

## ORDINANCE 2023-11

**BE IT ORDAINED**, the Catawba County Code of Ordinances, Chapter 30, Purchasing, be amended in its entirety to read as follows:

### Chapter 30, Purchasing

**Editor's note**— Ord. No. 2015-04, adopted March 16, 2015, repealed Ch. 30, §§ 30-1—30-23, in its entirety and added a new Ch. 30. Former Ch. 30 derived from Ord. No. 2011-07, adopted June 20, 2011, and Ord. No. 2005-10, adopted September 6, 2005.

**Cross reference**— Administration, Ch. 2.

**State Law reference**— Authority of county to enter into multiyear contracts, NCGS §153A-13.

#### Sec. 30-1. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alternative Contracting Method* means local governments can seek authority to modify bidding requirements for particular projects, specifically design-build projects for building construction.

*Appropriation* means an authorization granted by the Board of Commissioners to make expenditures and to incur obligations for specific purposes.

*Bid* means a quotation specifically given a prospective purchaser upon request, usually in competition with other Vendors.

*Construction Management-at-Risk* means services are provided by a construction manager, which may include preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services and construction administration.

*Contract* means a legal agreement between the county and another governmental agency, company, corporation, individual or group of individuals obligating the county to pay money for services rendered or products.

*Department/Agency Head* means the highest level of supervision and coordination within a program area.

*Design-Build* means the design-builder contracts to provide both design services (architectural and engineering) and construction services under one contract.

*Design-Build Bridging* means the local government contracts separately with a project designer to design thirty-five percent (35%) of the project and contracts with a design-builder to complete the project design and perform construction services.

*Design-Builder* means an appropriately licensed person, corporation, or entity that, under a single contract offers to provide design services and general contracting services.

*Dual Bidding* means bids may be received to erect, construct, alter or repair a building under both the single-prime and separate-prime contracting systems, and the contract shall be awarded to the lowest responsible bidder under the single-prime or the lowest responsible bidder under the separate-prime system.

*Electronic Auction* means an auction of surplus property conducted on an internet site.

*E-Verify* means local governments are prohibited from contracting for formal purchases and construction projects with a contractor that has not submitted documentation that the E-Verify program has been used to insure the contractor's employees and subcontractor's employees are not illegal immigrants and are legally employed.

*Minority Business* means a business of which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged individuals or, for a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals, and of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

*Preaudit* means an examination for the purpose of determining the propriety of proposed financial transactions and financial transactions which have already taken place but which have not yet been recorded or, if such approval is required, before the approval of the financial transactions by designated officials for recording.

*Purchase Order* means a legal document binding a Vendor to provide a service or product and the county to pay a specified price.

*Purchasing Manager* means one who purchases for another; one who is authorized by the County to negotiate contracts with Vendors.

*Quote* means to state a price for goods or services.

*Request for Proposals* means a formal solicitation document typically used for seeking competition and obtaining offers for more complex services or a combination of goods and services for competitive procurements over \$90,000.

*Request for Qualifications* means a process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources and ability necessary for faithful performance of a contract for construction or repair work.

*Separate-Prime* means bids for building projects are received for each subdivision of work:

- (1) Heating, ventilating and air conditioning;
- (2) Plumbing;
- (3) Electrical; and
- (4) General.

*Single-Prime* means bids for building projects are received from one contractor. The single-prime contractor performs all work or contracts with subcontractors for heating, ventilating and air conditioning; plumbing; and electrical.

*Sole Source Item* means when an item is of such a special nature that it is only manufactured by one company.

*Surplus Property* means items which are obsolete or are no longer of any value to the county.

*Unencumbered Balance* means that portion of an Appropriation which has not been expended or obligated through issuance of a Purchase Order.

*Vendor* means one who sells a commodity or a service.

*Voucher* means a document which evidences the propriety of transactions and indicates the accounts against which they are to be recorded.

(Ord. No. 2015-04, 3-16-2015; Ord. No. 2018-06, 6-18-2018)

**Cross reference—** Definitions generally, §1-2.

## **Sec. 30-2. Jurisdiction and Authority.**

- (a) The securing of goods and services necessary to the operation of county government is a major administrative responsibility. Under the supervision of the Finance Director, this function of county government is the primary responsibility of Purchasing.
- (b) Statutory provisions regulating purchasing by local governments are contained primarily in NCGS §143-129 through §143-135. Other specific duties, responsibilities and authorities are contained in NCGS Chapters 14, 44, 66, 75, 87, 105, 153, 160A, and 159. By virtue of these statutes, the County is empowered to enter into contracts for the procurement of materials and services. The Board of Commissioners has full budget authority to sign such contracts. Authority to sign contracts for procurement of supplies and services has been delegated to the County Manager.
- (c) Prior to entering into any agreement or making any purchase, the County must first have funds appropriated to meet financial obligations. Contracts or Purchase Orders requiring the payment of funds for supplies or materials may not be made unless a proper Appropriation appears in the budget and a sufficient Unencumbered Balance remains in the Appropriation.

- (d) Electronic advertising is hereby allowed for formal bids and the County is authorized to advertise by that means.

(Ord. No. 2015-04, 3-16-2015; Ord. No. 2018-06, 6-18-2018)

**State Law reference—** Budgetary accounting for Appropriations, NCGS §159-28.

**Sec. 30-3. Purpose.**

- (a) The purchasing function is a service-oriented activity. As such, it exists to serve the needs of operating departments and agencies in county government.
- (b) This chapter makes reference to statutory provisions of state law. The provisions contained in this chapter reflect the current laws. It is intended that these provisions will always duplicate whatever changes occur in state law, and such provisions will be administratively updated at that time.

(Ord. No. 2015-04, 3-16-2015; Ord. No. 2018-06, 6-18-2018)

**Sec. 30-4. Local buying.**

According to NCGS §143-129(b), the County has no authority to establish preferences of any kind and is bound by law to award to the lowest responsible bidder, taking into consideration quality, performance and time specified in the proposals for the performance of the contract. However, it is the desire of the County to contract with Vendors and contractors located within the County whenever possible. The purchasing office shall update departments of new local Vendors and contractors and encourage departments to obtain quotes from local Vendors when appropriate.

(Ord. No. 2015-04, 3-16-2015; Ord. No. 2018-06, 6-18-2018)

**Sec. 30-5. Formal bids.**

All formal bids will be sent out by the Purchasing Manager as the authorized representative of the County. Bids will be opened and tabulated by the Purchasing Manager. When architects or engineers are employed to perform this service on construction bids, the Purchasing Manager should be present at openings when possible, receive copies of the public notice and bids, and prepare a recommendation for the award of a bid. Certain requirements must be followed in the formal bid process:

- (1) Written specifications must be prepared. Efficient purchasing practices require buying in accordance with carefully developed specifications. For purchases of standard items, development of elaborate specifications are not necessary, but simple, standard specifications are acceptable. Good, clear specifications are an essential aspect of competitive bidding. Quality and service are as important as price; therefore, specifications are needed that will fulfill but not exceed the requirements for which the items and/or services are intended. Specifications are prepared by the purchasing office with input from the ordering department to ensure that the products purchased fill the need. A lengthy specification designed solely for the purpose of eliminating competition, other than those able to supply a particular brand name, will not be permitted. Brand names should be used only when no other product would be satisfactory.
- (2) Bids must be advertised for prospective bidders. Advertisements must be published on the County's web site so there are seven (7) full days between the date of the publication and the date of the opening of the bids. It will be the purchasing office's responsibility to maintain a Vendor list and notify all parties on the Vendor list for applicable projects. The advertisement must contain the time and place where plans and specifications may be obtained and the time and place for opening of the proposals. On all construction contracts, the advertisement must also contain a notice that bidders must be properly licensed under NCGS Chapter 87.
- (3) Prospective bidders must submit sealed bids. Unless the invitation to bid states differently, bids must be sealed and the contents must not be disclosed or exhibited prior to the time set for the bid opening.
- (4) Except under the conditions in subsections (4)a. and b., the Board of Commissioners must accept bids and award contracts. Bid results must be presented to the Board of Commissioners for

acceptance and award. The Board of Commissioners reserves the right to reject any or all proposals.

- a. The County Manager is authorized to award formal bids for purchase contracts in amounts less than \$250,000 within the following guidelines:
  1. The bid is awarded to the lowest responsible bidder.
  2. Sufficient funding is available within the department.
  3. The purchase is consistent with the goals and/or outcomes of the department.
  4. The project is approved in the budget.

The County Manager is further authorized to reject any and/or all bids received less than \$250,000 if it is in the best interest of the County.

- b. Bids may be rejected for any reason determined by the Board or the County Manager, under his/her authority, for any reason determined to be in the best interest of the County. However, the bid shall not be rejected for the purpose of evading the provisions of NCGS §143-129.

(Ord. No. 2015-04, 3-16-2015; Ord. No. 2018-06, 6-18-2018)

#### **Sec. 30-6. Formal bid and request-for-proposal monetary limits.**

- (a) *When required.* Formal procedures must be followed when the purchase requires an estimated expenditure of \$90,000 or more. For construction, repairs and renovation, formal bid procedures must be followed if the project requires an estimated expenditure of \$500,000 or more.
- (b) *Minority contractors; separate specifications and contracts.* If the cost for the construction of a building is estimated at \$300,000 or more, the County has established a five percent (5%) goal for participation by minority contractors in the total value of work for which a contract is awarded pursuant to NCGS §143-128. In addition, for projects totaling \$300,000 or more, separate specifications and contracts must be prepared for the following areas of work:
  - (1) Heating, ventilating, air conditioning and accessories and/or refrigeration for cold storage (where the cooling load is fifteen (15) tons or more of refrigeration);
  - (2) Plumbing and gas fittings and accessories;
  - (3) Electrical wiring and installations; and
  - (4) General work not included in the three (3) areas listed in subsections (1) through (3).
- (c) *Contracting methods.* For building construction or building repair projects \$300,000 and above, bids may be received by using (i) single-prime, (ii) separate-prime, (iii) dual bidding, (iv) construction management-at-risk contract or (v) Alternative Contracting Methods authorized pursuant to NCGS §143-135.26(9) in accordance with the following:
  - (1) *Single-Prime.* All bidders in a single-prime project shall be required to identify on their bid the contractors they have selected for the subdivisions or branches of work for: heating, ventilating, and air conditioning; plumbing; electrical; and general. The contract shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with NCGS §143-128.2. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractors listed in the original bid, except:
    - a. If the listed subcontractor's bid is later determined by the contractor to be nonresponsive or nonresponsive, or the listed subcontractor refuses to enter into a contract for the complete performance of bid order; or
    - b. With the approval of the Board of Commissioners for good cause shown by the contractor.

When a contract is awarded using the single-prime method, the County shall make the dispute resolution process available to subcontractors.

- (2) *Separate-Prime.* Bids shall be accepted for each subdivision of work for which specifications are required to be prepared, and bids shall be awarded separately to responsible and reliable persons

regularly engaged in their respective lines of work. Each separate contractor shall be directly liable to the County and to the other separate contractors for the full performance of all duties and obligations due under the terms of the contract. Contracts shall be awarded to the lowest, responsible, responsive bidders, taking into consideration quality, performance, the time specified in the bids for performance of the contract and compliance with NCGS §143-128.2.

- (3) *Dual Bidding.* Bids may be received to erect, construct, alter or repair a building under both the single-prime and separate-prime contracting systems, and the contract shall be awarded to the lowest responsible, responsive bidder under the single-prime system or to the lowest responsible, responsive bidder under the separate-prime system, taking into consideration quality, performance and compliance with NCGS §143-128.2 and time specified in the bids to perform the contract. In determining the system under which the contract will be awarded to the lowest responsible, responsive bidder, the cost of construction oversight, time for completion, and other factors the county considers appropriate may be considered. The bids received as separate-prime bids shall be received, but not opened, no less than one (1) hour prior to the deadline for the submission of single-prime bids. The amount of a bid submitted by a subcontractor to the general contractor under the single-prime system shall not exceed the amount bid, if any, for the same work by that subcontractor under the separate-prime system.

(4) *Construction Management Contracts.*

- a. *Construction Management Services.* The term "Construction Management Services" means services provided by a construction manager, which may include preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.
- b. *Construction Management-At-Risk Services.* The term "Construction Management-at-Risk Services" means services provided by a person who:
  1. Provides construction management services for a project throughout the preconstruction and construction phases;
  2. Is licensed as a general contractor; and
  3. Guarantees the cost of the project.
- c. *Construction Manager-At-Risk.* The Construction Manager-at-Risk shall contract directly with the County for all construction, shall publicly advertise, and shall prequalify and accept bids from first-tier subcontractors for all construction work. The Construction Manager-at-Risk shall address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and other factors deemed appropriate by the County. The County shall require the Construction Manager-at-Risk to submit its plan for compliance with NCGS §143-128.2 for approval by the Board of Commissioners prior to soliciting bids for the project's first-tier subcontractors. A Construction Manager-at-Risk and first-tier subcontractors shall make a good faith effort to recruit and select Minority Businesses for participation in contracts pursuant to NCGS §143-128.2. A Construction Manager-at-Risk may perform a portion of the work only if:
  1. Bidding produces no responsible, responsive bidder for that portion of the work, the lowest responsible bidder will not execute a contract for the bid portion of the work or the subcontractor defaults and a prequalified replacement cannot be obtained in a timely manner; and
  2. The County approves of the Construction Manager-at-Risk's performance of the work.

All bids shall be opened publicly and once they are opened are public records. The Construction Manager-at-Risk shall act as the fiduciary of the County in handling and opening bids. The Construction Manager-at-Risk shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for the performance of the contract, the cost of construction oversight, time for completion, compliance with NCGS §143-128.2, and other factors deemed appropriate by the County and advertised as part of the bid solicitation. The County may require the selection of a different first-tier subcontractor for any portion of the work, provided the Construction Manager-at-Risk is compensated for any additional cost incurred. When contracts are awarded using this method, the County shall provide for a dispute resolution

procedure as provided in N.C.G.S. §143-128(g). The Construction Manager-at-Risk shall provide a performance and payment bond to the County.

- d. *Design-Build and Design-Build Bridging.* Design-Builder Contracts are used to provide both design services (architectural and engineering) and construction services under one contract. Design-Build is subject to request for qualification and is initially selected based on qualifications. A Design-Build Bridging contract is utilized when a local government contracts with a design-builder to complete project design and perform construction services. A Design-Build Bridging contract is awarded to the lowest responsive, responsible bidder based on estimated costs of performing design and construction services.
  - (5) *Alternative Contracting Method.* Local governments can seek authority to modify bidding requirements for particular projects, specifically Design-Build projects for building construction.
  - (d) *Performance and Payment Bonds.* When a project exceeds \$300,000, performance and payment bonds are required for each contract that exceeds \$50,000. No bid for construction or repair work valued at \$300,000 or above may be considered or accepted unless, at the time of the submittal, it is accompanied by a deposit in the form of cash or certified check, in an amount equal to not less than five percent (5%) of the proposal. In lieu of making a cash deposit, the bidder may file a bid bond executed by a corporate surety licensed under the laws of the state. The successful contractor shall be required to submit performance and payment bonds to secure the faithful performance of the terms of the contract and the payment of all sums due for labor and materials.
  - (e) *Reporting Requirements.* County staff shall report to the Secretary of the Department of Administration the cost and effectiveness of the method used under this section. Reports shall include the following information:
    - (1) The method used;
    - (2) The total value of each project;
    - (3) The bid costs and relevant post bid costs;
    - (4) A detailed listing of all contractors and subcontractors used on the project, including identification of whether the contractor was an out of state contractor; and
    - (5) When an out-of-state contractor was used, the reasons why the contractor was selected.
- The reports must be filed annually beginning April 1, 2003, and thereafter must be filed in the year in which the project is completed.
- (f) *Dispute Resolution for Building Construction Projects.* The County shall provide dispute resolution procedures for all building construction or repair projects. The dispute resolution procedures are available to all parties involved in the construction project, including the architect, the construction manager, and the contractors, including all levels of subcontractors, and are available for any issue arising out of the contract or construction process as long as the matter in dispute is \$15,000 or more. See the County's dispute resolution policy for additional information.
  - (g) *Minority Participation for Building Construction Projects (\$300,000 and above).*
    - (1) Contractors, including first-tier subcontractors on Construction Management-at-Risk projects, must identify on their bids the Minority Businesses they will use on the project and the total dollar value of the bid that will be performed by Minority Businesses. Contractors must also include an affidavit listing the good-faith efforts they have made. If contractors intend to perform all of the work with their own forces, they may submit an affidavit.
    - (2) After bids are received, the apparent lowest responsible bidder must provide either:
      - a. An affidavit describing the portion of the work to be executed by Minority Businesses, expressed as a percentage of the total contract amount showing a percentage equal to or more than the applicable goal on the project; or
      - b. Documentation of good-faith efforts to meet the goal, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of Minority Businesses for participation in the contract.

- (3) Within thirty (30) days after a contract is awarded, the successful contractor must list all identified subcontractors that will be used on the project. Failure to provide the affidavit or documentation required to demonstrate good faith efforts is grounds for rejection of a bid.
- (4) A subcontractor may not be replaced except:
  - a. When the subcontractor's bid is determined to be nonresponsible or nonresponsive or the subcontractor refuses to enter into a contract for the complete performance of the work; or
  - b. With the approval of the County for good cause.

When selecting a substitute contractor, the contractor must make and document good faith efforts. See guidelines and minority outreach plan, on file in the county offices.

- (h) *E-Verify Required for Formal Construction Contracts.* All contractors and their respective subcontractors shall provide E-Verify affidavits or acknowledgements for any formal construction project prior to contracting with the County.

(Ord. No. 2015-04, 3-16-2015; Ord. No. 2018-06, 6-18-2018)

**State Law reference—** Authority of county to lease real property and to employ county personnel under certain circumstances, NCGS §153A-165 and §143-135.

#### **Sec. 30-7. Informal bids.**

- (a) Informal bids are distinguished from formal bids by the following:
  - (1) The dollar amount for the purchase of goods is less than \$90,000 and less than \$500,000 for construction/repair work contracts.
  - (2) Advertising for bids is not necessary.
  - (3) Written, sealed bids need not be submitted.
  - (4) Informal bids received shall remain confidential until the bid is awarded.
- (b) Three quotes should be obtained for purchases between \$5,000 and \$90,000 for purchases of supplies and equipment unless it is a Sole Source item. For purchases of supplies and equipment between \$5,000 and \$30,000, the three-quote requirement can be waived with the approval of the Purchasing Manager.
  - (1) The employee who receives such bids is to keep a record of all bids submitted and have these available for public inspection. This record shall include the company name, the contact person, the item quoted and the date the quote was received.
  - (2) When informal bids are received by a department, the quotes received should be listed on the Purchase Order and a copy attached to the Purchase Order.
- (c) Informal building construction and repair projects are accomplished by obtaining three (3) written quotations for projects between \$30,000 and \$500,000. For building construction or repair contracts in the informal range, between \$30,000 and \$500,000, Minority Business contractors shall be solicited.

(Ord. No. 2015-04, 3-16-2015; Ord. No. 2018-06, 6-18-2018)

**State Law reference—** Bids to be available for inspection, NCGS§ 143-131.

#### **Sec. 30-8. Contracts.**

All contracts proposed by any county department or agency must be preaudited prior to execution as required by NCGS §159-28. The following procedures relative to contracts will apply:

- (1) All contracts should be sent to the Finance Director for preaudit with the following language:

"This Instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act."

\_\_\_\_\_  
Finance Director

- (2) A Purchase Order shall be issued for all contracts when County funds will be expended.
- (3) The contract will be sent to the County Attorney's office for approval as to form, prior to execution.
- (4) A copy of the contract will be maintained in a County approved electronic database and attached to the Purchase Order.

(Ord. No. 2015-04, 3-16-2015; Ord. No. 2018-06, 6-18-2018)

#### **Sec. 30-9. Emergency Purchases.**

- (a) Emergency purchasing permission is granted only in extreme cases. During normal working hours, if, in the judgment of the Department Head, an emergency arises which necessitates immediate purchase of materials or services to continue with department operations, the Purchasing Manager is notified of the emergency purchase which will be necessary and enters the Purchase Order in the computer system. The Purchasing Manager then processes the Purchase Order immediately, contacting the Finance Department for approval.
- (b) After working hours, the Department Head will decide if an emergency exists and in such case will authorize the necessary emergency purchase. A disbursement voucher shall be completed for any emergency purchase with an explanation attached.
- (c) In all cases, if the Department Head is not available, the decision regarding emergencies will be made by the Finance Director or Assistant Finance Director. These procedures apply to all County agencies and departments.
- (d) Emergency procedures are not intended for purchases required because of failure to anticipate normal needs. Work should be planned in advance and material requirements determined so that items can be requisitioned as a regular purchase.

(Ord. No. 2015-04, 3-16-2015; Ord. No. 2018-06, 6-18-2018)

#### **Sec. 30-10. Use of Purchasing Procedures and Purchasing Office Required.**

- (a) The purchasing of goods and services utilized by County departments must be handled in accordance with the procedures contained in this Chapter and all related County policies.
- (b) The purchasing of such items and services shall be accomplished through the use of the purchasing office. The key to an efficient and economical central purchasing system is optimum use of that system.
- (c) While some exception to this requirement may be allowed, e.g., emergency purchases as covered in section 30-18, failure to use the purchasing office may result in the County's refusal to pay invoices for such purchases.

(Ord. No. 2015-04, 3-16-2015; Ord. No. 2018-06, 6-18-2018)

#### **Sec. 30-11. Uniform Guidance Procurement for Contracts Using Federal Funds.**

This section establishes 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.

- (1) *Applies to contracts for purchases, services, and construction or repair work funded with federal financial assistance (direct or reimbursed).* These guidelines 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.

- (2) *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 of this subpart, as amended, unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. The County will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the County have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.
- (3) Definitions Related to Uniform Guidance:

*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.

*No Evasion.* No contract may be divided to bring the cost under bid thresholds or to evade any requirements of this chapter or state and federal law.

*Contractor.* An entity that receives a contract.

*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. part 200, including Appendix II, as amended.

*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.

*Micro-Purchase.* A purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold.

*Micro-Purchase Threshold.* The dollar amount at or below which a non-Federal entity may purchase property or services using micro-purchase procedures under 2 C.F.R. 200-320.

*Pass-Through Entity.* A non-Federal entity that provides a subaward to carry out part of a Federal program.

*Simplified Acquisition Threshold.* The dollar amount below which a non-Federal entity may purchase property or services using small purchase methods.

*Subaward.* An award provided by a pass-through entity to a subrecipient for the subrecipient 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 subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

*Subrecipient.* An entity usually but not limited to non-Federal entities, that receives a subaward 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.

*Time and Materials Contract.* A time and materials contract provides for acquiring supplies on the basis of:

(1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and

(2) Actual cost for materials (except as provided for in 48 C.F.R. § 31.205-26(e) and (f)).

**(Ord. No. 2018-06, 6-18-2018)**

**Sec. 30-12. General procurement standards and procedures required for federally awarded contracts and grants.**

Either the purchasing office or the requesting department shall procure all contracts in accordance with these requirements.

- (1) *Necessity.* Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. The purchasing office 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.
- (2) *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.
- (3) *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.
- (4) *Compliance by contractors.* All solicitations must inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.
- (5) *Fixed price.* Solicitations must state that bidders must submit bids on a fixed price basis and the contract shall be awarded on this basis unless otherwise provided in this chapter. 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.
- (6) *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 when needed 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.
- (7) *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.
- (8) *Dividing contract for Minority or Women Business Enterprise ("WBE") participation.* If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and Minority Businesses and WBE (sometimes referred to "M/WBE"). The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this chapter.
- (9) *Documentation.* Documentation must be maintained by the purchasing office and/or 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.
- (10) *Cost estimate.* For all procurements in excess of the Simplified Acquisition Threshold (2 C.F.R. § 200-324(a)), the purchasing office 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.
- (11) *Contract requirements.* The requesting department must prepare a written contract incorporating the provisions referenced in this Chapter.
- (12) *Debarment.* No contract shall be awarded to a contractor included on the federally debarred bidder's list.

- (13) *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.
- (14) *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.
- (15) *Geographic preference.* No contract shall be awarded on the basis of a geographic preference.
- (16) *Duplicate purchases.* The requesting department should avoid unnecessary or duplicate purchases 2 C.F.R. §200-318(d).
- (17) *Consolidate.* Consider consolidating or breaking out purchases to obtain more economical purchases.
- (18) *Interlocal Agreements.* Entering into interlocal or cooperative agreements for common or shared goods or services is encouraged. 2 C.F.R. §200.318(e).
- (19) *Value Engineering.* Using value engineering in construction contracts is encouraged.

(Ord. No. 2018-06, 6-18-2018)

### **Sec. 30-13. Specific Procurement Procedures for Contracts Using Federal Funds.**

Either the purchasing office or the requesting department shall solicit bids in accordance with the requirements under this section based on the type and cost of the contract.

- (1) Service contracts (except for Architectural and Engineering ("A/E") professional services) costing less than \$50,000 and purchase contracts costing less than \$30,000 shall be procured using the uniform guidance "micro-purchase" procedure (2 C.F.R. § 200.320(a)) as follows:
  - a. 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.
  - b. To the extent practicable, purchases must be distributed among qualified suppliers.
- (2) Service contracts (except for A/E professional services) costing \$50,000 up to \$250,000 and purchase contracts costing \$30,000 up to \$90,000 shall be procured using the uniform guidance "small purchase" procedure (2 C.F.R. § 200.320(b)) as follows:
  - a. 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).
  - b. Take affirmative steps to solicit price quotes from M/WBE Vendors and suppliers as required under 2 C.F.R. § 200.321.
  - c. Cost or price analysis is not required prior to soliciting bids.
  - d. 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).
  - e. Award the contract to the lowest responsive, responsible bidder.
- (3) Service contracts (except for A/E professional services) costing \$250,000 and above and purchase contracts costing \$90,000 and above shall be procured using a combination of the most restrictive requirements of the UG "sealed bid" procedure (2 C.F.R. §200.320(c)) and state formal bidding procedures (NCGS §143-129) as follows:
  - a. Cost or price analysis is required prior to soliciting bids.
  - b. Complete specifications or purchase description must be made available to all bidders.
  - c. 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."

- d. Take affirmative steps to solicit price quotes from M/WBE Vendors and suppliers as required under 2 C.F.R. §200.321.
  - e. 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 two (2) bids must be received in order to open all bids.
  - f. 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."
- (4) 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:
- a. An 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.
  - b. Take affirmative steps to solicit price quotes from M/WBE Vendors and suppliers as provided under 2 C.F.R. §200.321.
  - c. Identify evaluation criteria and relative importance of the criteria (criteria weight) in the RFP.
  - d. Consider all responses to the publicized RFP to the maximum extent practical.
  - e. A written method for conducting technical evaluations of proposals and selecting the winning firm.
  - f. 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.
  - g. Award the contract on a fixed-price or cost-reimbursement basis.
- (5) Construction and repair contracts costing less than \$30,000 shall be procured using the uniform guidance "micro-purchase" procedure (2 C.F.R. §200.320(a)) as follows:
- a. 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.
  - b. To the extent practicable, contracts must be distributed among qualified suppliers.
- (6) Construction and repair contracts costing \$30,000 up to \$250,000 shall be procured using the uniform guidance "small purchase" procedure (2 C.F.R. §200.320(b)) as follows:
- a. 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).
  - b. Take affirmative steps to solicit price quotes from M/WBE Vendors and suppliers as required under 2 C.F.R. §200.321.
  - c. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
  - d. Award the contract on a fixed-price or not-to-exceed basis.
  - e. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required.

- (7) 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:
- a. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
  - b. Complete specifications must be made available to all bidders.
  - c. 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.
  - d. Take affirmative steps to solicit price quotes from M/WBE Vendors and suppliers as provided under 2 C.F.R. §200.321.
  - e. 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 two bids must be received in order to open all bids.
  - f. A five percent (5%) bid bond is required of all bidders. Performance and payment bonds of one hundred percent (100%) of the contract price are required of the winning bidder.
  - g. Award the contract on a firm fixed-price basis.
  - h. 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."
- (8) 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 (NCGS §143-129) as follows:
- a. Cost or price analysis is required prior to soliciting bids (this cost estimate should be provided by the project designer).
  - b. Complete specifications must be made available to all bidders.
  - c. Formally advertise the bid electronically 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."
  - d. Take affirmative steps to solicit price quotes from M/WBE Vendors and suppliers as provided under 2 C.F.R. §200.321.
  - e. 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 three bids must be received in order to open all bids.
  - f. A five percent (5%) bid bond is required of all bidders (a bid that does not include a bid bond cannot be counted toward the three-bid minimum requirement). Performance and payment bonds of one hundred percent (100%) of the contract price are required of the winning bidder.
  - g. Award the contract on a firm fixed-price basis.
  - h. Award the contract to the lowest responsive, responsible bidder. Governing board approval is required and cannot be delegated. The governing board may reject any and all bids only for "sound documented reasons."
- (9) Construction or repair contracts involving a building costing \$300,000 and above must comply with the following additional requirements under state law:
- a. Formal HUB (historically underutilized business) participation required under NCGS §143-128.2, including local government outreach efforts and bidder good faith efforts, shall apply.

- b. Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under NCGS §143-128(a).
  - c. The project shall be bid using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under NCGS §143-129(a1).
- (10) Contracts for architectural and engineering services costing under \$250,000 shall be procured using the state "Mini-Brooks Act" requirements (NCGS §143-64.31) as follows:
- a. 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.
  - b. Take affirmative steps to solicit price quotes from M/WBE Vendors and suppliers as provided for under 2 C.F.R. § 200.321.
  - c. Evaluate the qualifications of respondents based on the evaluation criteria developed by the purchasing office and/or requesting department.
  - d. 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.
  - e. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
  - f. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.
- (11) 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:
- a. 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.
  - b. Take affirmative steps to solicit price quotes from M/WBE Vendors and suppliers as provided under 2 C.F.R. § 200.321.
  - c. Identify the evaluation criteria and relative importance of each criterion (the criteria weight) in the RFQ.
  - d. Proposals must be solicited from an "adequate number of qualified sources" (an individual federal grantor agency may issue guidance interpreting "adequate number").
  - e. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
  - f. Consider all responses to the publicized RFQ to the maximum extent practical.
  - g. 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.
  - h. Price cannot be a factor in the initial selection of the most qualified firm.
  - i. 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.
  - j. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

(Ord. No. 2018-06, 6-18-2018; Ord. No. 2018-09, 7-23-2018)

#### **Sec. 30-14. Exceptions for Contracts Using Federal Funds.**

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:

- (1) *Sole Source.* A contract may be awarded without competitive bidding when the item is available from only one source. The purchasing office 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.
- (2) *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.
- (3) *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 chapter, do not result in a qualified winning bidder.
- (4) *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.
- (5) *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.

(Ord. No. 2018-06, 6-18-2018)

#### **Sec. 30-15. Conflict of Interest for Contracts Using Federal Funds.**

These conflicts of interest criteria 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).

This section 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 section also applies to any subrecipient of the funds.

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 subrecipients, of the requirements of this policy and any additional prohibitions or requirements.

- (1) In addition to the prohibition against self-benefiting from a public contract under NCGS §14-234, no officer, employee, or agent of the county may participate 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:
  - a. The employee, officer, or agent;
  - b. Any member of his or her immediate family;
  - c. His or her partner; or
  - d. An organization which employs or is about to employ any of these parties.
- (2) Any officer, employee, or agent with an actual, apparent, or potential conflict of interest as defined in this chapter 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.
- (3) In addition to the prohibition against accepting gifts and favors from Vendors and contractors under NCGS §133-32, officers, employees, and agents of the 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 such as promotional items, honorariums for participation in meetings, and meals furnished at banquets may be accepted. Any officer, employee or agent who knowingly accepts an item of nominal value shall report the item to his or her immediate supervisor.

- (4) Employees violating this chapter will be subject to discipline up to and including termination. Violation of this conflict of interest requirement by a party to a contract shall result in the termination of the contract and make the contracting party ineligible for future contract awards.

(Ord. No. 2018-06, 6-18-2018)

**Sec. 30-16. Surplus Property.**

- (a) If County property becomes surplus to the County's needs due to obsolescence, end of useful life, or for any other reason deemed appropriate by the County, such property will be disposed of by means most advantageous to the County. This includes tangible personal property, buildings and structures, and real estate acquired in foreclosure proceedings for nonpayment of property taxes.
- (b) When the value of personal property is less than \$10,000 for any one item or group of items, the Purchasing Manager is authorized and may declare items surplus. When the value of personal property is between \$10,000 and \$30,000 the County Manager is authorized and may declare items surplus. The County Manager and/or the Purchasing Manager shall determine the fair market value, taking into consideration the present market value, depreciation, condition of the property, and other factors affecting value. After a determination of the fair market value, the Purchasing Manager, by any manner deemed necessary, is authorized to sell or exchange any property for fair market value and has full authority to convey good title to the property. A record of all transactions shall be kept generally describing the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange. The County Manager and/or the Purchasing Manager may discard any personal property that:
- (1) Is determined to have no value;
  - (2) Remains unsold or unclaimed after the County has exhausted efforts to sell the property using any applicable procedures; or
  - (3) Poses a threat to public health or safety.
- (c) Any county employee who has the responsibility of declaring an item to be surplus property shall not purchase or obtain the item under any circumstances for personal use.
- (d) Surplus library books. Each branch library has a Friends of the Library organization. Library staff shall have the authority to transfer surplus and donated library materials to the Friends of the Library. Further, the Friends of the Library shall have the authority to sell donated or discarded County books on behalf of the County pursuant to NCGS §160A-266(c). The Friends of the Library shall use the proceeds to purchase new library materials and programs.

(Ord. No. 2015-04, 3-16-2015; Ord. No. 2018-06, 6-18-2018)

This 16<sup>th</sup> day of October, 2023

[Seal]

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C. Randall Isenhower, Chairman  
Catawba County Board of Commissioners

Attest:

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Dale R. Stiles, Clerk to the Board  
Catawba County Board of Commissioners