts (except for A/E professional services) and **Purchase Contracts costing \$10,000 up to \$90,000** shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. § 200.320(b)) as follows:

1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency might issue guidance interpreting “adequate number,” so the Requesting Department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Cost or price analysis is not required prior to soliciting bids.
4. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).
5. Award the contract to the lowest responsive, responsible bidder.

C. Service Contracts (except for A/E professional services) and **Purchase Contracts costing \$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 (G.S. 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids.
2. Complete specifications or purchase description must be made available to all bidders.
3. The bid must be formally advertised 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. The 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 only for “sound documented reasons.”
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
5. Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
6. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis. Governing board approval is required for purchase contracts unless the governing board has

delegated award authority to an individual official or employee. Any and all bids may be rejected only for “sound documented reasons.”

D. Service Contracts (except for A/E professional services) **costing \$250,000 and above** may 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. The procedures are as follows:

1. A 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.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
3. Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
4. Consider all responses to the publicized RFP to the maximum extent practical.
5. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
6. Award the 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.
7. Award the contract on a fixed-price or cost-reimbursement basis.

E. Construction and repair contracts costing less than \$10,000 shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:

1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
2. To the extent practicable, contracts must be distributed among qualified suppliers.

F. Construction and repair contracts costing \$10,000 up to \$250,000 shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. § 200.320(b)) as follows:

1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency might issue guidance interpreting “adequate number,” so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
3. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
4. Award the contract on a fixed-price or not-to-exceed basis.
5. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required.

G. Construction and repair contracts costing \$250,000 up to \$500,000 shall be procured using the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) as follows:

1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
2. Complete specifications must be made available to all bidders.

3. 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). The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders. Performance and payment bonds of 100% of the contract price is required of the winning bidder.
7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required. Any and all bids may be rejected only for “sound documented reasons.”

H. Construction and repair contracts costing \$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 (G.S. 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids (this cost estimate should be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. Formally advertise the 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. The 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 only for “sound documented reasons.”
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of 3 bids must be received in order to open all bids.
6. A 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.
7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is required and cannot be delegated. The governing board may reject and all bids only for “sound documented reasons.”

I. Construction or repair contracts involving a building costing \$300,000 and above must comply with the following additional requirements under state law:

1. Formal HUB (historically underutilized business) participation required under G.S. 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 G.S. 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 G.S. 143-129(a1).

J. Contracts for Architectural and Engineering Services costing under \$250,000 shall be procured using the state “Mini-Brooks Act” requirements (G.S. 143-64.31) as follows:

1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. § 200.321.
3. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
4. 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.
5. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
6. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

K. Contracts for Architectural and Engineering Services costing \$250,000 or more shall be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(d)(5)) as follows:

1. Publically advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
3. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
4. Proposals must be solicited from an “adequate number of qualified sources” (an individual federal grantor agency may issue guidance interpreting “adequate number”).
5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
6. Consider all responses to the publicized RFQ to the maximum extent practical.
7. Evaluate qualifications of respondents to rank respondents 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.
8. Price cannot be a factor in the initial selection of the most qualified firm.
9. Once the most qualified firm is selected, negotiate fair and reasonable compensation. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
10. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

V. Exceptions

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:

A.Sole Source. A contract may be awarded without competitive bidding when the item is available from only one source. The Purchasing 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.

B.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.

C.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.

D.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.

E.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.