Basic Public Contract Requirements

Procurement Methods

Competitive Bidding Requirements

Construction Requirements

Building Construction Requirements

 Exceptions

ARE YOU SMARTER THAN A . . .

. . . PURCHASING OFFICER?
<table>
<thead>
<tr>
<th>Question</th>
<th>Option 1</th>
<th>Option 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only 2 bids received for purchase of fire truck costing $115,000.</td>
<td><strong>Yes</strong></td>
<td><strong>No</strong></td>
</tr>
<tr>
<td>After bid opening, vendor asks you to keep his “proprietary” bid documents confidential.</td>
<td><strong>Yes</strong></td>
<td><strong>No</strong></td>
</tr>
<tr>
<td>A service vendor fails to perform as required under an oral contract.</td>
<td><strong>Yes</strong></td>
<td><strong>No</strong></td>
</tr>
</tbody>
</table>
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?

- Authority
- Budget / Pre-audit
- Writing
- Proper Procurement Methods
- Offer Acceptance Consideration
- Other Legal Requirements
Failure to Comply
- Contract rendered void
- Cannot be enforced by either party
- Loose legal authority to make payments under the contract

PROCUREMENT METHODS

What Method Do I Use?

Type of Contract + Cost = Procurement Method
Procurement Procedures
### Competitive Bidding Requirements

<table>
<thead>
<tr>
<th>Bidding Requirement</th>
<th>Informal ($30,000 - $50,000)</th>
<th>Formal ($500,000 and above)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solicitation Advertisements</td>
<td>No specific method required; local government may choose to “secure” bids by any means</td>
<td>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)</td>
</tr>
<tr>
<td>Form of Bids</td>
<td>Any form; must keep record of bids</td>
<td>Bids must be sealed (construction bids must be in paper form)</td>
</tr>
<tr>
<td>Number of Bids Received</td>
<td>No minimum required</td>
<td>At least 3 (construction only)</td>
</tr>
<tr>
<td>Bid Bond</td>
<td>Not Required</td>
<td>Must be submitted with bid; must equal at least 5% of bid amount</td>
</tr>
<tr>
<td>Bid Deadline</td>
<td>No statutory deadline</td>
<td>Bid must be received by date and time of bid opening</td>
</tr>
<tr>
<td>HUB requirements</td>
<td>Must solic HUB participation and document recruitment efforts</td>
<td>Formal HUB requirements for local governments and bidders</td>
</tr>
<tr>
<td>Standard of Award</td>
<td>Lowest responsive, responsible bidder</td>
<td>Lowest responsive, responsible bidder</td>
</tr>
<tr>
<td>Board Approval</td>
<td>Not required</td>
<td>Required (may delegate for purchase contracts)</td>
</tr>
<tr>
<td>Public Record</td>
<td>Record of bids not public until contract awarded</td>
<td>Bids public when opened</td>
</tr>
</tbody>
</table>

### You Want To:

- **Purchase a new tractor**
  - Cost: ($65,000)
- **Build a new admin building**
  - Cost: ($2.5 million)

### 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**
Formal Bidding Requirements

- Advertise in newspaper for at least 7 full days (electronic only requires board approval)
- Sealed bids
- Public bid opening
- Award to lowest responsive responsible bidder
- Construction:
  - 3-bid minimum
  - 5% bid bond
  - Governing board approval (may delegate for purchases)

Cost of Contract (Bid Thresholds)

- $500,000
- $90,000
- $30,000
- $0

Type of Contract

Purchase
Construction & Repair

LRRB Standard of Award

- Lowest Cost
- Responsive Bid
- Responsible Bidder
  - Skills
  - Abilities
  - Resources

Only minor deviations can be waived!

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 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)

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### CONSTRUCTION CONTRACTING REQUIREMENTS

**FOR BUILDING CONSTRUCTION**

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### 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

Type of Contract

*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

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

*For projects costing $300,000 or more and funded wholly or in part with state funds, state law requires a local government to use a 10% goal unless the local government has previously established and maintained another verifiable goal.
## What About Local Preferences?

**Buy Local:**

![NC Agriculture](image)

**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

<table>
<thead>
<tr>
<th></th>
<th>State</th>
<th>Local</th>
<th>What Controls?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Informal Bid Threshold</td>
<td>$30,000</td>
<td>$5,000</td>
<td>Local</td>
</tr>
<tr>
<td>3-Bid Minimum</td>
<td>Only formal construction</td>
<td>All contracts over $30,000</td>
<td>Local</td>
</tr>
<tr>
<td>Board Approval</td>
<td>Formal construction and purchase (may delegate for purchase)</td>
<td>Authority delegated to manager for all contracts under $50,000</td>
<td>State &amp; Local</td>
</tr>
<tr>
<td>Service Contracts</td>
<td>No bidding requirements</td>
<td>RFP for all contracts over $100,000</td>
<td>Local</td>
</tr>
<tr>
<td>Bidding Requirements</td>
<td>Article 8, Chapter 143</td>
<td>No local policy</td>
<td>State</td>
</tr>
</tbody>
</table>
**QBS Process – When to Use?**

- **Architect**
- **Engineer**
- **Surveyor**
- **Alternative Construction Delivery**

*Applies to ALL contracts regardless of price*

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**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 not allowed if paying for the contract with federal grant funds (may be permissible if contract costs less than $10,000 – check with grantor agency!)

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

There is an exception to every rule, except this one.
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?

**Sole Source**  GS 143-129(c)(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

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

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

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

### 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

### 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

### 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**

#### 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**

#### 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!

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