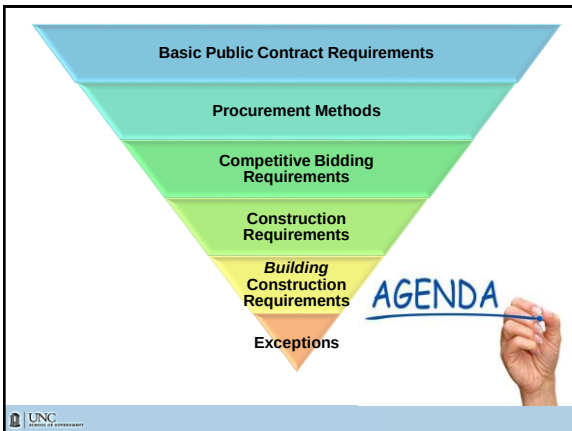
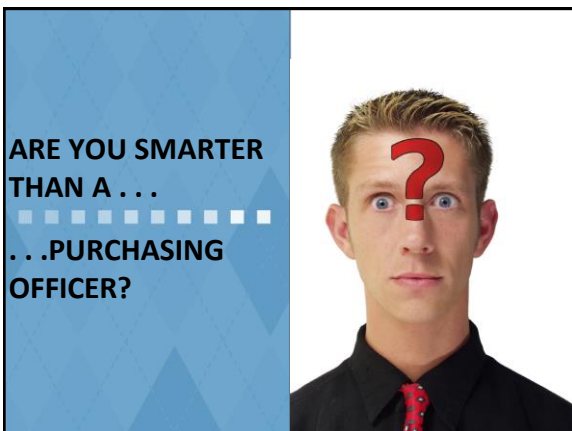








Only 2 bids received for purchase of fire truck costing \$115,000.

Can you open the bids?

1. Yes

2. No



After bid opening, vendor asks you to keep his "proprietary" bid documents confidential.

Can you keep the bid documents confidential?

1. Yes

2. No



A service vendor fails to perform as required under an oral contract.

Can you enforce the terms of the contract?

1. Yes

2. No



County requires bid bond even though not required by statute. Low bidder omits bond.

Can the defect be waived?

1. Yes

2. No



Bidder's formal construction bid arrives late because of Fed Ex error due to no fault of bidder.

Is the bid timely?

1. Yes

2. No



Bidder notices part of his cost estimates are missing when his bid is opened and offers the missing information to complete his bid.

Can the missing information be accepted?

1. Yes

2. No



Local vendor's bid is only \$100 higher than out-of-state vendor.

Can the bid be awarded to the local vendor?

1. Yes

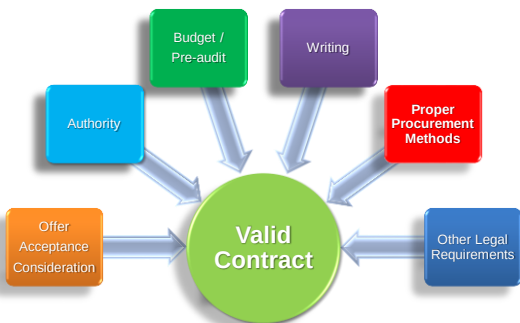
2. No



PUBLIC CONTRACT REQUIREMENTS



What is a Valid **Public** Contract?



Failure to Comply

- Contract rendered void
- Cannot be enforced by either party
- Loose legal authority to make payments under the contract

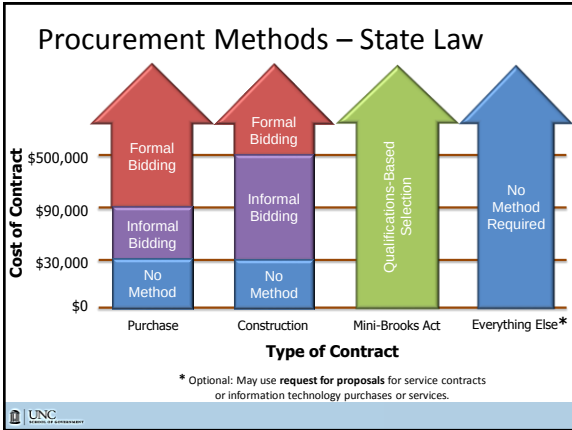


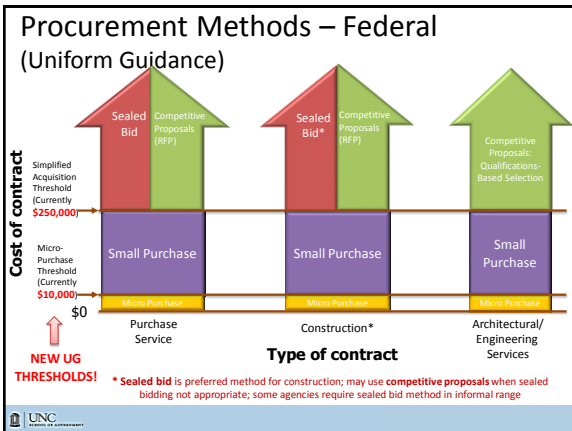
PROCUREMENT METHODS



Public Procurement Methods







COMPETITIVE BIDDING REQUIREMENTS

Competitive Bidding Requirements

Bidding Requirement	Informal (\$30,000 - \$500,000)	Formal (\$500,000 and above)
Solicitation Advertisement	No specific method required; local government may choose to "secure" bids by any means	Formal notice published in newspaper for 7 days between date of publication and bid opening; may also use electronic means in addition to newspaper (electronic means only requires governing board approval)
Form of Bids	Any form; must keep record of bids	Bids must be sealed (construction bids must be in paper form)
Number of Bids Received	No minimum required	At least 3 (construction only)
Bid Bond (construction only)	Not Required	Must be submitted with bid; must equal at least 5% of bid amount
Bid Deadline	No statutory deadline	Bid must be received by date and time of bid opening
HUB requirements (building construction only)	Must solicit HUB participation and document recruitment efforts	Formal HUB requirements for local governments and bidders
Public bid opening	Not required	Required
Standard of Award	Lowest responsive, responsible bidder	Lowest responsive, responsible bidder
Board Approval	Not required	Required (may delegate for purchase contracts)
Public Record	Record of bids not public until contract award	Bids public when opened

You Want To:

Chapter 10



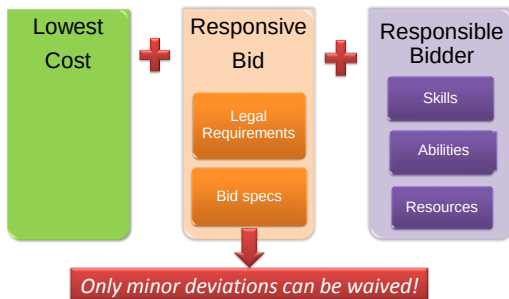
Purchase a new tractor
(\$65,000)



Build a new admin building
(\$2.5 million)



LRRB Standard of Award



Can You Waive . . .

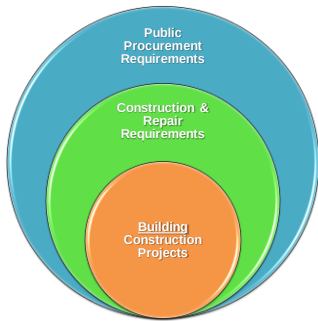


- NO** ? Failure to comply with statutory requirement
- MAYBE** ? Minor clerical error
- MAYBE** ? Miscalculation of dollar amounts
- NO** ? Missing information material to bid specifications
- YES** ? Missing information *not* material to bid specifications

CONSTRUCTION CONTRACTING



Construction Contract Requirements



Construction Contract Requirements

ALL Informal and Formal Construction

1. General contractor required for projects over \$30,000
 - Owner-contractor affidavit required if acting as own general contractor (force account work)
2. Licensure requirements included in ITB and bid specs
3. Dispute resolution procedure (either local policy or State Building Commission policy)



Construction Contract Requirements

ALL Formal Construction (\$500,000+)

1. Bids received sealed in paper form
2. 3-bid minimum to open
3. Bid bond/deposit with bid (at least 5%)
4. Withdrawal after opening only for good faith clerical error
5. Board approval required (cannot delegate)
6. Contractor must execute w/in 10 days or forfeit bid deposit/bond
7. Performance and payment bonds at execution (\$300,000)

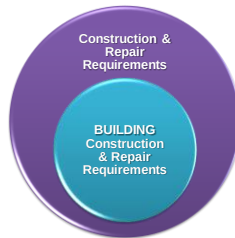


CONSTRUCTION CONTRACTING REQUIREMENTS FOR BUILDING CONSTRUCTION & REPAIR

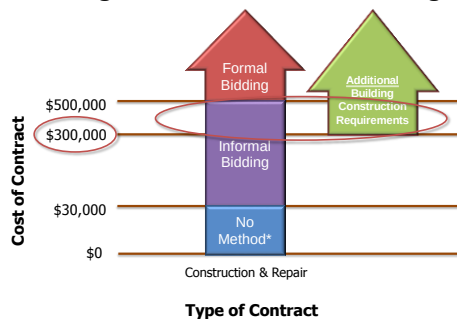


Building Construction & Repair

- Additional legal requirements for construction & repair of **buildings**
- Requirements apply to building construction and repair costing **over \$300,000** (unless otherwise noted)



Building Construction Contracting



*Local governments may impose lower bid thresholds by local policy

What Do You Think?

What is a "Building"?



Building Construction Requirements (\$300,000+)

1. **Separate Specifications for Trades**
 - HVAC
 - Plumbing
 - Electrical
 - General
2. **HUB Participation**
 - \$30,000+ informal
 - \$300,000+ formal
3. **Authorized Construction Methods**
 - Traditional
 - Separate-Prime (Multi-Prime)
 - Single Prime
 - Dual Prime
 - Alternative
 - CM@R
 - Design-Build
 - Design-Build Bridging
 - Public Private Partnership (P3)



HUB Participation

- Is a **goal**, not a quota
- Focuses on opportunity to **compete** on bids
- Lowest responsive, responsible bidder standard still applies
- Non-discrimination requirements still apply



HUB - What is Required?

- Depends on Funding Source and Project Cost
- 3 Basic Requirements:
 1. **Goals** set by local government
 2. **Participation efforts**
 - By local government
 - By Bidder
 3. **Reporting** by local government



HUB Requirements

Cost	Goals	Good Faith Efforts	Reporting
Below \$30,000	Not required	Not required	Not required
\$30,000 - \$300,000 <i>Informal HUB</i>	Not required (10% goal: \$100,000 or more and funded with state funds*)	<u>Local Government:</u> Informal solicitation <u>Bidders:</u> No requirements	<u>Local Government:</u> Informal reporting to HUB Office
\$300,000 and above <i>Formal HUB</i>	Required	<u>Local Government:</u> Formal outreach and good faith efforts <u>Bidders:</u> Formal good faith efforts	<u>Local Government:</u> Formal reporting to HUB Office

*For projects costing \$100,000 or more and funded wholly or in part with state funds, state law requires a local government use a 10% goal unless the local government has previously established and maintained another verifiable goal.



When Bids Become Open To Public Inspection



When Received, Or If Sealed, When Opened	When Opened	When Contract is Awarded
Purchase & Construction <i>Below Informal Range</i>	<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?



Local Policies v. State Law

- Do you have local purchasing policies?
- If so, do those local policies impose more stringent requirements?



Remember: Most Restrictive Rule

	State	Local	What Controls?
Informal Bid Threshold	\$30,000	\$5,000	Local
3-Bid Minimum	Only formal construction	All contracts over \$30,000	Local
Board Approval	Formal construction and purchase (may delegate for purchase)	Authority delegated to manager for all contracts under \$50,000	State & Local
Service Contracts	No bidding requirements	RFP for all contracts over \$100,000	Local
Bidding Requirements	Article 8, Chapter 143	No local policy	State

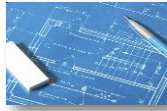
MINI-BROOKS ACT REQUIREMENTS



QBS Process – When to Use?



Architect



Engineer



Surveyor



Alternative Construction
Delivery

Applies to ALL contracts regardless of price



Mini-Brooks Act Requirements

(GS 143-64.31)

1. **"Announce"** requirements for the service and make good faith efforts to notify minority firms
2. Select firm based on **competence and qualifications** – **NOT PRICE** (except for unit cost, such as hourly rate)
3. **CANNOT** solicit work product (except for previously completed work)
4. **Negotiate** a "fair and reasonable fee" with best qualified firm. If negotiations fail, proceed to next best qualified firm and so on



Mini-Brooks Act Exemption

(GS 143-64.32)

Available for units of local government and NCDOT:

1. Must be in **writing**
2. Applies to **"particular projects"**
3. Estimated fees must be **less than \$50,000**

Note: Exemption probably not allowed if paying for the contract with federal grant funds



FAQ's – What Do You Think?

- NO** ? Does the governing board have to approve an exemption?
- NO** ? Are blanket exemptions authorized?
- NO** ? Do formal bidding requirements apply to a RFQ?
- NO** ? Are contracts under \$50k automatically exempt?
- YES** ? Are proposals open to public inspection when received or if sealed, when opened?

COMPETITIVE BIDDING 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

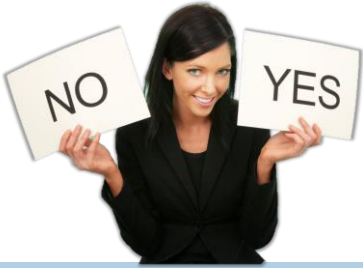
- a. Purchases From Other Units of Government
- b. Group Purchasing Programs
- c. Used Items



Does It Qualify?

Chapter 10







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



UNC
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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



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University of North Carolina

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



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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



RESOURCES



www.ncpurchasing.unc.edu



www.canons.sog.unc.edu



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