

## **Model Procurement Policy for Expenditures of Federal Financial Assistance**

### DISCLAIMER and Policy Overview

**Comment:** When spending federal financial assistance (e.g., federal grant awards), local governments are required to adopt written procurement policies to help ensure compliance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the Uniform Guidance).<sup>1</sup> This model policy is intended to help local government recipients and sub-recipients of federal awards to comply with the Uniform Guidance procurement requirements set forth in [2 C.F.R. §§ 200.317–.328](#). Local governments should review their own local policies and consult with their attorneys to make modifications as needed to conform to local purchasing practices. Local governments also should consult each federal award’s terms and conditions to determine whether additional procurement requirements apply.

The use of this model policy does not create an attorney-client relationship between the local government and the University of North Carolina (UNC) School of Government. This policy is not intended to replace or supersede North Carolina state procurement law or local policy. In the case of a conflict in law, the more restrictive requirement shall govern.

**NOTE:** The comments in red highlight areas in which the local government may want to insert procedures specific to that unit’s procurement process. These comments should be deleted prior to policy adoption.

**NOTE:** In addition to this policy, local governments are also required to adopt written standards of conduct covering conflicts of interest in the administration of federal awards.<sup>2</sup> This model procurement policy does not include the federal conflict of interest provisions, but it assumes the unit has adopted a federal COI policy. See Section 2 for more on this.

Questions regarding this model policy may be directed to faculty member Rebecca Badgett at [rbadgett@sog.unc.edu](mailto:rbadgett@sog.unc.edu).

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<sup>1</sup> The Office of Management and Budget (OMB) reviews and updates the Uniform Guidance every five years. At the time of this policy’s release in October 2023, the OMB is in the process of reviewing several proposed changes to the UG. Local governments will need to update their procurement policies as necessary to reflect any changes to the federal procurement standards.

<sup>2</sup> [2 C.F.R. § 200.318](#). A model federal Conflicts of Interest Policy is linked in Kara Millonzi’s blog post [ARP Basics](#), which is available on the Coates’ Canons Local Government Law Blog.

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## Model Federal Procurement Policy

### **Section 1: Purpose**

**Application of Policy.** The purpose of this policy is to establish guidelines for the procurement of goods, apparatus, supplies, materials, equipment, professional and non-professional services, and construction or repair work that is funded, in whole or in part, with federal financial assistance.

The [LOCAL GOVERNMENT] shall comply with the standards established in this policy, as well as with state law and any other policies and procedures adopted by the [COUNTY/CITY/TOWN (hereinafter "UNIT")]<sup>3</sup>. The requirements of the Policy also apply to any subrecipient of federal financial assistance. In the case of a conflict in governing law or local policy, the [UNIT] shall follow the most restrictive rule.

**Compliance with Federal Law.** Unless otherwise directed in writing by the federal awarding agency, or by a state agency acting as a passing-through entity, all procurements that involve the expenditure of federal financial assistance (federal awards) shall be conducted in accordance with the federal procurement requirement identified in 2 C.F.R. §§ 200.318–.327, of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (the Uniform Guidance).

### **Section 2: Code of Conduct**

The [UNIT] has adopted standards of conduct covering conflicts of interest and governing the actions of its employees, officers, and agents who are engaged in the selection, award, and administration of federal award contracts.<sup>4</sup> [Units may want to include the federal COI policy as an addendum to this policy.]

### **Section 3: Pre-Solicitation Requirements**

Prior to any procurement transaction, the following pre-solicitation requirements shall be considered.

1. **No Evasion.** No contract may be intentionally divided into two or more separate purchases with the intent to avoid federal or state competitive procurement requirements.

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<sup>3</sup> The term "UNIT" is used as a placeholder. Local governments should insert county, city, town, or village or specify a specific department or position that is responsible for performing the specific requirement.

<sup>4</sup> [2 C.F.R. § 200.318.](#)

2. **Interlocal Agreements.** The [UNIT] shall explore the feasibility of entering into state and local intergovernmental agreements or cooperative agreements, where appropriate, for the procurement of common goods and shared services. Competition requirements may be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.<sup>5</sup>
3. **Surplus Property.** The [UNIT] shall avoid the acquisition of unnecessary or duplicative items and shall explore the feasibility of purchasing federal surplus property in lieu of purchasing new equipment and property.<sup>6</sup>
4. **Value Engineering.** The [UNIT] shall consider opportunities to use value engineering in contracts for permanent restorative work projects that are of sufficient size to offer reasonable opportunities for cost reduction.<sup>7</sup>
5. **Domestic Preferences.** To the greatest extent practicable, the [UNIT] shall provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, including but not limited to iron, aluminum, steel, cement, and other manufactured products.<sup>8</sup> No sacrifice or loss in price or quality is required in providing this preference, and no preference shall be given if such preference would violate any trade treaty to which the United States is a signatory.<sup>9</sup>
6. **Geographic Preference.** The [UNIT] shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.<sup>10</sup>
7. **Contracting with Minority-Owned, Women-Owned, and Small Business Firms.** For all contracts above the micropurchase threshold, the [UNIT] shall take all necessary affirmative steps to assure that minority businesses, small businesses, women’s business

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<sup>5</sup> [2 C.F.R. § 200.318\(e\)](#).

<sup>6</sup> [2 C.F.R. § 200.318\(f\)](#).

<sup>7</sup> [2 C.F.R. § 200.318\(g\)](#); Value engineering is a systematic and creative analysis of each contract item or task undertaken to ensure that its essential function is provided at the overall lowest cost.

<sup>8</sup> [2 C.F.R. § 200.322\(a\)](#); The requirements of this section shall be included in all subawards, including all contracts and purchase orders for work or products under the federal award.

<sup>9</sup> [2 C.F.R. 200.322\(b\)](#); “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. “Manufactured products” means items and construction materials composed, in whole or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

<sup>10</sup> [2 C.F.R. § 200.319\(c\)](#); A preference may be afforded to A/E firms located within in the state of North Carolina only when the state from which an outside bid was received provides a reciprocal preference. See [Chapter 143, Section 64.31\(a1\) of the North Carolina General Statutes \(hereinafter G.S.\)](#).

enterprises, historically underutilized businesses, and labor surplus area firms are used when possible.<sup>11</sup> These affirmative steps shall include:

- a. placing qualified small and minority businesses and women’s business enterprises on solicitation lists and soliciting these businesses whenever they are potential sources;
- b. dividing, when economically feasible, project requirements into smaller tasks or quantities and establishing delivery schedules that encourage maximum participation;
- c. identifying firms through the U.S. Small Business Administration (SBA)<sup>12</sup> and the U.S. Department of Commerce’s Minority Business Development Agency<sup>13</sup> of the [\*AU: Specify federal or state commerce department?]]Department of Commerce; and
- d. requiring the prime contractor, if subcontracts are to be awarded, to take the affirmative steps included in this section in an effort to make reasonable efforts to contract with disadvantaged business enterprises.<sup>14</sup>

8. **Cost or Price Analysis.** Prior to awarding a contract, [UNIT] shall perform a cost or price analysis in connection with every procurement above the Simplified Acquisition Threshold, including contract modifications.<sup>15</sup> See [Section 6.4](#) for additional requirements of the cost/price analysis.
9. **Procurement of Recovered Materials.** The [UNIT] shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the U.S. Environmental Protection Agency (EPA) at 40 C.F.R. part 247 containing the highest percentage of recovered materials practicable, consistent with maintaining a

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<sup>11</sup> A “small business” is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the Small Business Administration criteria and size standards at [13 C.F.R. Part 121](#). A “women’s business enterprise” (1) is at least 51 percent owned by one or more women or, in the case of a publicly owned business, has one or more women owning at least 51 percent of the stock and (2) has one or more women in control of management and daily operations. A “minority business” (1) is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, has one or more minority group members owning at least 51 percent of the stock and (2) has one or more minority group member in control of management and daily operations. A “labor surplus area” is an area with a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the national average over the same period. A “labor surplus area firm” is one that, together with its first-tier subcontractors, will perform substantially in labor surplus areas, as defined by the U.S. Department of Labor’s Employment and Training Administration. The Department of Labor’s list of labor surplus areas is available on-line at <https://www.doleta.gov/programs/lisa>.

<sup>12</sup> For more information, visit the SBA’s website at <https://www.sba.gov/>.

<sup>13</sup> For more information, visit the Minority Business Development Agency’s website at <https://www.mbda.gov/>.

<sup>14</sup> [2 C.F.R. § 200.321](#); [45 C.F.R. § 75.330](#).

<sup>15</sup> [2 C.F.R. § 200.324](#).

satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. For federally funded solicitations, the requesting department shall include in the specifications the use of fully or partially recovered (recycled) materials to the greatest extent consistent with reasonable performance standards in accordance with federal regulations.<sup>16</sup>

#### **Section 4: Solicitation Requirements**

1. **Full and Open Competition.** Procurements shall be conducted in a manner that provides full and open competition to ensure objective supplier performance and eliminate unfair competitive advantage. The [UNIT] shall remain alert to organizational conflicts which would jeopardize the negotiation process and limit competition. The [UNIT] may not:
  - a. place unreasonable requirements on firms in order for them to qualify to do business;
  - b. require unnecessary experience and excessive bonding or encourage or participate in non-competitive practices among firms or affiliated companies;
  - c. award non-competitive consultant retainer contracts except as expressly provided by funding-source regulations;
  - d. specify (1) that only a “brand name” product be used instead of allowing an “equivalent product” to be offered, though a “brand name or equivalent” description may be used to define the performance or other salient requirements of procurement or (2) the specific features, performance, or other relevant requirements of the named brand that must be met by offerors; or
  - e. take any arbitrary actions that limit or restrict competition.<sup>17</sup>
2. **Contractors Excluded from Bidding.** To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals are excluded from competing for the underlying procurement contract.
3. **Prequalification.** The [UNIT] ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. The prequalified list shall be routinely updated. Potential bidders shall not be precluded from qualifying

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<sup>16</sup> [2 C.F.R. § 200.323.](#)

<sup>17</sup> [2 C.F.R. § 200.319\(b\).](#)

during the solicitation period.<sup>18</sup>

4. **Product Descriptions.** All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, service, or product to be procured. In competitive procurements, these descriptions shall not contain features which unduly limit competition. The description may include a statement of the qualitative nature of the material, product, or service and, when necessary, the minimum essential characteristics and standards to which it shall conform if it is to satisfy its intended use. Detailed product specifications shall be avoided whenever possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used to define the performance or other salient requirements of procurement. The solicitation shall identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.<sup>19</sup>

## Section 5: Bidding Requirements

**[NOTE: This section focuses on the federal procurement methods and does not incorporate state law bidding requirements. See Appendix \_\_ for a model procurement policy that was drafted by former SOG faculty member Norma Houston and combines the federal and state law procurement requirements for purchase contracts, service contracts, and construction and repair. Importantly, the Uniform Guidance requires local governments competitively bid service contracts when the contract will be paid, in whole or in part, with a federal award/grant.]**

The [UNIT] shall comply with the procurement methods set forth in the Uniform Guidance at 2 CFR § 200.320 when entering into purchase, service, and construction contracts and repair contracts that will be funded, in whole or in part, with a federal award. The method of procurement will depend on the anticipated expenditure amounts and the type of service or materials being procured. The [UNIT] shall also comply with state law and local policy when soliciting bids and awarding contracts.

1. **Informal Procurement Methods:** When the value of the procurement will not exceed the simplified acquisition threshold (SAT) of \$250,000, the [UNIT] may conduct the procurement using one of the informal procurement methods: micropurchases and small purchase procedures.
  - a. **Micropurchases:** (contracts costing less than \$10,000)

The micropurchase procurement method may be used when the aggregate amount of the purchase/contract is below the micropurchase threshold (\$10,000).<sup>20</sup> Micropurchases may be

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<sup>18</sup> [2 C.F.R. § 200.319\(e\).](#)

<sup>19</sup> [C.F.R. § 200.319\(d\).](#)

<sup>20</sup> [2 C.F.R. § 200.320\(a\)\(1\)](#); the current micropurchase threshold is set at \$10,000. A local government may self-

awarded without competition provided the price term is considered to be fair and reasonable based on market conditions. When making a micropurchase, the [UNIT] shall:

- i. Obtain price or rate quote from at least one qualified vendor or contractor;
- ii. Document in writing that the price or rate quote is fair and reasonable; and
- iii. To the extent practical, distribute micropurchases equitably among qualified suppliers.<sup>21</sup>

**b. Small Purchase Procedures:** (Contracts costing between \$10,000 - \$250,000)

The small purchase method may be used for procurements in which the aggregate dollar amount is higher than the micropurchase threshold but does not exceed the SAT (\$250,000). This method does not require formal advertisement; the method of advertising the procurement shall be established by [INSERT POSITION]. Price or rate quotes may be received in a variety of format, including email, fax, phone, or any other method.

When conducting procurements using the small purchase procedures method, the [UNIT/POSITION] shall:

- i. Obtain an adequate number of price or rate quotations from vendors or contractors;
- ii. Maintain documentation of price/rate quotes; and
- iii. Award the contract on to the lowest cost responsible bidder.<sup>22</sup>

**2. Formal Procurement Methods:** For procurements that cost \$251,000 or more, the [UNIT] shall conduct the procurement in accordance with one of the formal procurement methods: sealed bids or proposals.

**a. Sealed Bids:** (Contracts costing \$251,000 or more)

The sealed bid method shall be the [UNIT's] preferred method for procuring construction and repair contracts, provided the following conditions are present: (1) a complete, adequate, and realistic specification or purchase description is available; (2) two or more responsible bidders are willing and able to compete effectively for the business; and (3) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made

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certify a higher threshold consistent with state law or a local policy may set a lower threshold amount.

<sup>21</sup> [2 CFR § 200.320\(a\)\(1\)](#).

<sup>22</sup> [2 CFR § 200.320\(a\)\(2\)](#); the Uniform Guidance does not define "adequate number" of qualified sources. Some federal agencies have issued guidance assigning specific numbers to this requirement. For example, FEMA has interpreted "adequate number" to mean receiving at least 3 quotes. Departments should consult with their federal granting agency to determine if that agency has issued guidance defining "adequate number." Keep in mind that state law requires purchase contracts costing \$90,000 or more are subject to state law formal bidding requirements, and, as such, three quotes must be received for purchases in the formal bidding range. The other state law formal bidding requirements also apply to purchase contracts above the \$90,000 threshold. See G.S. 143-129.



principally on the basis of price.

When the sealed bid method is used, the [Unit] shall satisfy the following conditions:

- i. Solicit sealed bids from an adequate number of qualified sources, and provide bidders with sufficient time to prepare a response prior to the date set for bid opening.
- ii. Publicly advertise the Invitation for Bid (IFB).
- iii. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
- iv. Include in the IFB any specifications and pertinent attachments, and clearly define the items or services in order to allow the bidder to properly respond.
- v. Publicly open bids at the time and place prescribed in the IFB.
- vi. Award a firm, fixed-price contract in writing to the lowest responsive and responsible bidder.
- vii. Reject any or all bids only for sound documented reasons.<sup>23</sup>

**b. Competitive Proposals:** (Contracts costing \$251,000 or more for which the sealed bid method is not appropriate)

The [UNIT] shall use the competitive proposal method when the cost of the contract is above \$250,000 and when the sealed bids method is not appropriate. Proposals are conducted with more than one source submitting an offer, and either a fixed price or cost reimbursement type contract is awarded. The [UNIT] is required to use the proposals method for qualification-based procurements in the selection of architectural and engineering (A/E) professional services. In the procurement of A/E professional services, the price will be negotiated after the most qualified firm is selected. When the competitive proposals method is used, the [Unit] shall satisfy the following conditions:

- i. Publicly advertise the request for proposal (RFP) or request for qualifications (RFQ). Formal advertisement in a newspaper is not required provided the method of advertisement will solicit proposals from an “adequate number” of qualified firms.
- ii. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
- iii. Identify evaluation criteria and relative importance of each criterion (criteria weight) in the RFP or RFQ.
- iv. Consider all responses to the publicized RFP to the maximum extent practical.
- v. Establish a written method for conducting technical evaluations of proposals and selecting the winning firm.

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<sup>23</sup> [2 CFR § 200.320\(b\)\(1\)](#); factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

- vi. Award the contract on a fixed-price or cost-reimbursement bases to the most responsible firm with the proposal that is most advantageous to the [UNIT], taking into account price and other factors identified in the proposal. Price may not be an evaluation factor for (A/E) service contracts.
  - vii. **A/E Service Contracts:** For qualification-based procurement in the selection of architectural and engineering (A/E) professional services, qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. Price shall not be solicited in the RFQ, or used as an evaluation criterion, in awarding A/E professional service contracts.<sup>24</sup>
3. **Noncompetitive Procurement.** Noncompetitive procurements are allowed only under the following conditions.
- i. **Micropurchases.** The aggregate dollar amount of the procurement does not exceed the micropurchase threshold.
  - ii. **Sole source.** A contract may be awarded without competitive bidding when the item is available from only one source. [PURCHASING/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.
  - iii. **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 competitive bidding.
  - iv. **Agency Approval.** A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids/quotes from a number of sources as required under this Policy does not result in a qualified winning bidder.
  - v. **Inadequate Competition.** A contract may be awarded without competitive bidding when competition is determined to be inadequate after a minimum of two attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.<sup>25</sup>

## Section 6: Contract Award

1. **Responsible Contractors.** Contracts shall only be awarded to responsible, responsive contractors/firms possessing the ability to perform successfully under the terms and conditions of the proposed procurement. “Responsible” refers to the character or

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<sup>24</sup> [2 CFR § 200.320\(b\)\(2\).](#)

<sup>25</sup> [2 CFR § 200.320\(c\).](#)

quality of the bidder, with consideration being given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. “Responsive” refers to the bidder’s compliance with all required specifications in the formal solicitation.

2. **Suspension and Debarment.** Prior to awarding a contract, the [UNIT/POSITION/RESPONSIBLE PARTY] shall verify that a potential contractor is not debarred or suspended using the System for Award Management (SAM.gov). If a contractor has been debarred, suspended, or is otherwise excluded from participation in a federal award program, the contractor may not be awarded the contract. The [DEPARTMENT/POSITION] shall maintain documentation of this verification.
3. **Bid Rejections.** Bid submissions and/or proposals may be deemed non-responsive, or contractors may be determined to be non-responsible, for any sound documented reason(s). The documentation will state the reason(s) why each bidder failed to satisfy the responsive, responsible contractor standard for a particular procurement.
4. **Cost and Price Analysis.** Prior to receiving bids or proposals, the [UNIT/DEPARTMENT/POSITION] is required to perform a cost or price analysis in connection with every procurement transaction, including contract modifications, falling above the simplified acquisition threshold (\$250,000).<sup>26</sup> To satisfy this requirement, the requesting department shall prepare and submit a memorandum containing the cost/price analysis to [insert position/office] [\*Local governments may include specific procedures for the performance of the cost/price analysis.]
  - a. A price analysis involves the evaluation of the total proposed price without an evaluation of its separate cost elements and proposed profit. A price analysis is used to verify that the overall price for a specific item is fair and reasonable.
  - b. A cost Analysis involves the evaluation of the separate elements that make up the total cost of a contract (e.g., labor, materials, profit, etc.). The cost analysis is required for new contracts and contract modifications or change orders, even when the change order results in a lower contract price.<sup>27</sup>
5. **Profit.** For contracts without price competition, or where cost analysis is required in accordance with 2 C.F.R. § 200.323(a), the [UNIT] must negotiate profit as a separate price element. To establish a fair and reasonable profit, consideration shall be given to

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<sup>26</sup> [2 C.F.R. § 200.324\(a\)](#).

<sup>27</sup> Price analysis involves the examination and evaluation of a proposed price without an evaluation of its separate components (cost and profit). For example, the comparison of competing offers or the comparison of quoted prices with independent estimates falls within a price analysis. Cost analysis involves the review and evaluation of the separate cost elements, such as labor hours, overhead, materials, etc., and the proposed profit in order to determine a fair and reasonable price. This analysis is usually used to establish the basis for negotiating (1) contract prices for procurement by request for proposal, (2) contract modifications, and (3) in any other case where price analysis by itself does not ensure price reasonableness.

the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of the contractor's past performance, and industry profit rates in the surrounding geographical area for similar work.<sup>28</sup>

6. **Estimated Costs.** The [UNIT] shall use estimated costs in negotiating contract terms only to the extent that the cost estimates included in negotiated prices are allowable under the 2 C.F.R. Part 200, Subpart E, "Cost Principles."<sup>29</sup> [Units should have a separate Cost Principles policy that covers expenditures of federal award funds.]
7. **Bonding Requirements.** For construction contracts or subcontracts that exceed the simplified acquisition threshold (\$250,000), the [UNIT] shall require that contractors meet the minimum bonding requirements listed below.

To be submitted with the bidding documents:

A *bid guarantee* from each bidder equivalent to five percent (5%) of the bid price.<sup>30</sup> The bid guarantee must consist of a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid, as assurance that the bidder shall, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

To be submitted at the time of contract award:

A *performance bond* on the part of the contractor that is for 100 percent (100%) of the contract price.<sup>31</sup> A performance bond is a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

A *payment bond* on the part of the contractor that is for 100 percent (100%) of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.<sup>32</sup>

## Section 7: Prohibited Contracts

1. **Costs-Plus-a-Percentage-of-Construction-Cost Contracts.** The award of costs plus a percentage of construction cost contracts are prohibited.<sup>33</sup>

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<sup>28</sup> [2 C.F.R. § 200.324\(b\).](#)

<sup>29</sup> [2 C.F.R. § 200.324\(c\).](#) Units may reference their own cost principles policy. For example, a unit may want to limit the use of estimated costs to A/E contracts that are federally funded.

<sup>30</sup> [2 C.F.R. § 200.325\(a\).](#) [[Deleted bc repetitive of text]]

<sup>31</sup> [2 C.F.R. § 200.325\(b\).](#) [[Same comment as immed. above]]

<sup>32</sup> [2 C.F.R. § 200.326.](#)

<sup>33</sup> [2 C.F.R. § 200.324\(d\).](#)

2. **Time-and-Materials Contracts Disfavored.** The [UNIT] shall only enter into time and materials contracts if it has determined in writing that no other contract type is suitable for a given procurement. Time and materials contracts prescribe cost as the sum of (a) actual cost of materials and (b) direct labor hours charges at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Use of time and materials contracts shall require an established price ceiling to ensure that the agreement does not allow for an open-ended contract price with no profit incentive for the contractor to control costs or labor efficiency. These contracts shall be subject to frequent oversight to ensure that the contractor employs efficient methods and effective cost controls.<sup>34</sup>

## Section 8: Contract Administration

1. **Contract Oversight.** The [DEPARTMENT/POSITION] shall provide proper oversight to ensure that contractors and firms perform the contract requirements in accordance with the terms, conditions, and specifications of their contracts or purchase orders. [May insert process for ensuring compliance with this provision.]
2. **Contract Clauses.** All procurement contracts shall contain the applicable provisions described in Appendix II to 2 C.F.R. Part 200, "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards."<sup>35</sup> [May choose to include the Appendix II contract clauses as an appendix to this policy.]
3. **Record Retention.** The [UNIT] shall maintain records sufficient to detail the history of each procurement, including the rationale for the method of procurement and selection of contract type, the basis for the contractor selection or rejection, and the basis for the contract price.<sup>36</sup> These records include, but are not limited to, supporting documentation showing the rationale for the procurement method; written price or rate quotations, such as catalog price, online price, email or written quotes, copies of advertisements, requests for proposals, and bid sheets or bid proposal packets; bid rejection and award letters; purchase orders; executed contracts; and any other supporting documentation or financial records relating to the procurement transaction.
4. **Retention Period.** Unless a federal award prescribes a different record retention period, all financial records, supporting documents, statistical records, and all other records pertinent to a federal award shall be retained for a period of three years from the date of submission of the final expenditure report or, for federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or pass-

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<sup>34</sup> [2 C.F.R. § 200.318\(j\)](#).

<sup>35</sup> [2 C.F.R. § 200.327](#); [Appendix II to 2 C.F.R. Part 200](#). For assistance with the Appendix II contract clauses, see the document [Sample Contract Terms Compliance with the Uniform Guidance Procurement Requirements](#).

<sup>36</sup> [2 C.F.R. 200.318\(j\)](#).

through entity in the case of a subrecipient.<sup>37</sup> An exception to the standard retention period may exist if any of the following circumstances is satisfied:

- a. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- b. When the [UNIT] has been notified in writing by the federal awarding agency or pass-through entity that the retention period has been extended.
- c. Records for real property and equipment shall be retained for three years after final disposition.

### **Section 9: Awarding Agency or Pass-Through Entity Review**

1. **Agency Review.** Upon request of the awarding federal agency, the [UNIT] shall make available technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for acquisition.<sup>38</sup> The [UNIT] shall make the pre-procurement and procurement documents available upon request of the federal awarding agency or pass-through entity when any of the circumstances set forth in 2 C.F.R. § 200.325(b) are satisfied.<sup>39</sup>

### **Section 10: Compliance with Policy Provisions**

1. **[The unit should insert remedies for noncompliance.]**<sup>40</sup>
2. **Penalties Imposed by Federal Awarding Agency.** If it has been determined that the [UNIT] has failed to comply with the U.S. Constitution, federal statutes, regulations, or the terms and conditions of a federal award, the federal awarding agency or pass-through entity may impose additional conditions on the [UNIT], as described in [2 C.F.R. § 200.208](#). In cases in which noncompliance cannot be remedied by the imposition of additional conditions, the federal awarding agency or pass-through entity may take one or more of the following actions: temporarily withhold cash payments, disallow costs, suspend or terminate the award, initiate suspension or debarment proceedings, withhold further federal awards for the project or program, or take other remedies legally available.<sup>41</sup>

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<sup>37</sup> [2 C.F.R. 200.334](#). Procurement records related to expenditures of Coronavirus State and Local Fiscal Recovery Funds pursuant to the American Rescue Plan Act must be retained for a period of five years.

<sup>38</sup> [2 C.F.R. § 200.325\(a\)](#).

<sup>39</sup> [2 C.F.R. § 200.325\(b\)](#).

<sup>40</sup> [2 C.F.R. § 200.218\(c\)\(1\)](#).

<sup>41</sup> [2 C.F.R. § 200.339](#).

## Appendix A

**NOTE: Appendix A is an excerpt of the model procurement policy drafted by former UNC School of Government faculty member Norma Houston in 2018. The excerpt combines the Uniform Guidance procurement methods AND North Carolina state law bidding requirements for the different contract types and dollar thresholds. Local Governments may choose to substitute the below procurement procedures into Section 5 of this procurement policy. This should be done only if the local government wants to include state law in the federal procurement policy (this is allowed, but not required). Alternatively, Appendix A can be used as a reference for the purchasing department to ensure compliance with federal and state law when bidding on contracts.**

### **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.

- A. Service Contracts** (except for A/E professional services) and **Purchase Contracts costing less than \$10,000** shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:
1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
  2. To the extent practicable, purchases must be distributed among qualified suppliers.
- B. Service Contracts** (except for A/E professional services) and **Purchase Contracts costing \$10,000 up to \$90,000** shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. § 200.320(b)) as follows:
1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency might issue guidance interpreting “adequate number,” so the Requesting Department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
  2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
  3. Cost or price analysis is not required prior to soliciting bids.
  4. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).
  5. Award the contract to the lowest responsive, responsible bidder.
- C. Service Contracts** (except for A/E professional services) and **Purchase Contracts costing \$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) as follows:

1. Cost or price analysis is required prior to soliciting bids.
2. Complete specifications or purchase description must be made available to all bidders.
3. The bid must be formally advertised 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. The 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 only for “sound documented reasons.”
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
5. Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
6. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis. Governing board approval is required for purchase contracts unless the governing board has delegated award authority to an individual official or employee. Any and all bids may be rejected only for “sound documented reasons.”

**Note Regarding Service Contracts Costing \$90,000 up to \$250,000:** 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.

**D. Service Contracts** (except for A/E professional services) **costing \$250,000 and above** may 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. The procedures are as follows:

1. A 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.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
3. Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
4. Consider all responses to the publicized RFP to the maximum extent practical.



5. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
  6. 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 not required.
  7. Award the contract on a fixed-price or cost-reimbursement basis.
- E. Construction and repair contracts costing less than \$10,000** shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:
1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
  2. To the extent practicable, contracts must be distributed among qualified suppliers.
- F. Construction and repair contracts costing \$10,000 up to \$250,000** shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. § 200.320(b)) as follows:
1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency might issue guidance interpreting “adequate number,” so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
  2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
  3. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
  4. Award the contract on a fixed-price or not-to-exceed basis.
  5. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required.
- G. Construction and repair contracts costing \$250,000 up to \$500,000** shall be procured using the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) as follows:
1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
  2. Complete specifications must be made available to all bidders.
  3. 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). The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
  4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.

5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders. Performance and payment bonds of 100% of the contract price is required of the winning bidder.
7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required. Any and all bids may be rejected only for “sound documented reasons.”

**H. Construction and repair contracts costing \$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) as follows:

1. Cost or price analysis is required prior to soliciting bids (this cost estimate should be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. Formally advertise the 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. The 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 only for “sound documented reasons.”
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of 3 bids must be received in order to open all bids.
6. A 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.
7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is required and cannot be delegated. The governing board may reject and all bids only for “sound documented reasons.”

**I. Construction or repair contracts involving a building costing \$300,000 and above** must comply with the following additional requirements under state law:

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).

**J. Contracts for Architectural and Engineering Services costing under \$250,000** shall be procured using the state “Mini-Brooks Act” requirements (G.S. 143-64.31) as follows:

1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. § 200.321.
3. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
4. 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.
5. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
6. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.

**K. Contracts for Architectural and Engineering Services costing \$250,000 or more** shall be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(d)(5)) as follows:

1. Publically advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
3. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
4. Proposals must be solicited from an “adequate number of qualified sources” (an individual federal grantor agency may issue guidance interpreting “adequate number”).
5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
6. Consider all responses to the publicized RFQ to the maximum extent practical.
7. Evaluate qualifications of respondents to rank respondents 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.
8. Price cannot be a factor in the initial selection of the most qualified firm.

9. Once the most qualified firm is selected, negotiate fair and reasonable compensation. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
10. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing board approval is not required.