

## 4.11 Procurement Procedures with Federal Funds

### I. Purpose

The purpose of this policy is to establish guidelines that meet or exceed the procurement requirements for the purchase 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.

### 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) which includes, but is not limited to, direct grants, USDA grants and loans, CDBG funds, FEMA disaster assistance grants, and the Highway Planning, Research, and Construction Program. 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 of Onslow will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the County of Onslow have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law

**C. Contract Award.** When bids are required by law, or otherwise solicited by the County, 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. Consideration shall be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

**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 Section § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.

## 4.11 Procurement Procedures with Federal Funds - Continued

- F. **Contractor's 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 the Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

### III. **Procedures:**

**General:** The administrative procedures contained within this policy are administrative and may be changed as necessary at staff level to comply with the federal Procurement Standards within this Policy. However, any policy changes must be approved by the governing body prior to becoming effective.

Either the Purchasing Department or the Requesting Department shall procure all contracts in accordance with the requirements of this Section of the Policy.

#### **General Procurement Standards and Procedures:**

- A. **Necessity.** Purchases *must be necessary* to perform the scope of work and must avoid acquisition of unnecessary or duplicative items (no stock-piling). 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.** The Purchasing Department will ensure that all solicitations 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 should inform prospective contractors that they will need to comply with all applicable federal laws, regulations, executive orders, FEMA requirements, and terms and conditions of the funding award.
- E. **Fixed Price.** Solicitations must state that the 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 (Cost-Plus) contracts will not be

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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 the express 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 to 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. Note: This comparison is necessary for most FEMA financial assistance programs following an emergency or major disaster declaration.
- 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 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 \$150,000 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. “Contract Award” of this Policy.
- L. **Debarment.** No contract shall be awarded to a contractor included on the federally debarred bidder’s list. Prior to preparing the contract, the Purchasing Department or the Requesting Department must verify that the contractor is not on the federally debarred bidder’s list.

#### 4.11 Procurement Procedures with Federal Funds - Continued

- 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.
  
- N. **Open Competition.** Solicitations shall be prepared in a way to be fair and provide open competition. The County 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 requirement that have the effect of the restricting competition.
  
- O. **Geographic Preference.** No contract shall be awarded on the basis of a geographic preference.
  
- P. **Pre-Qualification.** If time allows, contractors for construction and repair projects will be prequalified in accordance with the County’s Pre-Qualification for Capital Improvement Projects (Section 2.14 of the Onslow County Purchasing Policy and Procedure manual. Protests for denial of prequalification will be in accordance with the pre-qualification policy.
  
- Q. **Protests and Disputes.** Bid protests and disputes will be in accordance of Section 4 - Special Procedures 4.1 “Bid Protest Procedures”.

## **4.11 Procurement Procedures with Federal Funds - Continued**

### **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.

#### **Purchase Contracts**

##### **Service Contracts (except for A/E professional services) Construction/Repair/Facility Improvement/Renovation**

##### **Up to Micro-purchase threshold as defined in 2 C.F.R. 200.67 (\$10,000 as of 6/21/2018):**

Shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. §200.320(a))

##### **Procedures are as follows:**

- No bidding is required
- Price must be considered fair and reasonable
- To the extent practicable, purchases must be distributed among qualified suppliers
- Contract must be in writing (this could be in the form of a purchase order)

#### **Purchase Contracts**

##### **Service Contracts (except for A/E Professional Services)**

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

Shall be procured using the Uniform Guidance “small-purchase” procedure (2 C.F.R. §200.320(b))

##### **Procedures are as follows:**

- Cost or price analysis is NOT required prior to soliciting bids
- Obtain **written** price quotes from an adequate number of suppliers or sources (which shall not be less than two (2) quotes)  
Check specific grant as some agencies may require more than two (2) quotes
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. §200.321
- Award contract as a Fixed Price. A Not to Exceed basis is permissible for service contracts only where obtaining a fixed price is not feasible.
- Award to lowest responsive, responsible bidder
- Contract must be in writing (purchase contracts may be in the form of a purchase order; service contracts and construction repair require use of contract template)
- **Cannot** use a cooperative purchasing program as an Exception to the Bidding

## 4.11 Procurement Procedures with Federal Funds - Continued

### IV. Specific Procurement Procedures - Continued

#### Service Contracts (\$90,000 up to \$250,000)

#### Purchase Contracts (\$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)

#### Procedures are as follows:

- Cost or price analysis is required prior to soliciting bids
- Complete specifications or purchase description must be available to all bidders
- Public Advertisement: (Electronic Advertising is authorized)
  - Legal notice must reserve to the governing board the right to reject any or all bids only for “sound documented reasons.”
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
- Solicit from adequate number of known suppliers
- Bids must be submitted sealed
- Public Bid Opening
- Must have two (2) sealed bids submitted
- Bids may only be rejected for “sound *documented* reasons”
- Award contract as a fixed-price. A Not to Exceed basis is permissible for *service contracts only* where obtaining a fixed price is not feasible.
- Award to lowest, responsive, responsible bidder
- Contract must be in writing (purchase contracts may be in the form of a purchase order; service contracts and construction repair require use of contract template)
- **Cannot** use a cooperative purchasing program as an Exception to the Bidding
- Governing board approval is not required (per local policy, governing board has delegated award authority to County Manager)

#### Service Contracts (except for A/E Professional Services)

#### \$250,000 and above

Shall 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.

*Note: RFP’s (Competitive Proposals) can **only** be used when conditions are not appropriate for the use of sealed bids such as service contracts. This can be used for all types of contracts \$150,000 and over.*

#### Procedures are as follows for *competitive proposal* method:

- 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.

## 4.11 Procurement Procedures with Federal Funds - Continued

### IV. Specific Procurement Procedures - Continued

- Solicit from adequate number of qualified firms
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
- Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
- All responses must be considered to the maximum extent practical.
- Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
- 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 required per local policy.
- Award the contract on a fixed-price or cost-reimbursement basis
- Must have written contract with federal contract provisions included
- **Cannot** use a cooperative purchasing program as an Exception to the Bidding

### Construction/Repair/Facility Improvement/Renovation

#### **\$10,000 up to \$250,000:**

Shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. § 200.320(b))

#### **Procedures are as follows:**

- Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
- Obtain written price quotes from an adequate number of suppliers or sources (typically means two (2) however, verify with granting agency)
- Award Contract on a fixed-price or not to exceed basis
- Award to lowest responsive, responsible bidder
- Governing Board approval is not required
- Must have written contract with federal contract provisions included

## 4.11 Procurement Procedures with Federal Funds - Continued

### IV. Specific Procurement Procedures - Continued

#### Construction/Repair/Facility Improvement/Renovation

##### **\$250,000 up to \$500,000:**

Shall be procured using the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c))

##### **Procedures are as follows:**

- Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
- Complete specifications must be made available to all bidders
- Public Advertisement: 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
- Solicit from adequate number of known suppliers
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
- Bids must be submitted sealed
- Public Bid Opening
- Must have two (2) sealed bids submitted prior to opening
- 5% Bid Bond (a bid that does not contain a bid bond cannot be counted toward the two (2) bid requirement
- Performance and Payment Bonds for 100% of contract price
- Bids may only be rejected for “sound *documented* reasons”
- Contract awarded on firm-fixed price basis
- Award to lowest responsive, responsible bidder
- Must have written contract with federal contract provisions included
- Governing Board approval is not required

##### **\* Building Projects over \$300,000**

##### **Note: Construction or repair contracts involving a building \$300,000 and above must also include:**

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).



## 4.11 Procurement Procedures with Federal Funds - Continued

### IV. Specific Procurement Procedures - Continued

#### Construction/Repair/Facility Improvement/Renovation

##### **\$500,000 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)

##### **Procedures are as follows:**

- Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
- Complete specifications must be made available to all bidders
- Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143-128(a).
- 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).
- Public Advertisement: (Electronic Advertising is authorized)
  - Legal notice must reserve to the governing board the right to reject any or all bids only for “sound documented reasons.”
- Solicit from adequate number of known suppliers
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
- Good Faith MBE Requirements/Affidavits must be submitted
- Bids must be submitted sealed and in paper form.
- Public Bid Opening
- Must have three (3) sealed bids submitted before opening
- 5% Bid Bond (a bid that does not contain a bid bond cannot be counted toward the three (3) bid requirement)
- Performance and Payment Bonds for 100% of contract price
- Bids can only be rejected for “sound *documented* reasons”
- Contract awarded on firm-fixed Price basis
- Award to lowest, responsive, responsible bidder
- Must have written contract with federal contract provisions included
- Governing Board approval is required (cannot be delegated)
- Governing board may reject and all bids only for “sound documented reasons.”

## **4.11 Procurement Procedures with Federal Funds - Continued**

### **IV. Specific Procurement Procedures - Continued**

#### **Professional Services (Architectural and Engineering Services)**

##### **Under \$250,000**

Shall be procured using the state "Mini-Brooks Act" requirements (G.S. 143-64.31)

##### **Procedures are as follows:**

- Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms
- Advertisement: Solicit only - Newspaper is not required.
- Price (other than unit cost) shall not be solicited in the RFQ.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. § 200.321.
- Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
- State licensure requirements apply
- 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.
- Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
- Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.
- Must be a fixed price or not to exceed contract type for services
- Governing board approval is not required.
- Must have written contract with federal contract provisions included

## **4.11 Procurement Procedures with Federal Funds - Continued**

### **IV. Specific Procurement Procedures - Continued**

#### **Professional Services (Architectural and Engineering Services)**

##### **\$250,000 and over**

Shall be procured shall be procured using the Uniform Guidance “**competitive proposal**” procedure (2 C.F.R. § 200.320(d)(5))

##### **Procedures are as follows:**

- Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms
- Advertisement: Solicit only - Newspaper is not required).
- Price (other than unit cost) shall not be solicited in the RFQ.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. § 200.321.
- Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
- Proposals must be solicited from an “adequate number of qualified sources” (an individual federal grantor agency may issue guidance interpreting “adequate number”).
- Must have a 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 based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department
- Rank respondents based on qualifications 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.
- Price cannot be a factor in the initial selection of the most qualified firm.
- Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
- Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.
- State licensure requirements apply
- Must be a fixed price or not to exceed contract type for services
- Governing board approval is not required.
- Must have written contract with federal contract provisions included

**Note1: Geographic preference can be given (in-state) as long as there is an appropriate number of qualified firms given the size of the project**

**Note 2: RFQ process cannot be used for general consulting services or other services not defined by state law or PDAT Supplement, Section V-15 even if those services can be performed by an architectural or engineering firm.**

## 4.11 Procurement Procedures with Federal Funds - Continued

### IV. Specific Procurement Procedures - Continued

#### 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:

- 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.

## Section 4.12 Conflict of Interest: Use of Federal Funds

### 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 of Onslow may participate 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,
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 County of Onslow 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 such as promotional items, honorariums for participation in meetings, and meals furnished at banquets may be accepted. Any officer, employee or agent who knowingly accepts an item of nominal value shall report the item to his or her immediate supervisor.

## **Section 4.12 Conflict of Interest: Use of Federal Funds - Continued**

### **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.