

COUNTY OF WASHINGTON

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POST OFFICE BOX 1007
PLYMOUTH, NORTH CAROLINA 27962
OFFICE (252) 793-5823

ADMINISTRATION STAFF:

CURTIS S. POTTER
COUNTY MANAGER/COUNTY ATTORNEY
cpotter@washconc.org

CATHERINE "MISSY" DIXON
FINANCE OFFICER
mdixon@washconc.org

JULIE J. BENNETT, MMC, NCMCC
CLERK TO THE BOARD
jbennett@washconc.org

RESOLUTION 2022-43

RESOLUTION ADOPTING & UPDATING

WASHINGTON COUNTY PROCUREMENT & PURCHASING POLICY

WHEREAS, the Board previously adopted certain general countywide purchasing policies including without limitation a "Washington County Purchasing Policy" adopted on or about March 3rd, 2015, as subsequently updated by a Resolution Incorporating Federal Uniform Guidance Requirements into the Washington County Purchasing Policy on or about October 1st, 2018, and again by adopting a Uniform Guidance Conflict of Interest Policy on or about November 15th, 2018; and

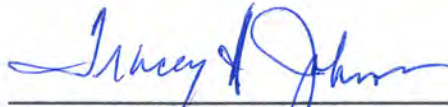
WHEREAS, staff has advised that the original policy is now outdated and should be updated and replaced with the attached Washington County Procurement & Purchasing Policy Effective October 3rd, 2022 which incorporates the aspects of Uniform Guidance previously added to the original policy.

NOW, THEREFORE, the Board of Commissioners of Washington County hereby resolves as follows:

1. That the attached Washington County Procurement & Purchasing Policy is hereby adopted and shall be deemed to supersede, control over, and replace any and all previously adopted countywide procurement or purchasing policies adopted by this Board including without limitation the policies specifically referred to in this Resolution above.
2. Except as stated herein, and otherwise except to the extent inconsistent with the Policy adopted by the Board under this Resolution, no other conflict of interest policies, ethics policies, grant specific policies, or policies adopted in compliance with Uniform Guidance or the American Rescue Plan Act shall be considered to be effected by this Resolution which is primarily intended to update the primary countywide purchasing and procurement policy

underlying most day to day operations of the County in compliance with applicable local, state, and federal laws.

ADOPTED this the 3rd day of October, 2022.



Tracey A. Johnson, Chair
Washington County Board of Commissioners

ATTEST:



Julie J. Bennett, MMC, NCMCC
Clerk to the Board





Washington County Procurement & Purchasing Policy

EFFECTIVE OCTOBER 3, 2022

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I. INTRODUCTION

This Policy is intended for use as a guide to Washington County's purchasing methods and practices. This policy establishes rules and regulations to govern all purchases and contracts by Washington County. It also implements a system of internal controls that provide reasonable assurance that the County is compliant 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 by the County Manager and County Finance Officer, provided that notice of any changes shall be provided to the Board of Commissioners at their next regular Board meeting thereafter.

It is the policy of Washington County to comply with competitive bidding rules and regulations as required by the North Carolina general statutes, federal and state laws, and/or local policies when making purchases of goods (apparatus, supplies, materials, or equipment) professional or other services, and construction and repair work. The objective in doing so 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.

II. EQUAL OPPORTUNITY

It is the policy of Washington 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. UNIFORM GUIDANCE SAVINGS PROVISION:

Notwithstanding anything in this policy to the contrary, applicable contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200).

IV. CONFLICT OF INTEREST POLICY

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

Washington 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 projects paid for in part or whole by federal funds or with federal financial assistance (whether direct or indirect) as required under 2. C.F.R. 200.318(c)(1). This policy also extends and 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 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 spouse or domestic partner; or
4. any 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 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 \$50 which fall into one of the following categories may be accepted:

1. promotional items (cups, pens, etc.);
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.

v. BUDGET APPROPRIATIONS AND ENCUMBRANCES

Under the Local Government Budget and Fiscal Control Act, all expenditures must be supported by a budgeted 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.

vi. COMPETITIVE PROCUREMENT/PURCHASING

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 should, and in some cases must, seek competitive offers from qualified suppliers unless a specific exception or exemption applies, such as being able to obtain the items through existing "State Contracts" established by North Carolina's State Purchasing and Contracts Division, or "Piggy Backing" off of another jurisdiction's recently awarded contract for the same item. Washington County participates in North Carolina State Contracts whenever feasible and cost-effective.

Caution should be used whenever applying an exception or exemption to a general bidding requirement, and the County Manager or County Finance Officer should be consulted to confirm (with legal guidance if deemed necessary) that an exception or exemption should be pursued, and that all necessary procedures to do so are properly followed.

Washington 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.

Unless otherwise directed by the County Manager or County Finance Officer, the following should be consulted to provide notice, guidance, and input on specific types of procurement:

- Facilities Director for all construction, repair and renovation projects
- IT Director for all IT related services, and purchases of any electronic equipment to be attached to any county networks, as well as purchases of any phones including cell phones.
- County Manager and/or Finance Officer or their specific designees for any grant related procurement.

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 and terminology can vary between jurisdictions and different state and federal departments.

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

Competitive Bids/Quotes: are required when the estimated cost is \$10,000 (County Policy) or more, but less than \$30,000;

- Obtain 2-3 quotes. Verbal pricing or quotes from a vendor must be documented in writing along with any notes related to any lack of quotes/bids.
 - Awards should be made to the Lowest, Responsible, Responsive Bidder (LRRB)
 - The County Manager or Finance Officer may grant a competitive bidding waiver for purchases above \$10,000 in certain limited situations.
- i. **INFORMAL BIDDING:** is generally required when the estimated cost of procurement is \$30,000 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) unless an exception applies. NC General Statutes and County policy generally require the following for informal bids:
- Dollar thresholds shall be based on aggregate cost of all similar or related items to be purchased, cannot be divided into multiple groups to avoid threshold.
 - Advertisement of the informal bid opportunity on-line for a minimum of 7 days.
 - Maintain confidentiality of bids until one is accepted/awarded.
 - Obtain 2-3 quotes preferably on vendor letterhead, and keep a written record of all bids submitted (submit with requisition along with any contracts and/or other important procurement notes/info)
 - Contracts must be awarded to the lowest responsible, responsive bidder (LRRB), taking into consideration quality, performance, and the time specified in a bid for contract performance.
 - Contracts must be pre-audited by the County Finance Officer and signed by the County Manager.
 - ***For Informal Construction, Renovation and Repair Contracts exceeding \$30,000:**
 - By law a licensed general contractor must be used.
 - Additional (MWBE) (Minority & Women Owned Business Enterprises) solicitation is required (N.C.G.S. §143-131(b), after the completion of which, the department must submit an MWBE Reporting form to the County Finance Officer or other designee who will report MWBE information for each project to the North Carolina Office of Historically Underutilized Business on the HUBSCO Informal Project Report (G.S. 143-128.3). (If the project is \$300,000 or more see HUBSCO reporting requirements under Formal Billing below).
 - The HUBSCO information reported shall consist of:
 - type of project
 - total dollar value of the project
 - the dollar value of minority business participation in the project, and
 - the unit's efforts to recruit minority participation
 - Note: Typically, the informal bidding statute does not require advertisement, notification, preparation of specifications, sealed bids, or a public bid opening. It does not require award by

the governing board, nor does it require bid bonds or a minimum number of bids. Finally, although the informal bidding statute does not require performance and payment bonds, such bonds are still required for all contracts worth more than \$50,000 that are part of a project worth more than \$300,000.

- ii. **FORMAL BIDDING:** is generally 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 generally 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 should be made to obtain at least three (3) bids. *Note special requirements for formal construction contracts.
 - All formal bids must be opened in public. Bids must be sealed and opening a bid or package with the 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 Board of County Commissioners reserves the right to reject any and all bids.
 - The Board of County Commissioners will approve formal bid awards based on the recommendation by the relevant department, and the County Manager is authorized to sign awarded contracts with any additional legal terms or assurances recommended by the County Attorney.
 - 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.
 - *For **Formal Construction, Renovation, and Repair Contracts exceeding \$500,000** involving (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 without opening bids from the first solicitation. Bids may be opened on the second process regardless of the number of bids received (N.C.G.S. §143-132(a)).
 - 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)). Bid bonds will be maintained by the Finance Office.
 - By law a licensed general contractor must be used.
 - Additional (MWBE) (Minority & Women Owned Business Enterprises) solicitation is required (N.C.G.S. §143-131(b)), and if the project is \$300,000 or more, the department must

submit an MWBE Reporting form semiannually to the County Finance Officer or other designee who will report MWBE information for each project to the North Carolina Office of Historically Underutilized Business on the HUBSCO Informal Project Report (G.S. 143-128.3) along with a final post construction report.

- The HUBSCO information reported shall consist of:
 - The verifiable percentage goal/s
 - 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. Service Procurement & Contracts

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 two (2) to three (3) competitive quotes before a service contract is awarded.

The competition process may be informal or formal. It may be an RFP response, simple written quotes, or other methods that accurately reflect the undertaking of a competitive solicitation process. Awards should be based on the best overall cost-effective solution, (taking into due consideration the LRRB standard whenever possible), along with other relevant factors such as overall quality and compatibility with existing systems. The County Manager or County Finance Officer may approve an award to a higher bidder when circumstances warrant (ex. choosing a higher priced option which is more compatible with existing systems when a lower priced option is not and would create operational inefficiencies).

- All service contracts must be in writing, must be reviewed and approved by applicable department heads following any internal administrative review procedures established by County administration for such purpose, must contain a pre-audit certificate signed by the County Finance Officer, and must be finally approved and signed by the County Manager or Board.
- All Contracts for services should be reviewed annually by each department, and should be attached to requisitions when requesting a Purchase Order for each fiscal year.
- Contracts should be exposed to competition every three to five years.
- For contracts estimated to be \$30,000 or more: (1) the Finance Officer (or their designee) should be contacted prior to initiation of the competition process to provide guidance and reduce procurement mistakes and errors, (2) whenever possible such contracting opportunities should be advertised, including an additional Minority & Women Owned Business Enterprises (MWBE) solicitation using the state portal for such advertisements.
- Departments are responsible for documenting the competition process. At a minimum a Quote Summary, along with any relevant notes about efforts made or obstacles encountered, and any additional backup documentation should be included when submitting a new contract for administrative review or a requisition for any such agreements.

C. Professional 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 or County Manager to whom such authority has been granted. (N.C.G.S. §143-64.32). County departments must consult with the County Manager and County Finance Officer when considering these services.

Approval of separate Exemption Resolutions is required for each separate project for services estimated to be \$50,000 or less, unless a blanket resolution authorizing the County Manager to grant such exemptions in writing has otherwise been adopted by the Board in which case such exemptions shall be granted in compliance with the terms thereof.

D. Request for Proposals (RFP)

The County may use 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 certain construction work exceeding \$30,000 and/or certain professional services subject to the NC Mini Brooks Act, which may require additional advertisement, MWBE solicitation, and other requirements. (See related sections above).

E. Exceptions to the bidding requirements

There are certain exceptions to the general bidding requirements that may apply to **purchase** contracts. Contact the County Finance Officer (or their designee) to determine whether or not such an exception may apply. The following is a list of non-exclusive potential exceptions, but may require additional action or compliance steps to be used in lieu of more competitive processes:

- Purchases from other governmental agencies (G.S. 143-129(e)(1))
- Competitive group purchasing (G.S. 143-129(e)(3))*Requires Additional Compliance
- 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 current approved “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, competitive bid info attached to the requisition, or on the contract documents themselves.