



# NEW HANOVER COUNTY

## Administrative Memorandum

### PURCHASING POLICY

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## **1.0 POLICY STATEMENT**

The policy of New Hanover County (the “County”) is to maintain a responsible procurement process that obtains the best apparatus, supplies, materials, equipment, and services, at the best price and in compliance with all applicable laws.

## **2.0 PURPOSE**

The purpose of this policy is to establish guidelines for the expenditure of funds used to procure goods and services by County departments. This primary purpose is met by establishing and implementing a system of internal controls that provide reasonable assurance that the County is in compliance with North Carolina General Statutes Chapter 143, Article 8, Public Contracts. Each County department shall be responsible for ensuring that all procurement undertaken within their department complies with:

1. All applicable state and federal laws;
2. Local ordinances or directives established by the Board of County Commissioners (BOCC);
3. This policy; and
4. All other approved policies and procedures

This purchasing policy is pertinent to all County employees. Any employee who flagrantly disregards the County’s procurement policies and procedures may be subject to disciplinary action, including being held personally responsible for the payment of any unauthorized purchases or services.

## **3.0 PROCUREMENT ORGANIZATION**

New Hanover County’s purchasing system is a combination of both a centralized and decentralized purchasing system which utilizes decentralization of the process combined with centralization of authority. Essentially, the process of purchasing is the responsibility of the using department under rules established by the Finance Office.

The authority for approval and award of contract remains in the Finance Office where all purchasing-related work is reviewed by the staff to ensure that laws and system procedures are being followed.

## **4.0 RESPONSIBILITIES**

The County Finance Department shall have the responsibility for maintaining and administering this policy. The County Finance Department, at the discretion of the County Manager’s Office, shall be responsible for implementing this policy and delegating any necessary duties required to perform procurements. Compliance and monitoring of this policy shall be managed as directed by the County Manager’s Office. All County

departments and employees are subject to and responsible for the provisions of this Purchasing Policy.

No County employee shall purchase or contract for any goods and/or services except as provided in this policy and all applicable statutes.

## **5.0 PURCHASING AUTHORIZATIONS**

Purchases of apparatus, supplies, materials, equipment, and services must be authorized or documented by one of the following:

### **5.1 Petty Cash**

Expenditures of \$100 or less (including sales tax) can be made through the use of petty cash. Petty cash must only be used when the expenditure is clearly for a public purpose and the person initiating its use is certain that the funds have been appropriated. Refer to Petty Cash Policy and Department of Social Service Petty Cash Policy for more complete details.

### **5.2 Credit Cards**

5.2.1 The procurement card is a County-issued credit card and is used to purchase small dollar items, excluding services requiring a purchase order and/or a certificate of insurance, with a cumulative dollar value (including tax) not to exceed \$1,000 unless prior approval has been granted for a specific purchase by Finance. Additionally, this card can be used for certain expenses when traveling on official County business. Travel expenses are not held to the single \$1,000 transaction limit. Refer to the County's Procurement Card and Travel Policy for more complete details.

5.2.2 Each County vehicle is assigned a Fleet credit card which shall only be used for fuel purchases when using County vehicles.

### **5.3 Purchase Orders**

5.3.1 Normal: Purchases of goods and services costing \$1,000 or more require a purchase order. The cost is to include sales tax and freight. When a purchase order is not obtained prior to the purchase or service, the Department Head is required to provide to the Finance Department a signed memo explaining the reason for failure to obtain a purchase order.

- 5.3.2 Blanket: The purpose of a blanket purchase order is to eliminate the need to generate a large number of purchase orders for small and/or recurring purchases from the same vendor.

The purchase order **must** have a start and stop date and the stop date must not extend past June 30th of the current fiscal year.

The blanket **must** also specify a dollar limit and a period of time. The period may be monthly, quarterly, semi-annually, or yearly.

When appropriate, the blanket should list the individuals authorized to purchase items on behalf of the County.

Blanket purchase orders will be issued for department purchases of goods with an estimated annual cost less than \$30,000.

Blanket purchase order for services will only be issued when the estimated expenditure is less than \$10,000. When the dollar amount is \$10,000 or more, the department must request a written contract from the Legal Department.

#### 5.4 County Established Accounts

- 5.4.1 Sam's Club: The County maintains a Direct Bill Account with Sam's Club. Departments may add users by contacting Purchasing and requesting to be added to the account. Each user is charged an annual membership fee.

- 5.4.2 Amazon Business Account: Users may request to be added to the Amazon Business Account by contacting Purchasing. There is no charge to be added to the account. Users will receive an invoice payable net 30 days from Amazon.

#### 5.5 Direct Payments

Purchase orders are not required for the following:

1. Invoices received for annual maintenance agreements which are automatically renewed.
2. Advertising
3. Ongoing Utility Charges to include Electricity, Water, Telephone, Natural Gas, and Heating Oil
4. Reimbursements
5. Postage
6. Dues and Subscriptions

7. Real Property Transactions
8. Insurance Payments
9. Payroll Taxes
10. Cost Per Copy Program
11. Energy Assistance Payments
12. Medical Assistance Payment
13. Payments to Volunteers
14. Payments to Foster and Grandparents
15. Adoption Assistance
16. Registrations for Training

Although purchase orders are not required, departments may request them for their own convenience.

## **6.0 Statutory Requirements Governing Purchasing and Construction and Repair Contracts**

### **6.1 Formal Bids (G.S. 143-129)**

A formal bid process is required under the two (2) following conditions:

- 1) The purchase of goods, apparatus, materials, supplies and equipment requiring an estimated expenditure of \$90,000 or more; and
- 2) The purchase of construction and repair projects of \$300,000 or more. The County's limit is more restrictive than General Statute.

#### **6.1.1 Formal bidding procedures must:**

- 1) Be advertised in a newspaper having a general circulation in New Hanover County or by electronic means or both at least seven (7) days prior to the bid opening.
- 2) Advertisements must contain:
  - a) the time and place specifications will be available;
  - b) the time and place bids/proposals will be opened; and
  - c) a statement reserving the right to reject any or all bids;
- 3) Bids must be submitted in a sealed opaque envelope or package to ensure that prices and terms will not be disclosed prior to the bid opening;
- 4) Bids must be opened in public and the pricing read aloud and recorded;

- 5) Consideration of the need for bid deposits and/or performance and payment bonds must be included in the bid process as well as the insurance requirements.
- 6) Award must be made to the lowest responsible bidder taking into consideration quality, performance, and the time specified in the bids for the performance of the contract; and
- 7) The Board of Commissioners must approve all formal bid awards at a duly called public meeting.

## 6.2 Informal Bids

### Informal Bids (G.S. 143-131)

An informal bid process is required under the two (2) following conditions:

- 1) The purchase of goods, apparatus, materials, supplies and equipment requiring an estimated expenditure of \$30,000 up to \$89,999; and
- 2) Construction and repair projects of \$30,000 up to \$299,999.

## 7.0 EXCEPTIONS TO THE FORMAL BIDDING REQUIREMENTS

N.C.G.S. 143-129(e) lists the Exceptions in which the *formal* bidding requirements do not apply.

### 7.1 Exceptions that apply to **purchase contracts** only:

- Purchases from other governmental agencies
- Competitive group purchasing
- Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or natural gas. These purchases are subject to informal bidding requirements G.S. 143-131.
- Sole Source (must have letter from manufacturer and requires board approval)
- Information technology goods or services purchased through the State Office of Information Technology or under request for proposals.
- State Contract purchases
- Purchase of *used* apparatus, supplies, materials, or equipment. For purposes of this exception, remanufactured, refabricated or demo apparatus, supplies, materials, or equipment are not included under this exception.

- “Piggybacking” or Previously Bid *Purchase* Contracts (requires governing board approval at a regular meeting upon 10 days’ public notice)
- Purchase of goods and services from nonprofit work centers for the blind and severely disabled

7.2 Exceptions that apply to **construction or repair contracts** only:

- Change Order Work
- Construction Manager at Risk projects (Qualification Based Selection is required)
- Force account work (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when either the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed one hundred twenty-five thousand dollars (\$125,000) or the total cost of labor on the project does not exceed fifty thousand dollars (\$50,000).
- Projects using unemployment-relief labor paid for in whole or in part with state or federal funds.
- Contracts with North Carolina Department of Transportation for street construction and repair

7.3 Exceptions that apply to **both** construction and purchase contracts:

- Special emergency involving the health and safety of the people, or their property
- Guaranteed energy savings contracts, which are governed by Article 3B of Chapter 143 of the General Statutes
- Solid waste management facilities

**8.0 PURCHASES WITH TRADE-IN OF APPARATUS, SUPPLIES, MATERIALS, AND EQUIPMENT**

G.S. 143-129.7 permits the County to include in specifications for the purchase of apparatus, supplies, materials, or equipment an opportunity for bidders to purchase as "trade-in" specified personal property owned by the County. The awarding authority may award a contract for both the purchase of the apparatus, supplies, materials, or equipment and the sale of trade-in property, taking into consideration the amount offered on the trade-in when applying the criteria for award established in the Statute.

**9.0 REQUESTS FOR PROPOSALS (RFP)**

G.S. 143-129.8 contains an alternative provision which gives local governments more flexibility in purchasing a combination of information technology goods and services. The

statute authorizes local governments to use a Request for Proposals (RFP) process rather than a Request for Bids (RFB) process. An RFP process may be used to purchase services as well as any combination of goods or services, particularly when the services component of the purchase is greater than the goods component.

The RFP method of procurement is normally conducted with more than one source submitting an offer or proposal. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids

1. Proposals may not be disclosed to other proposers during any period of negotiation or discussion.
2. The award shall be made to the responsible firm whose proposal is most advantageous to the County with price and other factors considered.

#### **10.0 REQUESTS FOR QUALIFICATIONS (RFQ)**

G.S. 143-64.31 governs the procurement of architectural, engineering, and surveying services.

1. It is the policy of the County, except in cases of special emergency involving the health and safety of the people or their property, to announce or advertise **ALL** requirements for architectural, engineering, surveying, construction management at risk services, design-build services, and public-private partnership construction services.
2. The County may exempt proposed projects where the estimated professional fee is less than fifty thousand dollars (\$50,000). An exemption letter must accompany each project.

#### **11.0 ECONOMIC DEVELOPMENT**

G.S. 158-7.1 authorizes the County to make appropriations for economic development purposes. These appropriations must be determined by the Board of Commissioners to increase the population, taxable property, agricultural industries, employment, industrial output, or business prospects of the County. Any appropriation or expenditure pursuant to this section must be approved by the Board of Commissioners after a public hearing. The notice of a public hearing must be published at least ten (10) days before the hearing is held.

#### **12.0 CONSTRUCTION BIDDING METHODS**

The following methods for bidding are permitted under GS 143-128(a1). For more details of each method, refer to GS 143-128:

1. Separate-prime bidding: The County advertises and receives separate bids for each of the four categories of work for which separate specification must be prepared (HVAC, Plumbing, Electrical, and General.)
2. Single-prime: Contractors bid on performing all of the work required by the project for a specified price. The selected contractor hires and supervises the subcontractors used for various parts of the work.
3. Dual Bidding: A combination of separate-prime and single prime bidding. The County solicits and accepts bids under both the separate-prime and single-prime methods simultaneously.
4. Construction management at risk: The construction manager at risk (CMR) guarantees the project will be constructed to the architect's specifications for a guaranteed price. The CMR's profit and risk are built into the quoted price, which is "at risk" for cost overruns on the project.
5. Design Build: Both design (architectural and engineering) and construction services are under one contract with a single point of responsibility.
6. Design-build bridging: This is a two-step contracting and construction delivery process. First, the County contract separately with an architect/engineer to design 35 percent of the project. Second, the County solicits bids from design-build firms to complete the remainder of the design and perform the construction work.
7. Public-private partnership (P3): Authorizes the County to partner with a private developer for the construction, operation, and financing of a capital project.

### **13.0 SERVICES**

Non-professional or professional services (other than construction and those covered by GS 143-64.31), are distinguished by the provision of personal performance rather than the delivery of a tangible item.

Competitive services costing \$30,000 or more must undergo a bidding process. Services exempt from this requirement include those human services for which continuum of service delivery is paramount, competition will not yield significant benefits or when only a single vendor can provide a specific service.

### **14.0 EMERGENCY PURCHASES AND SERVICES**

While purchasing procedures involving competitive bidding and/or purchase orders are desirable for the majority of County purchases, when an emergency arises, it may be necessary to follow guidelines that are different from our normal required procedures.

#### 14.1 Definition of an Emergency

For purchasing purposes, an emergency is defined as an unforeseen situation requiring the immediate purchase of equipment, materials, supplies or services in order to avoid serious and adverse consequences affecting the life, health, welfare, or property of the citizens of New Hanover County. The emergency must be present, immediate, and existing. Refer to the Purchasing Procedures regarding emergency purchases.

#### 14.2 Emergency Purchases Requiring Board Approval

If the purchase is \$90,000 or more and would have been subject to Board approval, the department will submit the information to Purchasing to prepare an agenda item describing the events of the emergency to obtain "after the fact" Board approval at the next regular scheduled meeting.

### **15.0 PREQUALIFICATIONS REQUIRED**

Prospective bidders shall prequalify with the County in order to bid on construction/renovation capital improvement projects costing \$300,000 or more. Application for prequalification by the prospective bidder shall be made by filing with the County an AIA Contractor's Qualification Statement, AIA Document A305, and names of three previous project owner references. A bid will not be opened unless the bidder has prequalified and has been found to be acceptable to the County, as authorized by 1991 Session Laws, chapter 117.

### **16.0 DISQUALIFICATION OF BIDDERS**

Any one of the following causes may be justification for disqualifying a contractor from bidding until he has applied for and been re-qualified in accordance with the requirements as set forth in this section:

1. Being declared in default on any contract with any public body in accordance with the general conditions and supplementary general conditions of that contract in the state completed within the last three years.
2. Incomplete outstanding contracts which, in the judgment of the County and the project architect, might hinder or prevent the prompt completion of additional work if awarded.
3. Failure to comply with prequalification requirements.
4. The submission of more than one bid for the same work from an individual, partnership, joint venture or corporation under the same or different names.

5. Evidence of collusion among bidders. Each participant in such collusion will be disqualified.
6. Failure to furnish a non-collusion affidavit upon request.
7. The bankruptcy, insolvency or any act of bankruptcy or insolvency of the bidder.
8. Failure to comply with conditions of the minority MBE/WBE program.
9. County has not received the amount due under a forfeited bid bond on any project completed for County.
10. Failure to return overpayments to County as directed by the project architect on any project completed for County.
11. Participating at present in any outstanding claim against the County for any other construction project.
12. Failure to comply with a written order of the County or project architect.

## **17.0 APPEAL RIGHTS**

The County adheres to applicable construction bidding practices established by state law, County policy, and best practice. A bidder claiming wrongful treatment must formally notify the Chief Financial Officer at least ten (10) calendar days prior to the date of the bid opening and County staff determination of lowest responsible bidder.

The Chief Financial Officer will provide a formal response to the contractor within five calendar days. A contractor not satisfied with that response may appeal the decision to the County Manager, provided such appeal is received within five calendar days after the response from the Chief Financial Officer.

If an appeal is not filed within the specified period, no other County redress is available. No further appeal is available as of right; provided, however, the dissatisfied contractor may request that the Board of Commissioners elect to hear an appeal from the decision of the County Manager.

## **18.0 BID BOND**

The purpose of a bid bond is to ensure that the successful bidder will execute the contract and provide performance and payment bonds, if required. The minimum bid bond amount required is 5 percent (5%) of the total base bid.

The County will not return commercial bid bonds unless specifically requested to do so by the bidders. If any of the three low bidders request the return of a commercial bid bond, the County will not return those bid bonds until the contract and contract bonds have been executed by the successful bidder and approved by the County or all bids have been rejected.

When a bid bond is required, failure of a bidder to submit a bid bond at the time of the bid opening will render the bid invalid and the bid cannot be considered. Failure of the successful bidder to sign the contract will result in forfeiture of the bid bond. Bid bonds are required for construction or repair contracts estimated to cost \$300,000 or more.

Bids bonds are not required on purchase contracts; however, when deemed necessary by the County Manager or designee to be in the best interest of the County, bid bonds may be required on contracts for the purchase of apparatus, supplies, materials, or equipment.

At the time a bid is submitted for a formal construction or repair contract, the bid must be accompanied by a bid deposit of at least five percent (5%) of the amount of the bid proposal. The deposit is retained by the County if the bidder fails to honor the bid amount and execute the contract.

## **19.0 PERFORMANCE AND PAYMENT BONDS**

When the total amount of construction contracts awarded for any one project exceeds three hundred thousand dollars (\$300,000), a performance and payment bond as set forth in (1) and (2) is required from any contractor or construction manager at risk with a contract more than fifty thousand dollars (\$50,000).

- (1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract.
- (2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable.

The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the construction contract.

Performance and Payment Bonds are not statutorily required for the purchase of goods or service contract; however, at the discretion of the Chief Financial Officer/Designee, they may be required.

## **20.0 NUMBER OF BIDS REQUIRED**

### **20.1 Construction Projects**

A construction project estimated to cost \$300,000 or more may not be opened after the initial advertisement unless three (3) competitive bids are received

from qualified bidders. If fewer than three (3) bids are received after the initial advertisement, the project must be re-advertised for a period of seven (7) full days. If fewer than three (3) bids are received after the second advertisement, the bids may be opened and awarded.

## 20.2 Equipment and Supplies

Purchases estimated to cost \$90,000 or more must be advertised for a period of seven (7) full days prior to the bid opening. Equipment and supplies are not subject to the three-bid rule. If only one bid is received, the bid may be opened and awarded. The County may re-advertise if they deem that it is in the best interest of the County to receive more than one bid.

## 21.0 BID AWARD

Award of all formal bids must be made by the Board of Commissioners and **“shall be to the lowest responsive responsible bidder or bidders taking into consideration quality, performance, and the time specified in the proposal for the performance of the contract.”**

An award may be made to a bidder other than the low bidder if it is clearly evident that it would be in the best interest of the County to do so. The lowest bidder may be rejected for lack of skill, experience, financial resources, or other qualifications necessary to perform the contract. The County may also consider other factors such as past performance, financial stability, and availability of equipment in the consideration of award.

## 22.0 BIDS RECEIVED IN EXCESS OF AVAILABLE FUNDS

When the lowest responsive bid is in excess of the funds available for the contract, the County may enter into negotiations with the lowest responsive responsible bidder to reduce the cost to within the budgeted amount. If this cannot be accomplished, then the County must revise the specifications in such a manner as to reduce the cost of the project and re-advertise the revised project. This is available for purchase contracts as well as for construction or repair projects.

## 23.0 WITHDRAWAL OF BIDS

A bidder submitting a bid for construction or repair work may withdraw the bid from consideration after the bid opening without forfeiture of the bid bond if the price bid was based upon a mistake that constituted a substantial error provided the bid was submitted in good faith according to NC General Statute 143-129.1.

## 24.0 MINORITY BUSINESS PARTICIPATION GOALS

A minority business is a business that is at least fifty-one (51%) percent owned by one or more minority persons or socially and economically disadvantaged individuals. Minority and disadvantaged groups recognized by the US Government are Blacks, Hispanic, Asian American, American Indian, Women, Native Hawaiian, and members of American Indian tribes and Native Hawaiian groups. All of these minority individuals/groups must be citizens or lawful permanent residents of the United States.

For informal construction contracts, it is the County's responsibility to solicit minority participations in accordance with GS 143-131(b). The County's effort must be documented and upon completion of project, a report shall be made (including the type of project, total dollar value of the project, and the dollar value of minority business participation) to the Department of Administration, Office for Historically Underutilized Business.

For formal construction contracts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f), all bidders must identify on their bid, the minority businesses that will be utilized on the project with the corresponding total dollar value of the bid by submitting with their bid the Identification of Minority Business Participation form (**Exhibit A**), and the Listing of Good Faith Efforts (Affidavit A). If the bidder will perform work under contract with its own workforce, then the Intent to Perform Contract with Own Workforce (Affidavit B) shall be submitted instead of Affidavit A.

The lowest responsible, responsive bidder must then provide the Portion of the Work to be performed by Minority Firms (**Affidavit C**). In lieu of **Affidavit C**, the lowest responsible, responsive bidder must provide Good Faith Efforts (**Affidavit D**). In lieu of Affidavit C and D, the lowest responsible, responsive bidder must provide **Affidavit B**; which includes sufficient information for the County to determine that the bidder does not customarily subcontract work on this type of project.

**This information must be provided as required. Failure to submit these documents is grounds for rejection of the bid.**

## 25.0 DISPUTE RESOLUTION

The County adopted dispute resolution procedures promulgated by the State Building Commission, as found in North Carolina general statute 143-128(f1). Said procedures shall be available to address any issues arising out of the contract or construction process wherein the matter in controversy exceeds Fifteen Thousand (\$15,000) Dollars. If the contractor utilizes the dispute resolution procedures it must pay half of any administrative costs to be incurred by the County in conducting the dispute resolution.

## 26.0 BID PROTEST

The County adheres to applicable bidding practices established by State law, County policy, and best practices. Bids may be protested for any bid solicited. All protests must be in writing and must be delivered to the Chief Finance Officer prior to award by the Board of Commissioners or issuance of purchase order.

## **27.0 SURPLUS PROPERTY**

Property with a value greater than \$5,000 for any one item or group of items will be presented to the Board of Commissioner to be declared surplus.

The Board has authorized the Chief Financial Officer, or designee to declare surplus any personal property valued at less than five thousand dollars (\$5,000) for any one item or group of items, to set its fair market value, and to convey title to the property for the County in accordance with NC General Statute Chapter 160A-Article 12.

County employees are allowed to purchase any surplus County personal property of any monetary value, whether purchased by the County or donated to any representative or department of the County; however, certain employees and their immediate family members are prohibited from purchasing surplus property. Employees and immediate family members prohibited from purchasing surplus property include employees/supervisors who recommended the property be declared as surplus; any employee directly involved in working with, servicing or repairing the property; Board of County Commissioners; the County Manager; Deputy County Manager; Assistant County Manager; the purchasing agent/supervisor; and immediate family of the aforementioned employees. "Immediate family member" includes the employee's father, mother, wife, husband, son, daughter, brother, sister, grandfather, grandmother, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandson, granddaughter, half-sister, half-brother, stepmother, stepfather, stepson, stepdaughter, stepsister, or stepbrother.

## **28.0 PROPERTY DONATED TO THE COUNTY**

As allowed by NC General Statutes 153A-11 and 153A-12, in order to facilitate and expedite any donation of property to the County, either personal or real, the County Manager may accept such property in his/her discretion under the following conditions:

- A. The County Manager, or Designee under the Manager's direction, shall undertake all appropriate due diligence prior to accepting any gift to consider risks, liabilities, and need/appropriateness.
- B. The County Manager may accept a donation of real or personal property up to a value of \$5,000 per item, and \$100,000 in aggregate per budget year. Amounts in excess of these limits will require Board approval.
- C. The County Manager may further delegate this authority to the Chief Financial Officer.

## **29.0 PURCHASING CODE OF ETHICS**

As public servants, New Hanover County employees ~~and purchasing professionals~~, will guide their activity through the application and adherence to the following commonly shared values and ethical standards for dealing with vendors and clients:

1. Conduct business in good faith; demanding honesty and ethical practices from all participants in the purchasing process.
2. Decline personal gifts or gratuities from present or potential vendors and contractors since this can influence or appear to influence procurement decisions.
3. Promote positive vendor and contractor relationships by according vendor representatives courteous, fair and ethical treatment.
4. Make every reasonable effort to negotiate equitable and mutually agreeable settlements of controversies with a vendor(s).
5. Encourage support for small, disadvantaged, minority and women-owned businesses.
6. Avoid involvement in any transactions or activities that could be considered to be a conflict between personal interest and the interests of the County.
7. Know and obey the letter and spirit of laws governing the purchasing function and remain alert to the legal ramifications of purchasing decisions.
8. Honor our obligations and require that obligations to New Hanover County be honored.
9. Enhance proficiency by acquiring and maintaining current technical knowledge and pursuing related educational opportunities and professional growth.

## **30.0 GIFTS AND FAVORS**

No employee of the County will accept any valuable gift, whether in the form of service, loan, thing or promise from any person who to the employee's knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the County. No official or employee will accept any gift, favor, or thing of value that may tend to influence that employee in the discharge of duties. No official or employee will grant in the discharge of duties any improper favor, service, or thing of value.

## **31.0 UNIFORM GUIDANCE WHEN SPENDING FEDERAL FUNDS**

All federally funded projects, loans, grants, and sub grants whether funded in part or wholly, 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).

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. (Refer to Exhibit A-Uniform Guidance Purchasing Policy and Exhibit B-Conflict of Interest.)

## **NEW HANOVER COUNTY Uniform Guidance Purchasing Policy**

### **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. To the extent that other sections of procurement policies and procedures adopted by New Hanover County are more restrictive than those contained in this policy, local policies and procedures shall be followed.

### **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. 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.
- 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.

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- 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:**

Either the Purchasing Department or the Requesting Department 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 Purchasing Department and/or the Requesting Department should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.
- 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

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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 the 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 Purchasing Department 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.
- J. Cost Estimate.** For all procurements costing \$250,000 or more, the Purchasing Department and/or Requesting Department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.
- 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.

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- 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**

Either the Purchasing Department or the Requesting Department 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.
- 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.

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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.

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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”

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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.

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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:

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- 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.

## Uniform Guidance Conflict of Interest Policy

### I. Purpose

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

### II. Policy

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 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.

**A. Conflicts 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 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.

**B. Gifts.** 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 he County

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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.

### **III. 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.