



## **MECKLENBURG COUNTY, NORTH CAROLINA**

### **PROCUREMENT POLICY**

#### **1. POLICY STATEMENT**

The policy of Mecklenburg County (the “County”) is to maintain a responsible procurement process that obtains the best apparatus, supplies, materials or equipment (hereafter referred to as “goods”), services, technology and construction at the best price and in compliance with applicable laws, regulations, and other requirements.

#### **2. POLICY PURPOSE**

The purpose of this policy is to establish guidelines and accountability for the expenditure of funds used to procure goods and services used by County departments. This primary purpose is met by establishing and implementing a system of internal controls that provide reasonable assurance that the County is in compliance with North Carolina General Statutes Chapter 143, Article 8 Public Contracts as it may be amended from time to time; Federal regulatory and other requirements, as applicable; and other applicable laws, regulations, or other requirements. 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.

Each County department shall be responsible for ensuring that all procurements undertaken within departments comply with (a) all applicable State and federal laws<sup>1</sup>; (b) local ordinances or directives established by the Mecklenburg County Board of County Commissioners (“BOCC”) from time to time; (c) this Policy; and (d) all other approved policies and procedures. Procurements that involve federal funding must apply the most restrictive requirements; Uniform Guidance requirements also apply to subrecipients of such funds.

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<sup>1</sup> For information and tools regarding procurement laws and requirements, please see UNC School of Government website, Local Government Purchasing and Contracting, <https://www.sog.unc.edu/resources/microsites/local-government-purchasing-and-contracting/>. For assistance in interpreting legal requirements, contact the County Attorney’s Office.

**3. POLICY GOVERNANCE**

This policy is intended to govern the purchase of goods, apparatus, supplies, materials, equipment, professional and non-professional services, technology and construction or repair projects.

Specific procedural guidance related to the actions described within this Policy is provided for in the Mecklenburg County Procurement Process and Procedures Manual. Processes and procedures required by this policy are maintained and administered in the office of the Procurement Director within the Mecklenburg County Procurement Division of the Financial Services Department.

**4. PROCUREMENT PHILOSOPHY**

In all matters related to procurement, County employees should ensure adhere to statutory requirements, regulations, policies, and generally accepted professional standards to ensure the maximum efficiency of governmental operations. To the extent that all statutory, regulatory, and other requirements are met, County staff will work to ensure the appropriate, cost effective, efficient, and timely procurement of necessary goods and services, technology, and construction or repair. This in turn enables all County departments to achieve the mission of effectively delivering services to the residents of Mecklenburg County.

**5. PROCUREMENT ORGANIZATION**

The procurement process within the County is centralized and overseen by the Department of Financial Services, led by the Procurement Division. A centralized approach to the procurement of goods and services allows the County to establish and follow consistent policies, processes, and procedures that align to statutes, regulations and best practices in providing services while adding value and improvement in support of Mecklenburg County's success.

**6. GENERAL POLICY RESPONSIBILITIES**

The County Department of Financial Services shall have the responsibility for maintaining and administering this policy, and is responsible for implementing this policy and delegating any necessary duties required to perform procurements, including compliance and monitoring of this policy. All County departments and employees are subject to and responsible for the provisions of this Procurement Policy. This Procurement Policy, and any amendments, must be approved by the Director of Financial Services.

No County employee shall purchase or contract for any goods, services, technology or construction except as provided in this policy and all applicable statutes. Any purchase or contract made contrary to the provisions of this policy may be voidable at the option of the County.

Contracts funded with federal grant or loan funds must be procured in a manner that conforms with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200).

## 7. GOVERNING STATUTES, REGULATIONS, AND RELATED POLICIES

This policy is primarily	<u>Subject</u>
G.S. 143-129 & SL 1997-184 <sup>2</sup>	<b>Formal bids:</b> apparatus, supplies, materials or equipment over \$100,000; and construction or repair contracts \$500,000 and above.
G.S. 143-131	<b>Informal Bids:</b> apparatus, supplies, materials or equipment greater than \$30,000 and less than \$100,000; and construction or repair greater than \$30,000 but less than \$500,000.
G.S 143-128	Specifications and contracting methods for construction projects over \$300,000
G.S. 143-128.2 & .3	Minority business enterprise requirements for building construction
G.S. 143-64.31 - .34	Selection of Architect, Engineer, Surveyor, or construction manager at risk.
G.S. 143-64.17 - .17K	Guaranteed Energy Savings Contracts
2 C.F.R. Part 200, including Appendix II	Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
MWSBE Policy	Minority, Women and Small Business Enterprise Procurement Policy and Procedures.
Buy American Policy	Preference for goods manufactured in the United States of America
Procurement Card Policies and Procedures Manual	Establishes the policy, procedures and responsibilities associated with participation in County's Procurement Card Program and the use of a County procurement card
Mecklenburg County Public Records Policy	Establishes guidance to County officials, which includes employees, in understanding and complying with the North Carolina public records law including: record retention; record disposition; and record inspection and copying in response to public records requests

<sup>2</sup> SL 1997-184 increased the statutory requirement for formal bids for apparatus, supplies, materials and equipment for Mecklenburg County from \$90,000 to \$100,000.

Mecklenburg County Code of Ethics	Establishes guidance to County officials, which includes employees, in making decisions in the performance of their lawful duties
Property Disposal Policy and Procedures	Establishes policy and procedure regarding disposal and redeployment of surplus, obsolete, or unserviceable County property and establishes accountability for the decision to dispose of or redeploy such property
County Vendor Policy	Establishes uniform methods and strengthens internal controls that allow the County to maintain an accurate, current and consistent record of all vendors interested in doing business with the County

**8. CONTRACT EXECUTION AND APPROVAL**

County departments, employees and/or governing bodies are authorized to approve purchases within certain categories and thresholds. The following authorities to award contracts have been established:

<b>SUBJECT TRANSACTION</b>	<b>APPROVAL AUTHORITY</b>
Facility rentals for special events or training	County Manager or Designee
Contracts with schools, universities or other agencies for student interns	County Manager or Designee
Goods, apparatus, supplies, materials and equipment less than \$100,000	County Manager or Designee
Goods, apparatus, supplies, materials and equipment \$100,000 and above.	BOCC
Equipment purchases less than \$100,000 if trade-in is involved	County Manager or Designee
Contract Amendments for Goods	County Manager or Designee (as long as the amendment is less than \$100,000)
Technology goods less than \$100,000	County Manager or Designee
Technology goods \$100,000 or more	BOCC (except if purchased from a state or federal contract or County-approved cooperative agreement)
Contracts for services	County Manager or Designee

Contract Amendments for Services	County Manager or Designee
Construction contracts less than \$500,000 (except for those with federal funding)	County Manager or Designee
Construction contracts \$500,000 or greater	BOCC
Construction Contracts \$250,000 or greater with federal funds	BOCC
Leases, rentals and maintenance contracts	County Manager for contracts of one year or less than one year. BOCC for agreements greater than one year, or if the term crosses fiscal years and does not include a non-appropriations clause
Architect, Engineer, Surveyor, or Construction Manager at Risk Contracts – less than \$50,000	County Manager or Designee
Architect, Engineer, Surveyor, or Construction Manager at Risk Contracts –\$50,000 or more	BOCC
Energy Service Companies (ESCO's) for Guaranteed Energy Savings Contracts	BOCC

- For additional information regarding Architectural, and Engineering and Surveying Contracts, please see exhibits C and D

### **8.1 County Manager Authorization**

Annually, the County Manager is authorized by the BOCC to make certain procurement awards and decisions. Pursuant to the Mecklenburg County Budget Ordinance, the following authorizations are established:

- 1) The County Manager or his/her designee may award and execute contracts that are not required to be bid or which G.S. 143-131 allows letting by informal bids so long as the budget or appropriate capital project ordinance or capital reserve fund contains sufficient appropriated but unencumbered funds for such purposes.
- 2) On behalf of the County, the County Manager or his/her designee, may enter into and execute change orders or amendments to construction contracts when the appropriate capital project or capital reserve fund contains sufficient appropriated but unencumbered funds allocated for such construction projects.
- 3) On behalf of the County, the County Manager or his/her designee, may execute contracts with outside agencies to properly document budgeted appropriations to such agencies where G.S. 153A-248(b), 259, 449 or any similar statutes require such contracts.
- 4) The County Manager or his/her designee may execute contracts on behalf of the County, to render services, at not less than full cost, with the State, other political subdivisions of the State and outside agencies.

5) The County Manager or his/her designee may execute contracts or other agreements with the State of North Carolina required by the State in connection with the receipt of revenues that are included in the estimate of revenues.

6) The County Manager shall exercise his/her authority to designate individuals who are authorized to award and execute contracts only by a written memorandum of delegation filed with the Clerk to the Board, the Mecklenburg County Attorney, and the Director of Finance, except that the County Manager may designate the Assistant County Managers without filing a written memorandum of delegation. Provided, however, annual machine maintenance agreements, equipment leases for fewer than 30 days, and purchase orders may be processed without the signature of the County Manager or his/her designee if processed in accordance with policies of the Department of Financial Services.

Failing to consider all costs associated with a purchase or contract or dividing a purchase or contract for the purpose of circumventing the requirements set forth in this section constitutes a violation of this Policy and may also constitute a violation of state law. Violations of the requirements set forth in this section will be reported to the County Manager's Office and the Department of Financial Services with a referral to the Internal Audit Department for review.

## **9. CONTRACT APPROPRIATIONS AND ENCUMBRANCES**

Under the Local Government Budget and Fiscal Control Act, all expenditures must be supported by an appropriation. In G.S. 159-28 (b), bills, invoices, or other claims against a local government or public authority may be approved if 1) the amount is determined to be payable and 2) the budget or project ordinance includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed. Contracts, including purchase orders, must include a pre-audit certificate signed by a Finance Officer. When there is no commitment or obligation to utilize a particular contract, thus no encumbrance, the Department of Financial Services may take exception to the pre-audit certificate requirement and may not sign the contract.

If the BOCC does not appropriate the funding needed by the County to make payments under any given contract which has a non-appropriation clause for any given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the affected contract may be terminated at the discretion of the County and generally either at the end of the fiscal year for which the funds were appropriated or upon thirty (30) days written notice.

All appropriations for goods and services which have not yet been received or provided must be encumbered through the County's e-Procurement System and in accordance with the requirements established in this Policy and the County Procurement Process and Procedure Manual.

### **Point of Sale Purchasing Encumbrance Exceptions**

For purchases that are not witnessed by a purchase order or contract but are paid for at the point of sale with cash, or by credit or procurement card, no encumbrance is required. The expenditure however must be accounted for and recorded either through the P-card reconciliation process or by Check Request after the fact. County employees must retain merchant receipts for this purpose. These purchases are normally routine point of sale transactions at local businesses, made with general or assumed approval of the employee management. In a similar instance when goods or services are purchased without a purchase order or contract and are paid for after the fact, no encumbrance is needed, although the liability must be recorded. Purchase orders and contracts will not be processed after a purchase has been made or after the goods or services have been received. The procedures for approval and processing of these reimbursements are included in the Mecklenburg County Financial Policies and Procedures Manual under "Accounts Payable, Section K".

This type of purchase does not exempt any County employee from following the requirements and procedures set forth in this Policy or the County Procurement Process and Procedures Manual, nor does it exempt compliance with applicable statutes, regulations, governing board directives, and other County policies, procedures and best practices. The County recommends to the extent possible, that Departments use informal methods of procurement for such purposes, including cost comparisons and/or quotations.

### **Procurement Cards (P-Cards)**

P-Cards may be used for incidental purchases of goods or services at limits approved by a Department Director or his/her designee pursuant to the Mecklenburg County Procurement Card Policies and Procedures Manual. Employees using P-Cards must comply with the requirements and procedures set forth in the manual which is maintained by the Department of Financial Services.

P-Cards are considered an alternative payment tool and not a procurement method. Use of a P-Card does not exempt any County employee from following the requirements and procedures set forth in this Policy or the County Procurement Process and Procedure Manual for that type of purchase, nor does it exempt compliance with applicable statutes, regulations, governing board directives, policies, procedures and best practices. The County recommends to the extent possible, that Departments use informal methods of procurement such as cost comparisons and quotations when considering the use of a P-Card. Employees who have been issued a P-Card may initiate transactions in-person, by telephone, or internet, within the limits set forth in the Procurement Card Policies and Procedures Manual.

While vendor registration is not required prior to P-card transactions, the Financial Services Department will monitor frequency and spend by Vendor for registration opportunities.

**10. PROCUREMENT THRESHOLDS AND MINIMUM REQUIREMENTS**

The following thresholds and minimum requirements are established for the procurement of goods, apparatus, supplies, materials, equipment, and services. In all instances County Departments are responsible for adhering to thresholds and minimum requirements established in the County’s MWSBE policy.

<b>GOODS, TECHNOLOGY GOODS, SUPPLIES, MATERIALS, EQUIPMENT NON-FEDERALLY FUNDED</b>		
<b>Dollar Threshold</b>	<b>Minimum Requirements</b>	<b>Responsible Party</b>
Micro-Purchase Level: \$0 - \$ 9,999	P-Card or GAX  Department purchase order optional	Authorized Department Staff
Small Purchase Level: \$10,000 - \$99,999	Multiple price or rate quotes required from at least two sources  Award to lowest cost responsible bidder  Cannot divide contract to lower cost below micro-purchase threshold to avoid competitive bidding requirements, but may divide where economically feasible to encourage MWSBE participation	Authorized Department Staff or Procurement Division
Sealed Bid Level: \$100,000 or greater	Cost Estimate must be performed prior to prior to bidding (federally funded projects only)  Sealed bid process unless exempt by NC General Statute (if federally funded, must have permission from grantor to use exemption)  Formal Advertisement  BOCC Approval  Firm fixed price Contract	Procurement Division



The following thresholds and minimum requirements are established for the procurement of construction and for architecture, engineering, and surveying services:

<b>GOODS, TECHNOLOGY GOODS, SUPPLIES, MATERIALS, EQUIPMENT &amp; SERVICES RELATED TO FEDERALLY FUNDED CONSTRUCTION PROJECTS</b>		
<b>Dollar Threshold</b>	<b>Minimum Requirements</b>	<b>Responsible Party</b>
Micro-Purchase Level: \$0 - \$10,000	P-Card or GAX  Department purchase order optional	Authorized Department Staff
Small Purchase Level: \$10,000 - \$89,999	Multiple price or rate quotes required from at least two sources  Award to lowest cost responsible bidder  Cannot divide contract to lower cost below micro-purchase threshold to avoid competitive bidding requirements but may divide where economically feasible to encourage MWSBE participation	Authorized Department Staff or Procurement Division
Sealed Bid Level: \$90,000 or greater	Cost Estimate must be performed prior to bidding  Sealed bid process unless exempt by NC General Statute (refer to Section 15 of this Policy for legal exemptions) Formal Advertisement  BOCC Approval  Firm fixed price Contract	Procurement Division

<b>CONSTRUCTION, NON-FEDERALLY FUNDED</b>		
<b>Dollar Threshold</b>	<b>Minimum Requirements</b>	<b>Responsible Party</b>
\$0-\$29,999	<p>1 quote acceptable</p> <p>PO required</p> <p>Contract optional</p>	Authorized Department Staff
\$30,000 - \$499,999	<p>Informal bid process – must seek multiple quotes</p> <p>Obtain price or rate quotes from an adequate number of qualified sources (grantor may issue guidance on “adequate number”)</p> <p>Award to lowest cost responsible bidder</p> <p>Cannot divide contract to lower cost below micro-purchase threshold to avoid competitive bidding requirements</p>	Authorized Department Staff
\$500,000 or greater	<p>Sealed bid process</p> <p>BOCC Approval</p> <p>Firm Fixed Price Contract</p>	Authorized Department Staff

<b>CONSTRUCTION FEDERALLY FUNDED</b>		
<b>Dollar Threshold</b>	<b>Minimum Requirements</b>	<b>Responsible Party</b>
\$0 - \$9,999 micro purchase level	<p>Can award contract without competition if price is considered fair and reasonable</p> <p>Must distribute micro-purchases equitably among qualified suppliers to the extent practicable</p>	Authorized Department Staff
\$10,000 - \$249,999 Small Purchase level	<p>Obtain price or rate quotes from an adequate number of qualified sources (grantor may issue guidance on “adequate number”)</p> <p>Award to lowest cost responsible bidder</p> <p>Cannot divide contract to lower cost below micro-purchase threshold to avoid competitive bidding requirements</p>	Authorized Department Staff
\$250,000 or greater	<p>Conduct price/cost analysis prior to advertising</p> <p>Complete specifications/plans or purchase description made available to bidders</p> <p>At least two (2) responsible bidders required for bid opening</p> <p>Sealed bid process</p> <p>Award to lowest cost responsible bidder</p> <p>BOCC Approval</p> <p>Firm Fixed Price Contract</p>	Authorized Department Staff

<b>ARCHITECT, ENGINEER, SURVEYOR, or CONSTRUCTION MANAGER AT RISK</b>		
<b>Dollar Threshold</b>	<b>Minimum Requirements</b>	<b>Responsible Party</b>
Less than or equal to \$49,999	County Manager Approval  Contract	Authorized Department Staff
More than \$50,000	Best Qualified Section Procedure See Exhibits F & G <sup>3</sup>  BOCC Approval  Contract	Authorized Department Staff

The following thresholds and minimum requirements are established for the procurement of non-professional and professional services including combination of technology goods and services:

<b>SERVICES and COMBINATION OF TECHNOLOGY GOODS and SERVICES NON-FEDERALLY FUNDED</b>		
<b>Dollar Threshold for Services</b>	<b>Minimum Requirements</b>	<b>Responsible Party</b>
\$0 - \$99,999	Best business practice based on the needs of the department.	Authorized Department Staff or Procurement Division
\$100,000 or greater (Competitive Proposal)	Competitive Proposal Procedure Formal Request for Proposals (RFP)  Publicly Advertised	Procurement Division
Services purchases without Federal funds are subject by County Policy to the above thresholds. An exception to the RFP requirement for Services must be approved by the Director of the Financial Services Department.		

<sup>3</sup> G.S. 143-64.32 (b) authorizes the BOCC to exempt any particular project from following this selection procedure in the discretion of the BOCC by “stating the reasons therefor and the circumstances attendant thereto.”

<b>COMBINATION OF TECHNOLOGY GOODS and SERVICES, DESIGN-BUILD CONSTRUCTION FEDERALLY FUNDED</b>		
<b>Dollar Threshold</b>	<b>Minimum Requirements</b>	<b>Responsible Party</b>
\$0 - \$249,999	Best business practice based on the needs of the department.	Authorized Department Staff or Procurement Division
\$250,000 or greater (Competitive Proposal)	Competitive Proposal Procedure Request for Proposals (RFP)  Publicly Advertised	Procurement Division

<b>Selection of ESCO For Guaranteed Energy Savings Contract</b>	<b>Minimum Requirements</b>	<b>Responsible Party</b>
Every dollar amount (these are always very large dollar contracts)	Best Qualified Section Procedure See Exhibit J  BOCC Approval  Contract	Real Estate Services Department

## **11. METHODS OF PROCUREMENT**

County departments will primarily utilize two (2) methods of competitive procurement as follows:

### **11.1 Formal Bid Process**

A formal sealed bid process is required under the four (4) following conditions:

- 1) The purchase or lease purchase of goods, apparatus, materials, supplies and equipment requiring an estimated expenditure of \$90,000 or more;
- 2) For federally funded purchases, the purchase of goods and service contracts of \$100,000 or more;
- 3) The purchase of construction and repair projects of \$500,000 or more;

- 4) The purchase of construction and repair projects of \$250,000 or more where federal funds are involved.

These four categories of purchases must be procured through a **competitive sealed bid process** in compliance with N.C. General Statute 143-129. Requirements and 2 C.F.R. part 200 (where applicable) for a Formal Solicitation are detailed in the Mecklenburg County Procurement Process and Procedure Manual.

According to G.S. 143-129 and 2 C.F.R. part 200 (where applicable) all formal bidding procedures must:

- 1) For federally funded projects, conduct price/cost analysis prior to advertising for bids;
- 2) Be advertised in a newspaper having a general circulation in Mecklenburg County or by electronic means (if Board approved) or both at least seven (7) days prior to the bid opening. Advertisements must contain: a) the time and place specifications will be available; b) the time and place bids/proposals will be opened; and c) a statement reserving the right to reject any or all bids;
- 3) Bids must be submitted in a sealed opaque envelope or package to ensure that prices and terms will not be disclosed prior to the bid opening;
- 4) All bids must be opened in public and the pricing read aloud and recorded;
- 5) Proper storage and maintenance of the formal procurement documentation must be accomplished in compliance with the North Carolina Public Records Law and Retention Schedule;
- 6) Consideration of the need for bid deposits and/or performance and payment bonds must be included in the process;
- 7) Award must be made to the lowest responsible bidder taking into consideration quality, performance, and the time specified in the bids for the performance of the contract;
- 8) For federally funded projects, contract awarded on a firm-fixed-price basis in writing; and
- 9) The BOCC must approve all formal contracts at a duly called public meeting.

When purchasing commodities that include the trade-in of used equipment (including technology), if the trade-in value and the amount to be paid for the new equipment exceed \$100,000 combined, the formal bid process must be followed.

## 11.2 **Informal Bid Process**

An informal bid process will be used in the following conditions:

- 1) The purchase or lease purchase of goods, apparatus, materials, supplies and equipment requiring an estimated expenditure of \$10,000 to \$99,999;

- 2) The purchase of Construction and Repair Projects costing from \$30,000 to \$499,999; and
- 3) The purchase of construction and repair projects from \$10,000 to \$249,999 where federal funds are involved.

Although G.S. 143-131 does not specify any particular method for securing informal purchases, it does require that purchases or contracts be awarded to the lowest responsible bidder taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.

While informal methods are acceptable, County departments may also choose to utilize a more formal process. If the estimated total dollar amount of an informal purchase is over \$90,000, it is recommended to proceed with a formal bid process to avoid re-bidding should all quotes received total over \$100,000.

Informal purchasing methods include the following conditions:

- Requests for quotations, with submission via fax, e-mail, e-procurement system, and/or mail is acceptable;
- All informal quotations should be on an official quote form, a standard template, or a vendor developed form or letterhead and shall include the date of submission and a vendor signature;
- Informal purchases do not require advertisement for requests for quotes;
- Proper documentation, storage and maintenance of the informal solicitation documents in compliance with the North Carolina Public Records Law and Retention Schedule;
- Award must be made to the lowest responsible bidder
- Informal purchases do not require approval by the BOCC.

### **11.3 Request for Proposals (RFP)**

G.S. 143-129.8 contains an alternative provision which gives local governments more flexibility in purchasing a combination of information technology, goods and services. The statute authorizes local governments to use a Request for Proposals (RFP) process rather than an Invitation to Bid (ITB). An RFP process may be used to purchase services as well as any combination of goods or services, particularly when the services component of the purchase is greater than the goods component.<sup>4</sup> Technology and services contracts, and other contracts that include a combination of goods and services, are not necessarily well-suited or best

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<sup>4</sup> See exhibit F on the predominant aspect rule where there is a combination of goods and services that are not information technology goods and services that need to be obtained.

handled using the traditional bid processes called for in G.S. 143-129, and therefore a more flexible approach by County departments is desirable. The RFP process allows the County to employ a more flexible standard of award that allows for decisions to be made based on need and/or best value, not just low bid. Section 13 of this Policy details the procedures for utilizing an RFP process.

## **12. CONTRACTS AND AMENDMENTS**

In determining the amount of a contract for purposes of award authority or selection of a procurement process, the amount of the contract is the total of all expenditures the purchasing department estimates it will spend over the term of the contract and any extensions that the vendor or the County has a right to exercise or anticipates entering into. Expenditures include all costs the County expects to incur for equipment, licensing fees, service fees, maintenance and support and other associated fees. For Formal Solicitations, the Request for Board Action (RFBA) must include all goods that the Department anticipates procuring over the life of the contract or any contract extension.

### **12.1 Contract Amendments to Add Goods**

If after contract award, the purchasing department decides to procure additional goods that were not anticipated at the time of contract award, the amendment to add the additional goods or services will be treated as a separate contract for purposes of determining contract award authority. Notwithstanding this, if the amendment will make total expenditures under the contract exceed \$100,000, then the issue of whether to seek BOCC approval will be decided by the County Manager's Office. If the amendment in and of itself will add \$100,000 or more to the contract, the purchasing department will need to obtain BOCC approval regardless of whether the purchasing department anticipated making the expenditure at the time of contract award. This does not apply to construction contracts.

All amendments must be subsequently reviewed and approved by the original signing authority. At the discretion of the County Manager's Office, certain contracts originally approved by the BOCC may be processed through the County Manager's Office if substantive changes are not required. This excludes construction projects provided that the appropriation of additional funds is not necessary. In general, all amendments modifying the term, the price, the scope, and certain terms and conditions must be approved by the BOCC. Splitting purchases to avoid either the formal bidding or contract approval processes will constitute a violation of this policy and possibly G.S. 143-133.

### **12.2 Contract Extensions and Renewals**

Contract extension and renewal options and anticipated amendments shall be counted in calculating the total amount of a contract when considering whether or not BOCC approval is required. For Formal Solicitations, the purchasing department should ask BOCC to approve the contract and authorize the exercise of all options and extensions that the purchasing department expects to enter into.



### **12.3 Contract Award Authority Violations**

Failing to consider all costs associated with a contract or dividing a contract for the purpose of circumventing the requirements set forth in this Section constitutes a violation of this Policy and may also constitute a violation of G.S. 143-133 and 2 C.F.R. part 200. Violations of the requirements set forth in this section will be reported to the County Manager's Office and referred to Internal Audit for review.

### **12.4 Contract Terminations**

Department Directors are authorized to terminate contracts that have been approved by the County Manager or Designee, except when termination payments are required, excluding those for goods and services already received. Contract terminations that trigger termination payments require the review and approval of the County Attorney. Contracts that have been approved by the BOCC will have to be taken to the BOCC for approval to terminate. Contract terminations must be in writing.

### **12.5 Countywide Master Contracts**

Every effort must be made to purchase from master contracts. The contracts have been through the formal solicitation process and negotiated discounts have been secured.

### **12.6 Insurance Requirements for Contracts**

The Risk Management Division of the City of Charlotte Finance Department provides insurance and risk management services to the County. Insurance requirements for contracts will vary depending on the good or service being procured. The County Attorney determines which contracts require the approval of the Risk Management Department. Exhibit E provides general information on insurance requirements for contracts.

## **13. SERVICES**

Non-professional or professional services (other than construction), are distinguished by the provision of personal performance rather than the delivery of a tangible item. Although the procurement of services greater than \$100,000 is not governed by G.S. 143-129, these procurements must undergo an RFP process. Services exempt from the RFP requirement include those human services for which continuum of service delivery is paramount, competition will not yield significant benefits or when only a single vendor can provide a specific service. However, the County desires to take advantage of a flexible approach and allow County departments to procure services under \$100,000 with or without a process. However, best business practices strongly suggest that testing the market for competitive pricing and creative solutions are beneficial.

In some cases, a Department may need to purchase a combination of goods and services in a single procurement. In determining whether or not a purchase is subject to a mandatory procurement process, the predominant aspect review must be applied. The predominant aspect review will determine which element, goods or services constitute

the larger portion of the cost. The element constituting the larger portion is the predominant aspect and the procurement method associated with that aspect must be followed. See Exhibit F for additional information on the predominant aspect review.

County departments are encouraged to competitively solicit bids or proposals when there is a competitive market for the service and when it is in the best interest of the County. Although no procurement process is required for service procurements under \$100,000, unless federal funds are involved, County departments may choose to utilize any formal or informal method of procurement for services. The standard for services contracting should be based on the “best value” or best overall proposal or solution.

For services contracts below the \$100,000 threshold, consider the following (NOTE: for federally funded service contracts above \$100,000, a formal bid process must be followed):

- 1) The County Manager is authorized to approve, award and execute all services contracts.
- 2) Issuance of an RFP is the preferred method when and if a purchasing department chooses to use a more formal competitive solicitation process;
- 3) The procedures for advertising and proposal opening are flexible;
- 4) The selection criteria in an RFP may be more subjective than that allowed in an ITB, and factors other than price may be considered;
- 5) Negotiation is allowed, and the County has more flexibility in waiving adherence to RFP requirements;
- 6) Award of service contracts may be based on factors other than cost and responsiveness with such factors as vendor experience, qualifications, and solution possible taking precedence over price;
- 7) The County’s Director of Financial Services may waive the issuance of a competitive solicitation for a services contract when it is in the County’s best interest to do so; and
- 8) Services contracts, regardless of the amount, do not require BOCC approval if funds have been appropriated.

### **13.1 Determining “Best Value” in Procurements**

In determining “best value” in procurements, consider the following:

- 1) The purchase price;
- 2) The reputation of the vendor and the vendor’s goods and/or services;
- 3) The quality of the vendor’s goods and/or services;
- 4) The extent to which the goods and/or services meet County needs;
- 5) The vendor’s past relationship with the County;
- 6) The impact on the ability of the County to comply with the laws and rules regarding the procurement of goods and/or services;
- 7) The total long-term cost to the County of acquiring the goods and/or services;

- 8) The material used in repairing goods and/or property;
- 9) Adherence with the County Environmental Policy regarding purchase of Environmentally Preferable Products;
- 10) Adherence with the County MWSBE Policy regarding fair and reasonable opportunity to participate in the County's business opportunities; and
- 11) Any other relevant factor regarding the particular good and/or service.

### **13.2 Independent Contractors or Former County Employees**

County departments requiring the services of independent contractors and/or former employees should refer to the Contractor Checklist to determine the status and ensure compliance with the Internal Revenue Employee Service requirements. According to the IRS regulations, when an independent contractor or a former employee is engaged to provide services, Mecklenburg County must determine whether they should be classified as an employee subject to withholding tax, or as an independent contractor. Determining independent contractor status is driven by facts and circumstances. The facts and circumstances that make one individual an independent contractor may differ from those that make another individual an employee.

See Appendix G for the Independent Contractor checklist.

## **14. TECHNOLOGY**

To assure efficient and appropriate deployment of technology items using their operating budget, purchasing departments must go through the IST review process when they wish to purchase technology items. This includes items to be purchased with a P-Card. Any technology (hardware and/or software), that can or must be connected to and/or installed to a PC, Laptop, Printer, and/or the network, must be bought through the e-procurement system and obtain IT approval. Technology being purchased with non-County funds and which will not be owned by the County requires the approval of IST if the item/s will be connected to the County network and/or used by County staff for County work. Non-County funds are defined as any Federal, state, or other funding that are not held in a County account. County ownership is defined as any asset that is bought with County funds, where the County takes title of the asset, which does not have a board action specifying ownership outside the County.

County departments are subject to the IT Purchasing Guide as updated from time to time, which outlined standards and procedures for the purchase of IT equipment and accessories.

## **15. PROCUREMENT EXEMPTIONS**

G.S. 143-129 defines a number of exemptions to the competitive bidding requirements. The following categories of purchases are exempt from both the formal and informal bidding requirements established in G.S. 143-129. However, the following list is just a shorthand statement of the categories which are exceptions to the competitive bidding requirements. Before attempting to make purchases using these exceptions, Departments must consult with and obtain written approval from the Procurement Division of the Department of Financial Services to utilize a procurement exemption as the method of

purchase. Items 1) through 11) are found in G.S. 143-129 (e). Statutory and/or regulatory guidance as to the other items are listed beside the item.

- 1) Purchases from other units of government;
- 2) Emergencies;
- 3) Group or Cooperative Purchasing Programs; Generally, not allowed for federally funded purchases unless qualified as interlocal cooperation per 2 C.F.R 200.318
- 4) Change Order Work;
- 5) Gas, Fuel, and Oil;
- 6) Sole Source Purchases; For federally funded purchase, refer to the Non-Competitive Proposal procedure identified in 2 C.F.R 200.320(a) – (d);
- 7) Information Technology Goods and Services awarded by the North Carolina Office of Information Technology Services; For federally funded purchase, only allowed if state contract was procured in compliance with the rules applicable to local governments under 2 C.F.R. 200.318-326
- 8) Guaranteed Energy Savings Contracts; (See also G.S. 143-129.4)
- 9) State Contract Purchases; For federally funded project, only allowed if state contract was procured in compliance with the rules applicable to local governments under 2 C.F.R. 200.318-326
- 10) Federal Contract Purchases
- 11) Purchase of Used Goods; The use of federal surplus property where feasible instead of purchasing new property is encouraged when purchases are federally funded per 2 C.F.R. 200.318(f)
- 12) Construction Management at Risk;
- 13) Previously Bid or “Piggybacking” Contracts; (See G.S. 143-129 (g)) this is not allowed for federally funded purchases per 2 C.F.R 200.318 Solid Waste Management Facilities; (See G.S. 143-129.2)
- 14) Use of Unit’s Own Forces (force account work); (See G.S. 143-135 & SL 2009250)<sup>5</sup> and
- 15) Purchases of Goods and Services from Nonprofit Work Centers for the Blind and Severely Disabled. (G.S. 143-129.5)

Five of the most common exemptions are described below. These exemptions apply only to the method of procurement and not to who can award the contract. Unless otherwise indicated, the contract award authority requirements still apply to procurements under these exemptions.

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<sup>5</sup> SL 2009-250 increases just for Mecklenburg County the force account limit to \$300,000, but only for nonutility construction or repair work for park and greenway projects.

**Sole Source.** This exemption applies to the solicitations of goods both formal and informal when:

- 1) performance or price competition for a product is not available;
- 2) a needed product is available from only one source of supply; or
- 3) standardization or compatibility is the overriding consideration.

Sole source purchases of goods totaling \$30,000 or more must be supported by a Sole Source Justification Form, (See Exhibit H). The Sole Source Justification Form must be completed and approved by a Department Director or designee prior to submission to Procurement. Procurement will review all Sole Source Justification Forms for compliance with the Mecklenburg County Process and Procedure Manual and state law, provide an indication of concurrence or non-concurrence, ensure application of the required procedures, and maintain the sole source justification documentation. Purchasing departments that seek to purchase goods as a sole source procurement not initiated by Procurement must: (a) ensure the correct application of the sole source exception, (b) complete and submit to Procurement a Sole Source Justification Form and (c) maintain all required documentation as detailed in the Mecklenburg County Procurement Process and Procedure Manual. Sole source purchases are subject to review by Internal Audit. For federally funded purchase, refer to the Non-Competitive Proposal procedure identified in 2 C.F.R 200.320(a) – (d)

**Sole source procurements require approval by the BOCC.**

Generally, it is the policy of the County to establish an expiration on the Sole Source approval. This is intended to promote periodic reviews of this type of purchase for any changes that may affect the determination which include, but are not limited to: specifications, industry standards, and vendor market. A sole source determination is valid for either the initial term of the written contract if one has been executed or until the purchase order is closed.

**Cooperative Purchasing Programs.** This exemption allows purchasing departments under the appropriate circumstance, to utilize cooperative purchasing programs. Cooperative purchasing programs are formally organized programs that offer contracts that have been competitively bid on behalf of multiple entities that result in discount prices. Cooperative agreements may be prepared by Procurement or by other local, state, or national entities. For a cooperative purchasing program to be considered a legitimate and appropriate procurement method, the contract that the County desires to purchase under must have been competitively bid and must meet or exceed County needs related to specification, availability and cost per the Mecklenburg County Procurement Process and Procedure Manual. For federally funded purchases, the use of cooperative agreements is not allowed unless qualified as interlocal cooperation per 2 C.F.R 200.318

**These procurements do not require the approval of the BOCC.**

**State Contract Purchases.** [G.S. 143-129 (e)(9)] Purchasing departments may utilize State of North Carolina contracts to procure items available under contracts awarded by a North Carolina State agency if the vendor is willing to extend to the County the same or more favorable prices, terms and conditions. Before purchasing from a North Carolina State contract, however, purchasing departments, in consultation with Procurement, should conduct enough investigation to ensure that the specifications, terms and conditions, and pricing meet or exceed what might be available through an internal procurement process per the Mecklenburg County Procurement Process and Procedure Manual. For federally funded projects, this exemption is only allowed if the state contract was procured in compliance with the rules applicable to local governments under 2 C.F.R. 200.318-326.

**These procurements do not require the approval of the BOCC.**

**Federal Contract Purchases.** [G.S. 143-129 (e)(9a)] Purchasing departments may utilize contracts established by the United States of America or any federal agency, if the vendor is willing to extend to the County the same or more favorable prices, terms and conditions. As is the case with North Carolina State contracts, before purchasing from a federal contract, purchasing departments, in consultation with Procurement, should conduct enough investigation to ensure that the specifications, terms and conditions, and pricing meet or exceed what might be available through an internal procurement process per the Mecklenburg County Procurement Process and Procedure Manual.

**These procurements do not require the approval of the BOCC.**

**Piggybacking.** [G.S. 143-129(g)] **THIS EXCEPTION ONLY NEEDS TO BE USED WHEN PURCHASING FROM A STATE OR SUBDIVISION OF A STATE OTHER THAN NORTH CAROLINA, AND THEN ONLY WHEN THE PURCHASE IS NOT BEING MADE UNDER THE COOPERATIVE PURCHASING EXCEPTION IN G.S. 143-129(e)(3).** Piggybacking allows purchasing departments to purchase goods without bidding from a person or entity that has, within the past twelve months, contracted to furnish an item to any other state public agency, including subdivisions, anywhere in the country. The price and terms must be as good as or better than those that could be obtained through formal bidding, and the item specification must be the same. Additional requirements apply, such as approval by the BOCC, as outlined in the Mecklenburg County Procurement Process and Procedure Manual. This exception is not allowed for purchases made with federal funds.

**Emergencies.** [G.S. 143-129 (e)(2)] Purchasing departments are not required to utilize formal bidding processes when a special emergency is in effect, such that the health and safety of the people or their property are in jeopardy. Purchases needed in response to a natural disaster or other sudden and unforeseeable situations most closely reflect the intent of the emergency exemption. Emergency procurements must be approved by the County Manager's Office.

The North Carolina Supreme Court has interpreted the emergency exemption to the bid statutes very narrowly, and the situations in which it may legitimately be used are rare. The requirements for invoking the emergency exemption are:

- 1) The emergency must be present, immediate and existing;
- 2) The harm must be one that cannot be averted through temporary measures; and
- 3) The emergency cannot be self-created due to failure to take precautions.

**Purchase of Used Goods:** [G.S. 143-129(e) (10)] Local governments may purchase used apparatus, supplies, materials or equipment without complying with the competitive bidding requirements. This exception recognizes the situation that usually exists with used equipment, which is that each item is unique in terms of age and condition, making bidding impractical. The exception does not apply, however, to remanufactured, refabricated, or “demo” items. For purposes of this exception, the statute defines a “demo” item as one that is used for demonstration and is sold by the manufacturer or retailer at a discount. The use of federal surplus property where feasible instead of purchasing new property is encouraged when purchases are federally funded per 2 C.F.R. 200.318(f)

**These procurements do not require the approval of the BOCC.**

## **16. ENVIRONMENTAL CONSIDERATIONS**

The BOCC has requested inclusion of environmental considerations in purchasing decisions for goods and services.

In 2004, the BOCC created an Environmental Leadership Team to advise and guide the County in environmental initiatives that will set an example for public and private sector organizations in our region. An Environmental Leadership Policy and associated action plan provide the principles and guidance for recurring activities of the County that will improve its environmental performance. This policy furthers the County’s goal to be the “best local government service provider.”

## **17. MINORITY, WOMEN AND SMALL BUSINESS ENTERPRISES**

The goal of the MWSBE Program is to provide minority-owned, women-owned and small business enterprises (collectively “MWSBE”) as well as other responsible vendors with a fair and reasonable opportunity to participate in the County’s business opportunities. County staff involved in the procurement of goods and services are expected to make good faith efforts to utilize MWSBE vendors in according the procedures outlined in the MWSBE Program Policy. Department Directors shall be solely accountable for adhering to these procedures.

For federally funded purchases, 2 C.F.R. 200.320(f)(1)-(3) generally applies to all contract regardless of type and cost above the micro-purchase threshold. Affirmative steps must be taken to encourage small and minority firms and women-owned business participation (but no preferences), including the following:

- Include on solicitation lists
- Solicit when such firms are potential bidders
- Divide total contract requirements where economically feasible to enable more minority participation
- Establish delivery schedules to encourage participation
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and Minority Business Development Agency of US Dept. of Commerce
- Require prime contractors to take the same affirmative steps

**18. BUY AMERICAN**

The BOCC adopted a policy directing County employees procuring or contracting for goods, supplies, materials or equipment to give preference as far as may be practicable to products manufactured in the United States of America.

See Exhibit H for the Buy American Policy.

**19. PROCUREMENT ACTIVITY STANDARDS OF CONDUCT**

All County employees involved in procurement activities must at all times adhere to the County Code of Ethics. In addition to the County Code of Ethics, Employees must:

- 1) act responsibly;
- 2) conduct business honestly;
- 3) avoid wasteful and impractical purchasing practices;
- 4) avoid real or perceived conflicts when conducting business on the County's behalf;
- 5) comply with all applicable federal, state or local laws or regulations;
- 6) comply any other applicable County policies or requirements;
- 7) maintain fiduciary responsibility and integrity;
- 8) advise departmental personnel of expected professional standards of ethical and legal behavior and comply during any procurement activities; and
- 9) 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.

For procurements that utilize Federal funding, in whole or in part, Federal guidelines must also be adhered to as required under 2 C.F.R. § 200.318(c)(1). Such requirements may also apply to subrecipients.

**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 may participate directly or indirectly 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 involved in the selection, award, or administration of a contract;
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 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 valued at less than \$50 which fall into one of the following categories may be accepted:

1. promotional items;
2. honorariums for participation in meetings; or
3. meals furnished at banquets.

Any officer, employee or agent who knowingly accepts an item of nominal value allowed under this policy shall report the item to his or her immediate supervisor.

### **C. 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. Violations in the course of federally-funded procurements may result in loss of Federal funds and/or disallowed costs and repayment of Federal funds.

## **20. COUNTY DEPARTMENTAL RESPONSIBILITIES**

Department Directors and their designees are responsible for proactively managing procurement activities within their departments by:

- 1) Ensuring all procurement activities for goods, construction, technology and services are conducted in accordance with this Policy, all applicable state statutes, regulations, policies, executive rulings, and the procedures and best business practices identified in the Mecklenburg County Procurement Process and Procedure Manual;
- 2) Ensuring available funding to meet encumbrance requirements for planned purchases and obtaining required approval for purchases;

- 3) Entering into contracts that are in the County's best interest;
- 4) Ensuring the appropriate utilization of competitively bid local, state, or national contracts when the specifications, terms and conditions, and pricing meet or exceed the Department's requirements;
- 5) Collaborating with Procurement to develop contracts that meet department-specific, or countywide needs and requirements while also promoting economies of scale and volume discounting;
- 6) Ensuring the procurement process is not manipulated in such a way as to circumvent BOCC approval or signature authority thresholds;
- 7) Working with the County's MWSBE Program to establish appropriate subcontracting goals and making efforts to seek out and include certified minorities and other County-identified socioeconomic groups as appropriate;
- 8) Promoting inclusion of environmental purchasing initiatives pursuant to the County's environmental policy;
- 9) Ensuring compliance with the procedures for utilizing procurement cards as set forth in the County's Procurement Card Policy and Procedures Manual; and
- 10) Ensuring the retention and maintenance of all relevant documentation, as required by the North Carolina Public Records Law and Retention Schedule, related to procurements made independent of Procurement.
- 11) Partnering with the Department of Financial Services Procurement Division on annual Procurement Strategic Plans that support their operational needs.
- 12) Ensuring staff responsible for Procurement activities within their organization attend the training necessary to become competent in the execution of procurements that comply with the Procurement Policy and the Mecklenburg County Procurement Process and Procedures Manual, all applicable financial policies and directives, and understand appropriate use of the e-Procurement System.

## **21. COUNTY DEPARTMENT OF FINANCIAL SERVICES RESPONSIBILITIES**

The County Department of Financial Services is responsible for:

- 1) Ensuring that purchasing and contracting activities performed by Procurement are established in the best interests of the County and in accordance with current federal, state and local laws and County policies and ordinances;
- 2) Administering and maintaining the Mecklenburg County Procurement Process and Procedure Manual consistent with current federal, state, and local laws, County policies, and procurement industry best practices, and advising Department employees of acceptable procurement procedures and practices as outlined in the manual;
- 3) Identifying and referring policy violations to the County Manager's Office, and/or Internal Audit, at the discretion of the County Manager's Office;

- 4) Advertising and promoting acceptable stand alone or countywide contracts that may be utilized by all Departments;
- 5) Ensuring the timely review of requisitions and processing purchase orders;
- 6) Working collaboratively with Department staff throughout the fiscal year to review procurement needs, determine vendor usage and spending totals, and to establish contracts that promote economies of scale and provide savings; and
- 7) Retaining and maintaining all relevant documentation, as required by the North Carolina Public Records Law and Retention Schedule, for procurements managed by Procurement.

## **22. COMPLIANCE AND MONITORING**

The County Department of Financial Services will provide oversight for compliance and reporting related to countywide procurement activities in the following manner:

- 1) Meet with County departments on an annual basis to discuss contracting opportunities and needs with the goal of working collaboratively towards application of compliance with this policy.
- 2) Utilize various reporting capabilities to determine spending and efficiency within each Department and countywide throughout the year.
- 3) Review expenditures on a quarterly and random basis to determine the need and feasibility of combining certain goods and services under countywide contracts in order to realize economies of scale and cost savings for all Departments.
- 4) Refer inappropriate spending activity that is in violation of this policy to the County Manager's Office and Internal Audit for review and monitoring.
- 5) Sharing responsibility with Internal Audit for reporting non-compliance with this policy to the County Manager.

## EXHIBIT A DEFINITIONS

*A Legal Guide to Purchasing and Contracting for North Carolina Local Governments:* A comprehensive volume, written by Frayda S. Bluestein and published by the UNC School of Government that explains and interprets North Carolina law on purchasing and contracting.

*Architectural, Surveying and Engineering Services:* Contracts performed by private consulting firms as agents of Mecklenburg County including feasibility studies, planning, design, testing, and construction administration or management services.

*Best Value:* Means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the County's needs.

*Bidder:* Any person, firm, partnership, corporation, association, or joint venture seeking award of a public contract or subcontract with the Mecklenburg County, or their agents.

*Board of Mecklenburg County Commissioners (BOCC):* The governing board of Mecklenburg County.

*Change Order Work:* A change in the original construction plans due to unanticipated circumstances that arise after the work is under way, are incorporated into the original contract through the use of a written change order. The change order must describe the additional or revised work undertaken in writing.

*Construction:* Means building, altering, repairing, or improving any structure, building, road, drainage, or sanitary facility, and any draining, dredging, excavation, grading or similar work upon real property. [Demolition of a structure or building is not classified as construction and contracts for demolition work are normally awarded using the RFP process.]

*Contract:* A legally binding agreement through which the Mecklenburg County agrees to procure goods or services. Contracts do not include financial partner agreements that the Mecklenburg County enters into with non-profit organizations to provide services to the community.

*Decentralized Purchase Order (PD):* A legal contract document issued to a vendor for the purchase of goods or services less than \$30,000 by the Department.

*Encumbrance:* Expenditure commitments created by purchase orders or contracts that have been issued, but for which no goods or services have been received. Encumbrances become expenditures and liabilities only if goods or services are actually provided or rendered.

*Formal Solicitation:* A competitive procedure required for awarding contracts equal to or exceeding \$100,000. The requirements for a Formal Solicitation are described in Sections 6.1. and 6.2. of this Policy and vary based on whether the Mecklenburg County is procuring goods or services.

*Goods:* All apparatus, supplies, materials or equipment within the meaning of N.C. General Statute 143-129.

*Informal Solicitation:* Procedure used for expenditures exceeding \$10,000 but less than \$100,000. The requirements for an Informal Solicitation are described in Section 6.3. of this Policy and vary based on whether the Mecklenburg County is procuring goods or services and on funding source.

*Invitation to Bid:* The solicitation document utilized to solicit bids in the formal, sealed bid procedure and all documents attached or incorporated by reference. ITBs are not used for services.

*IT Asset:* Items that must be purchased through IST to include any hardware and/or software that can or must be connected to or installed to a PC, Laptop, Printer, and/or the network. Exceptions include Flash Memory (Compact flash, USB thumb drives, SD cards, memory sticks), Monitor privacy or glare screens, printer ink and toner cartridges. For additional clarification, please refer to the IT Purchasing Guide.

*Minority and Women Owned/ Small Business Development (MWSBE):* A Mecklenburg County program responsible for ensuring maximum utilization of minority-owned, women-owned and small business enterprises firms in all areas of Mecklenburg County procurement.

*Piggybacking:* To purchase, without bidding, from a person or entity that has, within the past twelve months, contracted to furnish an item to any other public agency following a procurement process substantially similar to that required by North Carolina law.

*Procurement:* Purchasing, leasing, contracting or otherwise acquiring goods or services. Also refers to the Department of Financial Services, Procurement Division.

*Purchase Order (PO):* A legal contract document issued to a vendor for the purchase of goods or services more than \$10,000.

*Requisition (RQS):* A request for procurement of purchases more than \$10,000.

*Request for Proposals (RFP):* The solicitation document typically utilized to solicit written proposals from vendors for the provision of services or combination of technology goods and services.

*Request for Quote (RFQ):* Informal procurement procedure for expenditures under \$100,000. Also referred to as Request for Qualifications, which is a formal solicitation process used to qualify vendors prior to requesting or negotiating price.

*Responsive Bidder:* Means an individual, company, firm, corporation, partnership or other organization who has submitted a bid which conforms in all material respects to the Invitation to Bid or Request for Proposals and further, who has the capability in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance.

*Services:* All services of any kind or nature, calling for personal performance of work, provided, however, services for construction work, and for architecture, engineering, surveying or construction manager at risk services are subject to special procurement rules as stated in this policy.

*Sole Source:* Purchases made without formal bidding wherein performance or price competition is not available, a needed product is available from only one source, or standardization or compatibility is the overriding consideration.

## **EXHIBIT B NORTH CAROLINA GENERAL STATUTE 143-129**

### **§ 143-129. Procedure for letting of public contracts.**

(a) **Bidding Required.** – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than five hundred thousand dollars (\$500,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars (\$90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with; provided that The University of North Carolina and its constituent institutions may award contracts for construction or repair work that requires an estimated expenditure of less than five hundred thousand dollars (\$500,000) without complying with the provisions of this section.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager, school superintendent, chief purchasing official, or other employee the authority to award contracts, reject bids, or re-advertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

(b) **Advertisement and Letting of Contracts.** – Where the contract is to be let by a board or governing body of the State government or of a State institution, proposals shall be invited by advertisement in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board.

The advertisements for bidders required by this section shall appear at a time where at least seven full days shall lapse between the date on which the notice appears and the date of the opening of bids. The advertisement shall: (i) state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials, or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii) reserve to the board or governing body the right to reject any or all proposals.

Proposals may be rejected for any reason determined by the board or governing body to be in the best interest of the unit. However, the proposal shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or political subdivision thereof may assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefore except under provisions of this Article.

All proposals shall be opened in public and the board or governing body shall award the contract to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

In the event the lowest responsible bids are in excess of the funds available for the project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and

specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work or provide the apparatus, supplies, materials, or equipment at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to re-advertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefore.

No proposal for construction or repair work may be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

(c) Contract Execution and Security. – All contracts to which this section applies shall be executed in writing. The board or governing body shall require the person to whom the award of a contract for construction or repair work is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and the contract shall not be altered except by written agreement of the contractor and the board or governing body. The surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, the board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

(d) Use of Unemployment Relief Labor. – Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

(e) Exceptions. – The requirements of this Article do not apply to:

- (1) The purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment from: (i) the United States of America or any agency thereof; or (ii) any other government unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may designate any officer or employee of the State or political subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by: (i) the United States of America or any agency thereof; or (ii) any other governmental unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may authorize the officer or employee to make any partial or down payment or payment in full that may be required by regulations of the governmental unit or agency disposing of the property.
- (2) Cases of special emergency involving the health and safety of the people or their property.
- (3) Purchases made through a competitive bidding group purchasing program, which is a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies.
- (4) Construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section.
- (5) Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or natural gas. These purchases are subject to G.S. 143-131.
- (6) Purchases of apparatus, supplies, materials, or equipment when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract.

In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when: (i) a particular medical item or prosthetic appliance is needed; (ii) a particular product is ordered by an attending physician for his patients; (iii) additional products are needed to complete an ongoing job or task; (iv) products are purchased for "over-the-counter" resale; (v) a particular product is needed or desired for experimental, developmental, or research work; or (vi) equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital shall keep a record of all



- purchases made pursuant to this subdivision. These records are subject to public inspection.
- (7) Purchases of information technology through contracts established by the State Office of Information Technology Services as provided in G.S. 147-33.82(b) and G.S. 147-33.92(b).
  - (8) Guaranteed energy savings contracts, which are governed by Article 3B of Chapter 143 of the General Statutes.
  - (9) Purchases from contracts established by the State or any agency of the State, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the State contract.
  - (9a) Purchases of apparatus, supplies, materials, or equipment from contracts established by the United States of America or any federal agency, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the federal contract.
  - (10) Purchase of used apparatus, supplies, materials, or equipment. For purposes of this subdivision, remanufactured, refabricated or demo apparatus, supplies, materials, or equipment are not included in the exception. A demo item is one that is used for demonstration and is sold by the manufacturer or retailer at a discount.
  - (11) Contracts by a public entity with a construction manager at risk executed pursuant to G.S. 143-128.1.
  - (12) **(Repealed effective July 1, 2011)** Build-to-suit capital leases with a private developer under G.S. 115C-532.
  - (f) Repealed by Session Laws 2001-328, s. 1, effective August 2, 2001.
  - (g) Waiver of Bidding for Previously Bid Contracts. – When the governing board of any political subdivision of the State, or the person to whom authority has been delegated under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:
    - (1) The United States of America or any federal agency;
    - (2) The State of North Carolina or any agency or political subdivision of the State; or
    - (3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice that a waiver of the bid procedure will be considered in order to

contract with a qualified supplier pursuant to this section. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts. (h) Transportation Authority Purchases. – Notwithstanding any other provision of this section, any board or governing body of any regional public transportation authority, hereafter referred to as a "RPTA," created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority, hereafter referred to as a "RTA," created pursuant to Article 27 of Chapter 160A of the General Statutes, may approve the entering into of any contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without competitive bidding and without meeting the requirements of subsection (b) of this section if the following procurement by competitive proposal (Request for Proposal) method is followed.

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, all of the following requirements apply:

- (1) Requests for proposals shall be publicized. All evaluation factors shall be identified along with their relative importance.
- (2) Proposals shall be solicited from an adequate number of qualified sources.
- (3) RPTAs or RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.
- (4) The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal may not be disclosed to other offerors during any period of negotiation or discussion.
- (5) The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered.

The contents of the proposals shall not be public records until 14 days before the award of the contract.

The board or governing body of the RPTA or the RTA shall, at the regularly scheduled meeting, by formal motion make findings of fact that the procurement by competitive proposal (Request for Proposals) method of procuring the particular apparatus, supplies, materials, or equipment is the most appropriate acquisition method prior to the issuance of the requests for proposals and shall by formal motion certify that the requirements of this subsection have been followed before approving the contract.

Nothing in this subsection subjects a procurement by competitive proposal under this subsection to G.S. 143-49, 143-52, or 143-53.

RPTAs and RTAs may adopt regulations to implement this subsection. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1; 1985, c. 145, ss. 1, 2; 1987, c. 590; 1987 (Reg. Sess., 1988), c. 1108, ss. 7, 8; 1989, c. 350; 1993, c. 539, s. 1007; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 367, s. 6; 1997-174, ss. 1-4; 1998-185, s. 1; 1998-217, s. 16; 2001-328, s. 1; 2001-487, s. 88; 2001-496, ss. 4, 5; 2005-227, s. 1; 2006-232, s. 2; 2007-94, s. 1; 2007-322, s. 4; 2007-446, s. 6.)

## **EXHIBIT C PROCEDURE FOR SELECTION OF ARCHITECTS COMMITTEE**

### **Purpose**

By Board of County Commissioner policy the Selection of Architects Committee recommends to the Board of County Commissioners those Consultants selected for award of contracts on public projects except where the estimated fee is less than \$30,000 or where the Board of County Commissioners exercises its right under G.S. 143-64.32 to exempt the selection from the requirements of G.S. 143-64.31. It provides the government with the services of the most qualified Architectural and Landscape Architectural firms at a professional fee that is fair and reasonable to the taxpayer. This Committee functions under the authority of G.S. 143-64.31.

### **Selection Committee**

The selection of Architects and Landscape Architects Committee is composed of the Mecklenburg County Manager (or his designee), two Mecklenburg County Commissioners (alphabetically on a rotating basis for all nine members), the Director of Real Estate Services (or his designee), the head of the agency which will occupy the facility or head of the agency which will maintain and operate the structure, and a General contractor appointed by the Board of County Commissioners for a term of one year. In no event will the final interview of architects and landscape architects take place unless at least one member of the Mecklenburg County Board of Commissioners is sitting on the Selection Committee.

### **Selection Procedure**

(A) Expression of Interest by Architectural and Landscape Architectural Firms - Firms interested in providing services to Mecklenburg County should write a letter to the Director of Real Estate Services expressing their interest in being considered for County work. This letter should contain or be accompanied by general information about the firm, limited to not more than two pages. This expression of interest will be updated periodically by the Architectural and Landscape Architectural firms.

(B) Announcement of Projects - When Architectural and Landscape Architectural services are desired for a specific project, firms having expressed an interest in working with the County will be notified in writing and invited to submit their Statements of Qualification to the Selection Committee, with supporting data, as they relate to the project. This notification should include a description of the project, its location, the scope of services required, the estimated construction cost, the proposed completion date and a description of any special requirements or unique features. Firms interested in the project will respond to the announcement with descriptions of their firm and Statements of Qualification with supporting documentation, as they relate to the proposed project.

(C) Initial Qualification - The Selection Committee will review all responses and determine those best qualified to perform the services for the project under consideration. The Selection Committee may also choose to list a group of architectural and/or landscape architectural firms qualified to perform services on a list of projects such as park bond referendum projects. The

Selection Committee may conduct oral interviews if the Committee considers such "interviews necessary prior to making a final recommendation.

(D) Interview – If the Selection Committee determines to interview firms then the Committee would then meet with the firms selected for interview to make an in-depth appraisal of their capabilities to perform the work and to assess their capability to organize and provide the services. Interview times may vary, depending on the scope of the project, from 30 to 50 minutes.

(E) Ranking/Listing Top Firms - The Selection Committee will then document the ranking in order of qualification of at least two firms considered to be the most highly qualified to perform the required services on the specific project described in the Request for Qualifications (RFQ). If the RFQ is for multiple projects, or for a group of projects such as park bond projects, the Selection Committee will submit a list of firms to the Board of County Commissioners that are considered to be qualified to perform work on the projects. The following criteria will be used to rank and list firms:

1. Capacity and capability of the firm to perform the work within the time limits set forth.
2. Specialized design and technical competence of the firm including;
  - a. Previous experience on work of comparable type and scope.
  - b. Its approach to providing architectural and landscape architectural services and the experience and background of the firm providing the services.
  - c. The identification and qualifications of key personnel to be assigned to the project(s), with particular emphasis on the technical knowledge, judgment, skill and decision-making capabilities of the Project Director.
3. Record of performance on previous contracts with the County, other government agencies and private industry with respect to such factors as;
  - a. Quality of work
  - b. Ability to control; cost (low bids within the established budget)
  - c. Ability to maintain time schedules.
  - d. Ability to work with the Owner in arriving at a solution that meets the needs of the project
  - e. Skill and management of the design and construction process.
4. The volume of work previously awarded the firm by the County, with the objective of affecting an equitable distribution of contracts among qualified firms and assuring that the interest of the public is having available a substantial number of qualified firms is protected, provided however, that the principal of selection of the most qualified firms is not violated.
5. General characteristics such as integrity, standing in the profession and, community, business acumen, creativity and ability to cooperate with all those involved in the project.

(F) Selection –The County Commissioners would then consider the Selection Committee recommendation and upon approval authorize the County Manager to negotiate a contract(s) with

the top ranked firm for a specific project, or with one of the firms on a list of firms selected to work on multiple projects and/or on park bond projects.

### **Negotiations**

(A) Individual Projects: The County Manager would then conduct negotiations with the top ranked firm on the scope of work and professional compensation. If a mutually satisfactory contract cannot be negotiated with that firm, the Manager will formally terminate negotiations and notify the firm. Negotiations would then be initiated with the firm ranked second and this procedure continued until a mutually satisfactory contract has been negotiated.

(B) Multiple projects (groups of projects and/or park bond projects): For multiple projects or park bond projects, the County Manager will determine which firms are best qualified to perform work on specific projects from the approved qualified firms list described in (E) above, along with any other special criteria which may be set forth in the announcement of the projects.

The County Manager would then conduct negotiations with the chosen firm on the scope of work and professional compensation. If a mutually satisfactory contract cannot be negotiated with that firm, the Manager will formally terminate negotiations and notify another of the firms on the approved list. Negotiations would then be initiated with that firm and this procedure continued until a mutually satisfactory contract has been negotiated. The County reserves the right to choose any of the firms on the approved list.

### **Rotation of Work**

Mecklenburg County believes it is in the public interest to affect an equitable distribution of contracts among qualified firms, provided, however, that the principle of selection of the most highly qualified firms is not violated. The volume of work previously awarded a firm shall be a factor in the selection of a firm. Since all firms will not have the capabilities or specialized expertise to handle every job, this policy does not prevent consideration of firms who have been awarded County contracts in previous years. Consideration will be given to firms that have not previously worked for the County and newly formed firms will be given consideration to demonstrate their abilities and quality of services.

## **EXHIBIT D PROCEDURE FOR SELECTION OF ENGINEERS AND SURVEYORS COMMITTEE**

### **Purpose**

By Board of County Commissioner policy, the Selection of Engineers and Surveyors Committee recommends to the Board of County Commissioners those Consultants selected for award of contracts on public projects except where the estimated fee is less than \$50,000 or where the Board of County Commissioners exercises its right under G.S. 143-64.32 to exempt the selection from the requirements of G.S. 143-64.31. It provides the government with the services of the most qualified Engineering or surveying firm at a professional fee that is fair and reasonable to the taxpayer. This Committee functions under the authority of G.S. 143-64.31

### **Selection Committee**

The selection of Engineers and Surveyors Committee is composed of the Director of Real Estate Services (or his designee) one Professional Engineer (P.E.) appointed by the Board of County Commissioners and an appropriate number of client representatives or Assistant County Managers.

### **Selection Procedure**

(a) Expression of Interest by Engineering and Surveying Firms - Firms interested in providing services to Mecklenburg County should write a letter to the Director of Real Estate Services expressing their interest in being considered for County work. This letter should contain or be accompanied by general information about the firm, limited to not more than two pages. This expression of interest will be updated periodically by the Engineering and Surveying firms.

(b) Announcement of Projects - When Engineering and Surveying services are desired for a specific project, firms having expressed an interest in working with the County will be notified in writing and invited to submit to the selection committee statements of qualification, with supporting data, as they relate to the project. This notification should include a description of the project, its location, the scope of services required, the estimated construction cost, the proposed completion date and a description of any special requirements or unique features. Firms interested in the project will respond to the announcement with descriptions of their firm and statements of qualification with supporting documentation, as they relate to the proposed project.

(c) Initial Qualification - The Selection Committee will review all responses and determine those best qualified to perform the services for the project under consideration. The Selection Committee may conduct oral interviews if the Committee considers such "interviews necessary prior to making a final recommendation.

(d) Interview - The Selection Committee would then meet with the firms selected for interview to make an in-depth appraisal of their capabilities to perform the work and to assess their capability to organize and provide the services. Interview times may vary, depending on the scope of the project, from 30 to 50 minutes.

(e) Ranking Top Firms - The Selection Committee will then document the ranking in order of qualification of three firms considered to be the most highly qualified to perform the required services.

(f) Selection - The County Commissioners would then consider the Selection Committee recommendation and upon approval authorize the County Manager to negotiate a contract with the top ranked firm.

### **Negotiations**

The County Manager would then conduct negotiations with the top ranked firm on the scope of work and professional compensation. If a mutually satisfactory contract cannot be negotiated with that firm, the Manager will formally terminate negotiations and notify the firm. Negotiations would then be initiated with the firm ranked second and this procedure continued until a mutually satisfactory contract has been negotiated.

### **Rotation of Work**

Mecklenburg County believes it is in the public interest to affect an equitable distribution of contracts among qualified firms, provided, however, that the principle of selection of the most highly qualified firms is not violated. The volume of work previously awarded a firm shall be a factor in the selection of a firm. Since all firms will not have the capabilities or specialized expertise to handle every job, this policy does not prevent consideration of firms who have been awarded County contracts in previous years. Consideration will be given to firms that have not previously worked for the County and newly formed firms will be given consideration to demonstrate their abilities and quality of services.



## **EXHIBIT E CONTRACT INSURANCE REQUIREMENTS**

### **Automobile Liability**

Insurance with a limit of not less than \$1,000,000 per occurrence combined single limit each occurrence for bodily injury and property damage liability covering all owned, non-owned, and hired vehicles.

### **Commercial General Liability**

Insurance with a limit not less than \$1,000,000 per occurrence/aggregate including coverage for bodily injury, property damage, products and completed operations, personal/advertising injury liability and contractual liability.

The County shall be named as an additional insured under the commercial general liability insurance for operations or services rendered under this Contract. The County shall be designated as Certificate Holder on the Certificate of Insurance.

### **Workers' Compensation**

Insurance meeting the statutory requirements of the State of North Carolina and any applicable Federal laws; and, Employers' Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit.

### **Professional Errors & Omissions**

Insurance with a limit of not less than \$1,000,000 per claim occurrence as shall protect the Service Provider and the Service Provider's employees for negligent acts, errors or omissions in performing the professional services under this contract.

### **Sexual Abuse and Molestation**

Insurance with a limit of not less than \$1,000,000 per claim occurrence as shall protect the Service Provider and the Service Provider's employees for negligent acts in performing the professional services under this contract.

### **Network Security and Privacy Liability**

Network Security and Privacy Liability as shall protect the Company and its employees from claims alleging from the failure: (1) to provide adequate electronic or physical security to safeguard against the theft, loss or other threat to confidential information; or, (2) to protect information of Mecklenburg County in any format. This policy shall be specific to the performance of this Contract and shall provide combined single limit each occurrence/aggregate of \$3,000,000. Policy will include acts of rogue employees and have a retroactive date of no later than the first date services under this contract are to be performed.

### **Fidelity Bond**

Insuring the Service Provider and/or his employees that have access to monies or properties of the County. Providing employee dishonesty coverage on all employees at a limit of not less than \$500,000, with the addition of Loss Payable endorsement (CR 20 14 08 07), Mecklenburg County named as loss payee; actual required coverage will vary according to the amount of money or property handled and will be determined by the County during processing of the Contract.

## **EXHIBIT F PREDOMINANT ASPECT REVIEW**

This review is supplied to assist you in determining the predominant aspect of your bid that includes both a service and the purchase of tangible property. In these circumstances, the County uses the “predominant aspect” rule to determine the best approach to obtain the goods and services.

When procurement requires both the purchase of goods, and service, it is imperative to determine which element, whether goods, or services, constitutes the larger component of cost. The element constituting the larger portion of the procurement is the predominant aspect. The predominant aspect must be identified in order to determine the procurement method required to fulfill the purchase.

In the instance where the predominant aspect is goods, equipment, supplies, apparatus, or other tangible items, then the procurement must be handled utilizing the bid laws contained in GS. 143-129, which requires an invitation to bid.

Alternatively, if the predominant aspect is the services, then the procurement procedure allows for a more flexible approach utilizing a request for proposals.

Another approach in these situations that may be considered is to separate the tangible and service components. This leaves the County free to negotiate the service contract while complying with the bidding requirements for the tangible component. This should only be done, however, where it is practical and will result in overall cost savings to the County, but should not be done solely to avoid competitive bidding requirements.

To assist you in determining if your purchase constitutes a majority purchase of either goods, or services, please adhere to the following guidelines:

### **PREDOMINANT ASPECT RATIONALE**

**The service provided is the predominant aspect of the contract because:**

- The services related to the contract are incidental to the goods or supplies being purchased and constitutes the majority of the overall cost. *(i.e. A contract for Uniform rentals would be considered a service contract because the majority of the cost is put towards paying for the end service, in this case, the delivery, pickup, and cleaning of the uniforms, which are rented by the contractor for the length of the contract).*

*In this case, the service constitutes the predominant aspect of the purchase, and is not subject to the usual bidding process.*

**The good provided is the predominant aspect of the contract because:**

- The tangible item is the end product of the service provided and constitutes the majority of the overall cost. (*i.e. A contract for carpet installation. Although the service of installing the carpet is provided, the cost of the carpet material itself constitutes the majority of the cost, and is therefore the predominant aspect of the contract.*)

*In this case, all goods purchased are subject to the bidding process and bidding can proceed as usual.*

For additional processes and policies pertaining to the bidding process, please refer to the Mecklenburg County Procurement Policy and Procedures Documentation.

## EXHIBIT G INDEPENDENT CONTRACTOR/EMPLOYEE CHECKLIST

To assist you in deciding whether a worker is an employee or an independent contractor, complete the following questions. A worker is generally considered to have an employee relationship with the County if the questions below are answered "YES". Complete this checklist only for individuals-sole proprietors, and partnerships. Do not complete for employees of a corporation.

Name:

1. Is the worker currently employed by the County or has the worker previously been an employee of the County? Position:	<input type="checkbox"/> No <input type="checkbox"/> YES
2. Are the hours of work established or regulated by the County?	<input type="checkbox"/> No <input type="checkbox"/> YES
3. Are tools and equipment supplied by the County? Independent contractors use their own equipment.	<input type="checkbox"/> No <input type="checkbox"/> YES
4. Does the worker provide their service only to the County? Independent contractors may have several contracts with other companies and advertise their services in the phone book or other source. List source:	<input type="checkbox"/> No <input type="checkbox"/> YES
5. Is the method of payment by unit of time, (i.e. hourly, weekly or monthly wage)? Independent contractors are usually paid by job in a lump sum.	<input type="checkbox"/> No <input checked="" type="checkbox"/> YES
6. Is training received from or at the direction of the County - either formally or informally?	<input type="checkbox"/> No <input type="checkbox"/> YES
7. Are repairs to equipment paid by the County? Independent contractors pay for their own repairs.	<input type="checkbox"/> No <input type="checkbox"/> YES
8. Is the worker required to work at a specific place or to work on the County's premises if the work could be done elsewhere? Independent contractors usually have a main office or other facility. Office Location:	<input type="checkbox"/> No <input type="checkbox"/> YES
9. Does the worker submit regular oral or written reports to the County to account for their actions?	<input type="checkbox"/> No <input type="checkbox"/> YES
10. Is business and/or travel expenses paid by the County? Independent contractors pay their own expenses.	<input type="checkbox"/> No <input type="checkbox"/> YES
11. Does the County restrict the worker from accepting any other work? Independent contractors may have several jobs at one time.	<input type="checkbox"/> No <input type="checkbox"/> YES

12. Does the worker act in the capacity of a foreman for/or a representative of the County by hiring others, supervising them and paying them at the direction of the County?	<input type="checkbox"/> No <input type="checkbox"/> YES
13. Does the worker wear a uniform with the County logo or other means of identification, except for security tags?	<input type="checkbox"/> No <input type="checkbox"/> YES
14. Is insurance coverage (liability, health, etc.) supplied by the County?	<input type="checkbox"/> No <input type="checkbox"/> YES
15. Does the County use the worker for any odd jobs that differ from their normal activities?	<input type="checkbox"/> No <input type="checkbox"/> YES
16. The County does not require the worker to have a license to perform the work they are hired to perform.	<input type="checkbox"/> No <input type="checkbox"/> YES
17. Is the relationship between the County and the worker a continuing one?	<input type="checkbox"/> No <input type="checkbox"/> YES
18. Is the worker free from any liability for quitting a job before the job is completed?	<input type="checkbox"/> No <input type="checkbox"/> YES
19. Does the worker have to perform services in the order or sequence set by the County?	<input type="checkbox"/> No <input type="checkbox"/> YES

If all questions above are answered NO, the worker is an Independent Contractor. Send the completed checklist with the Contract and the Contract Control Sheet to the Finance Department.

If any question above is answered YES, give an explanation for the question and send the checklist with the contract to the Finance Department for a determination as to whether the worker is an employee or an Independent Contractor. You will be notified if the contract is denied.

PREPARED BY: Name

DATE:

## **EXHIBIT H BUY AMERICAN POLICY**

The Board of County Commissioners, the Director of Purchasing, and all County Employees involved in making purchasing decisions for Mecklenburg County shall, in the purchase of or in contracting for goods, supplies, materials or equipment, give preference as far as may be practicable to such products manufactured or produced in the United States of America. Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted: and provided further, that not preference shall be given to products manufactured or produced in the United States if giving such preference would violate any trade treaty to which the United States is a signatory.

Adopted December 2, 1985

# **EXHIBIT I SELECTION OF ENERGY SERVICE COMPANIES (ESCO's)**

## **I. Purpose**

The purpose of this policy is to establish a process and committees for the selection of Energy Service Companies (ESCO's) for County projects. This policy will promote collaboration and transparency in selecting service providers.

## **II. Process**

### **A. Posting**

Place an advertisement in a newspaper(s) with local circulation. Allow the newspaper(s) proper notice to ensure publication in the necessary timeframe. Confirm that the paper received the advertisement.

Place the ad on the North Carolina State procurement web site at [www.ips.state.nc.us](http://www.ips.state.nc.us).

### **B. Phase 1**

All submitted proposals will be evaluated by the shortlist committee. The shortlist committee will comprise the following:

- County Manager or designee
- RES Department Director or designee
- Division Director of RES Buildings & Grounds or designee
- Finance Director or designee
- Management and Budget Director or designee
- RES Project Manager (serving as a non-voting facilitator)

This phase of the process will advance the most qualified candidates to the selection committee.

### **C. Phase 2**

The recommendations of the shortlist committee will be reviewed by the selection committee and a final ranking of candidates established. The selection committee will comprise the following:

- County Manager or designee
- Two members of the Mecklenburg County Board of Commissioners, serving alphabetically on a rotating basis for all nine members; repeat cycle.
- RES Department Director or designee
- Head of the agency which will occupy the facility(s) or designee.\*
- RES Project Manager (serving as a non-voting facilitator)

In no event will the final interview (if required) of ESCOs take place unless at least one member of the Mecklenburg County Board of Commissioners is sitting on the selection committee.

**D. Liaison with Board**

Contact the County Manager's Office to help coordinate Board members who will serve on the selection committee (based on the alphabetical rotation) and determines interview schedules.

*Adopted the 17<sup>th</sup> day of November, 2009*

*\* In the case of a multi-tenant facility, or multiple buildings in the same project, more than one agency may be represented.*