



## **“Most Restrictive Rule” Procurement Requirements under the Federal Uniform Guidance & FEMA Public Assistance Procurement Requirements for North Carolina Local Governments**

This document applies the “most restrictive rule” to procurement requirements for North Carolina local governments when expending federal financial assistance (grant and loan funds) subject to the federal Uniform Guidance (2 C.F.R. 200, Subpart D) (“UG”) and the FEMA Public Assistance program (“FEMA”). When expending federal grant and loan funds, local governments are required to follow their “own documented procurement procedures which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.” (2 C.F.R. §200.318(a)) In other words, local governments must comply with the “most restrictive” procurement requirements of both federal and state law as well as their own local policies.

For each category of contract listed below, the bidding requirements summarized are those which are the most restrictive under both North Carolina state law and the UG/FEMA. Local governments should consult with their own attorneys to ensure compliance with all procurement and contract requirements. **To the extent that a local government’s local procurement policies impose requirements that are more restrictive than either the UG/FEMA or state law, local policies must also be followed.**

### **SERVICE CONTRACTS (except for A/E professional services) AND PURCHASE CONTRACTS (purchasing apparatus, supplies, materials, or equipment)**

#### **Costing less than \$10,000**

Follow the UG “micro-purchase” procedure (2 C.F.R. § 200.320(a)):

- Contract can be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
- To the extent practicable, must distribute micro-purchases among qualified suppliers.

#### **Costing \$10,000 up to \$90,000**

Follow the UG “small purchase” procedure (2 C.F.R. § 200.320(b)):

- Obtain price or rate quotes from an “adequate number” of qualified sources (note: FEMA interprets “adequate number” to require 3 quotes).
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)
- Cost or price analysis is not required prior to soliciting bids.
- Award contract on a fixed-price or not-to-exceed basis.

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- Contract must be in writing and include applicable UG & FEMA contract provisions.
- Award the contract to the lowest responsive, responsible bidder.
- Document procurement procedures (similar to keeping a record of bids as required under state law for informal bidding; see G.S. 143-131).
- Do not divide the contract for the purpose of evading competitive bidding requirements.

### Costing \$90,000 and above

Follow combination of state formal bidding procedure (G.S. 143-129) and UG “sealed bid” procedure requirements (2 C.F.R. § 200.320(c)):

- Cost or price analysis is required prior to soliciting bids.
- Complete specifications or purchase description must be made available to all bidders.
- Formally advertise 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. 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 for “sound documented reasons.”
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)
- Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement; bids must be submitted sealed; the local government must receive a minimum of 2 bids in order to open all bids.
- Award contract on a firm fixed-price basis.
- Contract must be in writing and include applicable UG & FEMA contract provisions.
- Award the contract to the lowest responsive, responsible bidder; governing board approval is required unless the governing board has delegated award authority to an individual official or employee.
- Document procurement procedures.
- Do not divide the contract for the purpose of evading competitive bidding requirements.

**Note Regarding Service Contracts Costing \$90,000 and above:** *Local government service contracts are not subject to state competitive bidding requirements. If a local government does not require competitive proposals (RFPs) for service contracts under its local policy, it may choose to follow the UG small purchase procedure for service contracts costing \$10,000 up to \$250,000, and then follow the UG sealed bid or competitive proposal method for service contracts costing \$250,000 or more. If the local policy regarding service contracts is more restrictive, the local policy should be followed.*

# “Most Restrictive Rule” Procurement Requirements under the Federal Uniform Guidance for North Carolina Local Governments

## CONSTRUCTION AND REPAIR CONTRACTS

### Costing less than \$10,000

Follow the UG “micro-purchase” procedure (2 C.F.R. § 200.320(a)):

- Contract can be awarded without soliciting pricing or bids if the price of the contract is considered to be fair and reasonable.
- To the extent practicable, must distribute micro-purchases among qualified suppliers.

### Costing \$10,000 up to \$250,000

Follow the UG “small purchase” procedure (2 C.F.R. § 200.320(b)) (*note: FEMA encourages using the “sealed bid” method for contracts in this category*):

- Obtain price or rate quotes from an “adequate number” of qualified sources (*note: FEMA interprets “adequate number” to require 3 quotes*).
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers (2 C.F.R. § 200.321).
- Cost or price analysis is not required prior to soliciting bids.
- Award contract on a fixed-price or not-to-exceed basis.
- Contract must be in writing and include applicable UG & FEMA contract provisions.
- Award the contract to the lowest responsive, responsible bidder.
- Document procurement procedures (similar to keeping a record of bids as required under state law for informal bidding; see, G.S. 143-131).
- Do not divide the contract for the purpose of evading competitive bidding requirements.

### Costing \$250,000 up to \$500,000

Follow the UG “sealed bid” procedure requirements (2 C.F.R. § 200.320(c)):

- Cost or price analysis is required prior to soliciting bids (typically this cost estimate will be provided by the project designer).
- Complete specifications or purchase description must be made available to all bidders.
- 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). Advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)
- Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement; bid must be submitted sealed; local government must receive a minimum of 2 bids in order to open all bids.

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- 5% bid bond is required of all bidders; performance and payment bonds of 100% of the contract price is required of the winning bidder.
- Award contract on a firm fixed-price basis.
- Contract must be in writing and include applicable UG & FEMA contract provisions.
- Award the contract to the lowest responsive, responsible bidder; the unit may reject any and all bids only for “sound documented reasons.”
- Document procurement procedures.
- Do not divide the contract for the purpose of evading competitive bidding requirements.

### Costing \$500,000 or more

Follow combination of state formal bidding procedure (G.S. 143-129) and UG “sealed bid” procedure requirements (2 C.F.R. § 200.320(c)):

- Cost or price analysis is required prior to soliciting bids (typically this cost estimate will be provided by the project designer).
- Complete specifications or purchase description must be made available to all bidders.
- Formally advertise 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. 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.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)
- Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement; bids must be submitted sealed and in paper form; local government must receive a minimum of 3 bids in order to open all bids.
- 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.
- Award contract on a firm fixed-price basis.
- Contract must be in writing and include applicable UG & FEMA contract provisions.
- Award the contract to the lowest responsive, responsible bidder; governing board approval is required and cannot be delegated; governing board may reject and all bids only for “sound documented reasons.”
- Document procurement procedures.
- Do not divide the contract for the purpose of evading competitive bidding requirements.

# “Most Restrictive Rule” Procurement Requirements under the Federal Uniform Guidance for North Carolina Local Governments

## Projects involving a building costing \$300,000 or more

In addition to the requirements listed above for the applicable cost category, also comply with additional state requirements:

- Formal HUB (historically underutilized business) participation requirements, including bidder good faith efforts. (G.S. 143-128.2)
- Separate specifications must be drawn for the HVAC, electrical, plumbing, and general (G.S. 143-128(a))
- Project must be bid using an authorized bidding method (separate-prime, single-prime, or dual bidding). (G.S. 143-129(a1))
- Local government must adopt dispute resolution procedures (*this requirement applies to ALL construction or repair projects involving a building, regardless of cost*). (G.S. 143-128(g))

## **CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES (A/E)**

### Costing under \$250,000

Follow the state “Mini-Brooks” qualifications-based selection procedure (G.S. 143-64.31)

- Issue RFQ to solicit qualifications from qualified firms.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)
- Evaluate qualifications of respondents.
- Rank respondents based on qualifications and select best qualified firm; price cannot be a factor in the evaluation
- Negotiate fair and reasonable compensation.
- Award contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.
- Contract must be in writing and include applicable UG & FEMA contract provisions.
- Preference may be given to in-state firms.
- NOTE: The authority to exempt contracts costing less than \$50,000 under G.S. 143-64.32 is not allowed under the UG.

### Costing \$250,000 or more

Follow the UG “competitive proposal” procedure (2 C.F.R. § 200.320(d)(5))

- Publically advertise Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required).
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)

## “Most Restrictive Rule” Procurement Requirements under the Federal Uniform Guidance for North Carolina Local Governments

- Identify evaluation criteria and relative importance of each criteria in the RFQ.
- Proposals must be solicited from an “adequate number of qualified sources”; note that an individual federal grantor agency may issue guidance interpreting “adequate number.”
- Must have written method for conducting technical evaluations of proposals and selecting the best qualified firm.
- Consider all responses to the publicized RFQ to the maximum extent practical.
- Evaluate qualifications of respondents to rank respondents and select the most qualified firm.
- Price cannot be a factor in the initial selection of the most qualified firm.
- Once the most qualified firm is selected, fair and reasonable compensation can then be negotiated.
- Award contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.
- Contract must be in writing and include applicable UG & FEMA contract provisions.
- State licensure requirements apply.
- May use in-state geographic preferences for procuring A/E services, provided that this leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.

### COMPETITIVE PROPOSAL PROCEDURE

In addition to contracts for A/E services, a limited number of other contracts may be entered into under the UG “competitive proposal” procedure (2 C.F.R. § 200.320(d)):

- Contracts for services costing \$250,000 and above if the conditions are not appropriate for the “sealed bid” procedure (*Note: Some federal grantor agencies will approve use of competitive proposal procedure for contracts costing under \$250,000; local governments should consult with their federal grantor agency or state pass-through agency*).
- Contracts for information technology goods and services that would qualify under G.S. 143-129.8.
- Contracts for construction or repair using the design-build or design-build bridging construction delivery method. (G.S. 143-128.1A, -128.1B). If using the competitive proposal method for this category of contracts, state requirements will also apply.

Because of more restrictive state bidding requirements, contracts for the purchase of goods or construction and repair using a traditional bidding method (single-prime, multi-prime, or dual bidding) cannot be procured under the competitive proposal procedure.

## “Most Restrictive Rule” Procurement Requirements under the Federal Uniform Guidance for North Carolina Local Governments

Before using the competitive proposal procedure, confirm with the federal grantor agency.

### **Competitive Proposal Procedures:**

- 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.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers. (2 C.F.R. § 200.321)
- Identify evaluation criteria and relative importance of each criteria in the RFQ.
- Consider all responses to the publicized RFQ to the maximum extent practical.
- Must have written method for conducting technical evaluations of proposals and selecting a contractor.
- Award 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.
- Award contract on a fixed-price or cost-reimbursement basis.
- Contract must be in writing and include applicable UG & FEMA contract provisions.