



Public Purchasing and Contracting:
Basic Legal Requirements
Human Services Directors and Administrators

Norma Houston
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UNC
UNIVERSITY OF NORTH CAROLINA

Today We'll Discuss

1. Basic Public Contract Requirements
2. Procurement Methods
3. Procurement Requirements
4. Exceptions
5. Resources



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**ARE YOU SMARTER
THAN A . . .**
■ ■ ■ ■ ■ ■ ■ ■ ■ ■
**. . .PURCHASING
OFFICER?**



Test Your Knowledge

Only 2 bids received for purchase of IT system costing \$295,000. Can you open the bids?

1. Yes

2. No



Test Your Knowledge

Local vendor's bid is only \$250 higher than out-of-state vendor. Can you award to local vendor?

1. Yes

2. No



Test Your Knowledge

Fed Ex delivers bid late through no fault of bidder. Can you accept the bid?

1. Yes

2. No



Test Your Knowledge

Bidder notices calculation error after you open his bid.
Can you allow him to correct his mistake?

1. Yes

2. No



Test Your Knowledge

Vendor asks you to keep bid documents confidential after bid opening because they are "proprietary"? Can you?

1. Yes

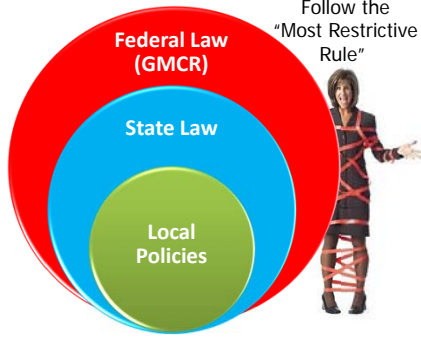
2. No



PUBLIC CONTRACT REQUIREMENTS



Sources of Legal Requirements



What is a Contract?



"An agreement between two or more parties creating obligations that are enforceable or otherwise recognized by law."

- Black's Law Dictionary (7th ed.)



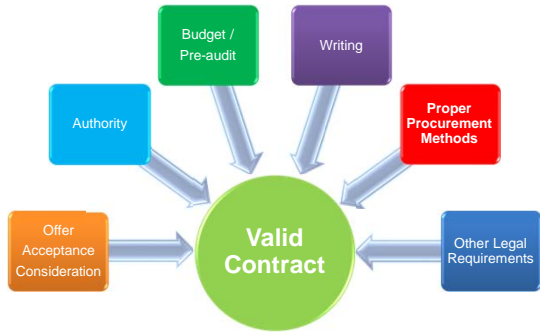
Are These Contracts?



- Construction
- Repair
- Services
- Property Transaction (real and personal)
- Property disposal (sales, auctions, etc.)
- Invoice
- Purchase Order
- Credit Card Purchase



What is a Valid **Public** Contract?



Failure to Comply



PROCUREMENT METHODS



What is Procurement?

Set of **procedures or methods** that must be followed to enter into a **specific kind of contract**



Which Procurement Method?



Type of Contract



Type of Contract

Type of Contract



- 1. Purchase**
Apparatus, supplies, materials, & equipment



Type of Contract

Type of Contract



- 2. Construction or Repair**
New buildings, renovations, “non-vertical” construction (utility lines, roads, etc.)



Type of Contract

Type of Contract



- 3. “Mini-Brooks Act” design services**
architectural, engineering, survey, CMR, DB, BDD, P3



Type of Contract



- 4. **Everything Else**
Includes service contracts and land purchases



What Kind of Contract Is It?

Buying and installing new carpet

1. Purchase

2. Service

3. Construction



What Kind of Contract Is It?

Smart phones with master service agreement

1. Purchase

2. Service



What Kind of Contract Is It?

Repaving Streets

1. Construction

2. Service



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What Kind of Contract Is It?

Lease of copiers with option to purchase

1. Lease

2. Purchase



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Cost



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Procurement Method

1. Informal Bidding

- Applies to purchases and construction/repair within a certain cost range
- Has minimal requirements to ensure competition with focus on getting the lowest cost

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Procurement Method

2. Formal Bidding

- Applies to purchases and construction/repair above a certain cost
- Has very specific requirements to ensure competition with focus on getting the lowest cost

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Procurement Method

3. Qualifications Based Selection (QBS)

- Required for selection of "Mini-Brooks Act" services - architect, engineer, survey, CMR, DB, DBB, P3
- Contract award based on qualifications of responder rather than price
- Local government can exempt itself in writing if contract is under \$50,000.

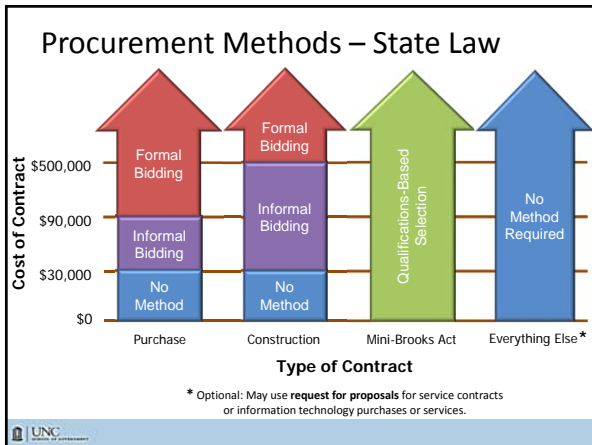
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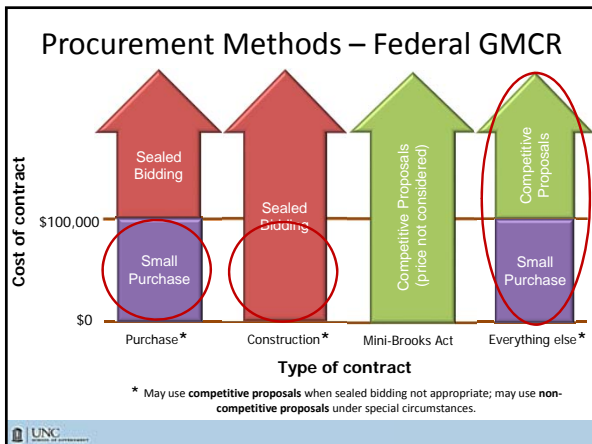
Procurement Method

4. Requests for Proposals (RFP)

- Optional for IT purchases
- Can be used (but is not mandated) for other service contracts

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PROCUREMENT REQUIREMENTS

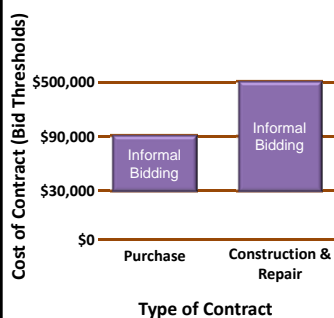


Procurement Requirements

	Informal	Formal	QBS	RFP
Solicitation / Advertisement	Not required	Newspaper/ electronic at least 7 days before bid opening	Must "announce" requirements	Not required (IT—must advertise like formal bid)
Form / Minimum #	Any form; keep record; no minimum #	Sealed bids; 3-bid minimum for construction contracts	No specific form required; no minimum #	No form required (IT – sealed proposals)
Public bid opening	Not required	Required	Not required	Not required
Standard of Award	Lowest responsive, responsible bidder	Lowest responsive, responsible bidder	Best qualified, regardless of cost	Best meets criteria set in the RFP
Board Approval	Not required	Required (may delegate for purchases only)	Not required	Not required
Public Record	Record of bids not public until contract award	Bids public when opened	Proposals public when opened	Public when opened (IT – not public until contract award)

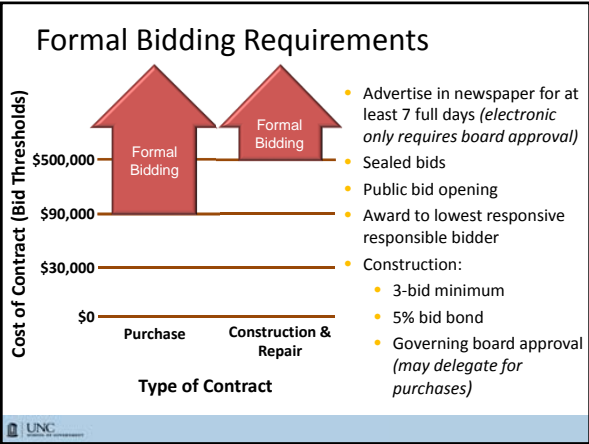


Informal Bidding Requirements



- Keep record of bids
- Award to lowest responsive responsible bidder
- No specific method of advertising
- No specific form of bids
- No minimum number of bids
- No public bid opening
- No governing board approval





Determining Successful Bidder

§ 142-129. Procedure for letting of public contracts.

(a) Bidding Required. — No construction or repair work requiring the expenditure of public money in an amount equal to or more than the threshold amount of \$500,000 or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than \$90,000 shall be let by the State government or any political subdivision thereof by sealed bids, provided that the University of North Carolina shall not be required to let contracts for purchases of apparatus, supplies, materials, or equipment in an amount less than the threshold amount of \$500,000 or for purchases of apparatus, supplies, materials, or equipment in an amount less than the threshold amount of \$90,000.

(b) Award. — The board or governing body shall award the contract to the lowest responsive bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

(c) Bidder Selection. — The board or governing body shall select the bidder or bidders to be awarded the contract on the basis of the lowest responsive bid or bids, provided that the board or governing body may, in its discretion, reject any or all proposals if it is determined that the proposals do not conform to the provisions of this Article.

(d) Bidder Qualification. — The board or governing body may, in its discretion, require any bidder or bidders to be qualified by the board or governing body before the award of the contract. The board or governing body may, in its discretion, require any bidder or bidders to be qualified by the board or governing body before the award of the contract.

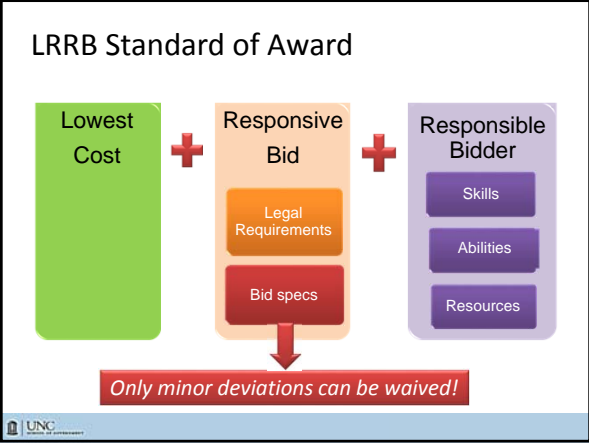
(e) Bidder Responsibility. — The board or governing body may, in its discretion, require any bidder or bidders to be responsible before the award of the contract. The board or governing body may, in its discretion, require any bidder or bidders to be responsible before the award of the contract.

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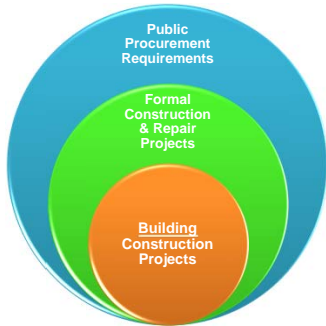


Responsive & Responsible Checklist

1. **Is the lowest cost bid responsive?**
 - Does it meet the legal requirements?
 - Does it *substantially* conform to the specs?
2. **Is the lowest cost bidder responsible?**
 - Can the bidder perform the contract?
3. **Accept or reject:**
 - If lowest bid is responsive **and** lowest bidder is responsible, accept bid.
 - If not, document—then repeat checklist with next lowest bidder, and/or reject and re-bid.
 - Can **always** reject all bids.



Construction Contract Requirements



Construction Contract Requirements

ALL Formal Construction (all vertical and horizontal \$500,000*):

- Bids received sealed in paper form
- 3 bid minimum to open
- Bid bond/deposit with bid (at least 5%)
- Board approval required and cannot delegate
- Performance and payment bonds at execution
(for all contracts over \$50,000 on projects costing \$300,000 or more)



Building Construction Requirements (\$300,000+)

- Separate specifications for trades
- Authorized construction methods
 - Separate-Prime (Multi-Prime)
 - Single Prime
 - Dual Prime
 - Construction Manager At-Risk
 - Design-Build/DBB/ P3**
- HUB requirements
 - \$30,000+ informal
 - \$300,000+ formal
- Dispute resolution (*ALL building construction*)



When Bids Become Open To Public Inspection



When Received, Or If Sealed, When Opened	When Opened	When Contract is Awarded
Purchase & Construction <i>Below</i> Informal Range	<i>Formal</i> Purchase and Construction	<i>Informal</i> Purchase and Construction
Mini-Brooks Act		Optional IT RFP
Everything Else		

"Trade Secrets" remain confidential **ONLY** under statutory criteria

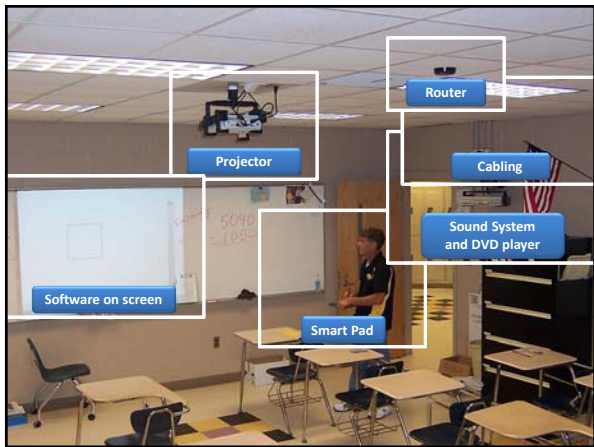


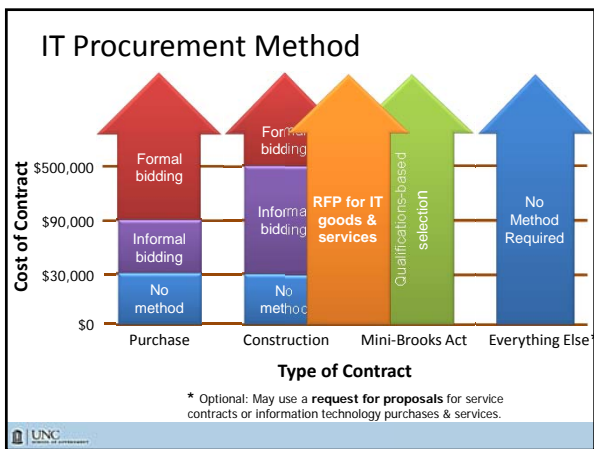
What About Local Preferences?



IT RFP OPTION







IT Procurement – RFP Option

- Flexible, optional RFP Procedure for IT **“goods and services”** (GS 143-129.8)
- Can be used **in lieu of** traditional competitive bidding procedures



GS 143-129.8



What is “IT”?

Goods and Services for:

- Electronic data processing
- Telecommunications
- Security systems
- Microprocessors
- Software
- Information processing
- Office systems

Services include:

- Consulting
- Design
- Installation
- Training
- Maintenance
- Operation

GS 147-33.81



IT RFP Procedures

- Formal advertisement
- Evaluate proposals based on RFP criteria
- Standard of Award = “best overall proposal” (**not low bidder**)
- May negotiate with **any** proposer within scope of RFP
- Proposals not public until **contract awarded**
- Governing board approval **not statutorily** required



EXCEPTIONS



Competitive Bidding Exceptions

1. Special Circumstances

- a. Sole Source
- b. Emergencies
- c. Fuel
- d. Force Account Work

2. Existing Contracts

- a. State and Federal Contracts
- b. Piggybacking
- c. Change Orders

3. Direct Purchases

- a. Purchases From Other Units of Government
- b. Group Purchasing Programs
- c. Used Items



Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

Sole Source GS 143-129(e)(6)

- Applies to formal and informal purchases (not construction)
- Only one *source of supply* (not only one manufacturer)
- Competition not available
- Standardization/compatibility is overriding consideration
- Board approval is required



Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

Emergencies *GS 143-129(e)(2)*

- Applies to purchases and construction/repair
- Special emergency involving public health and safety or property
- Emergency must be imminent or existing
- Cannot be generally anticipated to occur in the future or if competitive bidding requirements can be used without exacerbating harm
- Competitive bidding requirements still required for FEMA reimbursement
- Board approval **not** required



Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

Fuel Purchases *GS 143-129(e)(5)*

- Applies to purchases of:

Gasoline	Motor Fuel
Diesel Fuel	Fuel Oil
Alcohol Fuel	Natural Gas
- Must use informal bidding process for purchases \$30,000 or more (formal bidding not required for purchases above \$90,000)
- Board approval **not** required



Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

Force Account Work *GS 143-135*

- Applies to construction/repair (not purchases)
- Construction work performed by unit's own officers or employees
- Total cost of project under \$500,000 or
- Total cost of labor under \$200,000
- Must file owner-builder affidavit
- Board approval **is** required



Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

State and Federal Contracts

GS 143-129(e)(7),(e)(9),(e)(9a)

- Applies to formal and informal purchases (not construction)
- Purchasing **same item** from **same vendor**
- Vendor must agree to sell at the **same or more favorable** prices, terms, and conditions
- Includes state P&C contracts, IT purchases through ITS, and federal agency contracts
- Board approval **not** required



Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

Piggybacking GS 143-129(g)

- Applies to formal purchases only
- Purchasing **same item** from **same vendor**
- Vendor must agree to sell at the **same or more favorable** prices, terms, and conditions
- Contract competitive bid within **previous 12 months**
- Board approval **is** required with 10 days public notice



Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

Change Orders GS 143-129(e)(4)

- Applies to construction and repair purchases only
- For work undertaken **after** the contract is awarded
- Not allowed for project needs identified **prior** to contract award
- Cannot be used by bidder to **correct mistakes**
- Board approval **not** required



Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

Purchases from other units of government

GS 143-129(e)(1)

- Applies to formal and informal purchases
- Purchase **directly** from federal, state, or local governments anywhere in the US (not purchasing from vendor)
- Includes bidding on surplus sales
- Board approval **not** required



Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

Group Purchasing Programs

GS 143-129(e)(3)

- Applies to formal and informal purchases
- Formally organized program
- Purchases obtained through competitive process
- Items offered at discount prices
- To at least two public agencies
- Board approval **not** required



Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

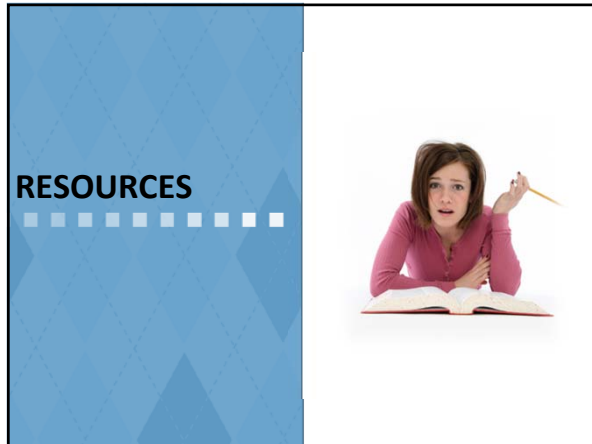
Direct Purchases

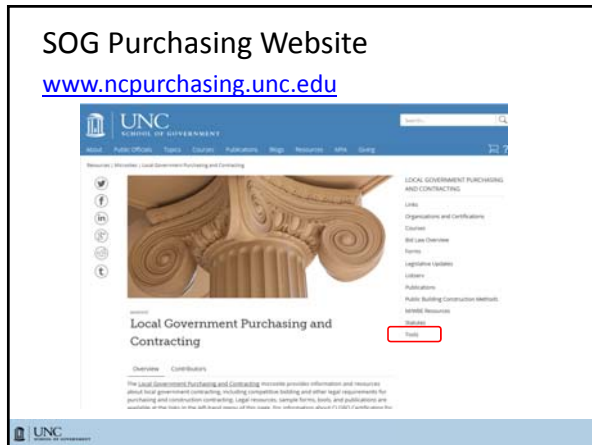
Used Items

GS 143-129(e)(10)

- Applies to formal and informal purchases
- Can purchase from public and private entities
- Does not include:
 - Remanufactured
 - Refabricated
 - Demo
- Board approval **not** required









We Appreciate You!



Hello, Procurement? There appears to have been a mix up with my request for a new computer.

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