

County of Wayne



PURCHASING & PROCEDURES MANUAL

Approved by the Board of Commissioners on April 18, 2023

County of Wayne
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**WAYNE COUNTY
PURCHASING & PROCEDURES MANUAL**

INTRODUCTION

This manual has been prepared to serve as a guideline to all departments and divisions of Wayne County in obtaining apparatus, supplies, materials, equipment, and services.

A special attempt has been made to design policies and procedures which will serve the County's needs and provide for a more effective and efficient buying process. These procedures have been developed to implement various provisions of the North Carolina General Statutes referred to throughout this manual. Like all policies and procedures, they can be effective only if the individuals involved are aware of what they are, how they apply, and the problems to be encountered when they are not followed. For this reason, we have tried to explain each directive in detail giving the purpose, the policy, and the procedure for carrying it out.

To get the most value from this manual the following suggestions are offered:

- All Department Heads should be familiar with this manual.
- All personnel involved in the purchasing process should review this manual.
- All new personnel who may be involved in purchasing items for the County should review this manual before participating in any purchase.
- The manual should be accessible to everyone concerned with purchasing items for the County.

The Purchasing Division hopes this manual will be a worthwhile tool for your department. As changes occur in the future, revisions to the manual will be furnished to the County departments. Please notify the Purchasing Division of any comments or suggestions you have so they may be incorporated into subsequent revisions. Please read this manual carefully and make every effort to

comply with the written guidelines.

Noelle B. Woods
Purchasing Manager

I. FORWARD

The Purchasing Division is a support organization, which means we are here to assist each department of the County in obtaining the required goods and services, when they are needed, at a minimum cost to the taxpayer.

The procedures and details involved with purchasing shall be executed by the Finance Director currently designated as the Official who controls the duties and activities of the Purchasing Manager. North Carolina State Law prohibits commitment of County funds without certification of the availability of funds by the Finance Director or his/her deputy.

The Purchasing Manager is responsible for the execution of this manual. In order for this to be done, each department head must comply with the instructions in this manual and require the same of subordinate staff members.

In a number of instances, before a purchase order can be written, it is necessary for competitive bids to be received. All formal bids and many informal bids require the use of specifications. Specifications are written descriptions of the product or service needed by the using department. The preparation of specifications shall be a joint effort of the Purchasing Division and the using department to ensure that the products purchased meet their needs. This is especially necessary where items purchased are of a specified nature. Specifications should be sufficiently detailed to be used as a basis for competitive bidding upon a common standard and free from restrictions that limit competition. In a case where the specifications recommended by a department head discourage competitive bidding, the burden of proof shall rest with the department head to justify the need for such restrictive specifications. The County Manager shall be advised of situations where competitive bidding is not possible and the reasons why.

Approved by the Wayne County Board of Commissioners on April 18, 2023.

Barbara Aycock
Wayne County Board of Commissioners

II. RESPONSIBILITIES AND OBJECTIVES

A. Responsibilities

It is the Purchasing Division's responsibility to ensure that all purchases are made in accordance with the North Carolina General Statutes. Within this responsibility, Purchasing verifies the budget availability, and approves the pricing and vendor selection for all purchases of goods and services. During this process, Purchasing may question the necessity for, or the specifications of, or purchase requests.

B. Objectives

1. To secure the necessary materials, equipment and services at the best quality, the needed quantity, the right time, and place, and at the best possible price.
2. To meet departmental requirements with a minimum investment in materials and inventory consistent with sound operating practices and economic advantage.
3. To maintain the continuity of supply to support ongoing service, operation, and construction schedules.
4. To give a fair opportunity to all prospective vendors.
5. To secure, whenever possible, competitive prices on purchases and services.
6. To assist in and/or establish specifications that will encourage competition and accurately describe the equipment and materials needed.
7. To be receptive to changes in material requirements and new products and procedures.
8. To conduct business with fairness and dignity and to demand honesty and truth in buying and selling.

III. BIDDING LAWS

The County Purchasing Division strictly enforces the Purchasing laws and guidelines of the State of North Carolina as set forth in Article 8 of Chapter 143 of the North Carolina General Statutes. It is imperative that all employees that are responsible for the requisition of goods and services understand the basic bid laws as stated below.

A. Formal Bids

State law requires that sealed bids (G.S. 143-129) be received on the purchase of apparatus, supplies, materials, or equipment when the estimated expenditure of public funds is an amount equal to or more than \$90,000. This method is also used when construction or repair to buildings exceeds the amount of \$500,000. When this method is used, a legal notice stating the pertinent facts of the contemplated purchase must be published in a newspaper at least seven (7) days prior to the time bids are to be opened. The sealed bids must be opened at the specified time and place as published in the advertisement. This process may take at least four weeks once a requisition has been received by Purchasing; therefore, planning and scheduling is very important.

With approval of the County Commissioners, the Formal Bid procedure may be waived for the purchase of apparatus, supplies, materials, and equipment for the following reasons; when performance or price competition for a product(s) are not available, when a needed product(s) are available from one source of supply, or when standardization or compatibility is the overriding consideration and when utilizing the Piggybacking process. For purchases of \$90,000 and above, the provisions of G.S. 143-129 (e) 6 & (g) will be followed.

B. Informal Bids

State law requires that Informal Bids follow (G.S. 143-131) (a) which states *all contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of thirty thousand dollars (\$30,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible, responsive bidder, taking into*

consideration quality, performance, and the time specified in the bids for the performance contract. It shall be the duty of any officer, department, board, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection until the contract has been awarded.

C. Additional Policies

Wayne County has chosen to exceed the state requirement by implementing the following additional policies:

1. All Wayne County Departments must adhere to and provide the Purchasing Manager with a Memorandum of Award (MOA) for all quotations over \$5,000.00. A RFQ (request for written quotation) is required to manage any purchase of more than \$5,000 as an informal bid. Informal bid requirements can be met by obtaining a minimum of three (3) written quotations. To facilitate the purchase, the using department may provide the Purchasing Manager with written quotations from at least three vendors. The quotations must be on the vendor's letterhead or an official quotation form and date. Quotations more than 30 days old require verification that the quotes are still valid. Written quotations should be attached to the requisition for purchase. When requesting written quotations from vendors, care should be taken to ensure they are quoting on the same item or specifications. The Purchasing Manager will approve the ultimate selection or may obtain other competitive bids when deemed necessary.
2. Construction or repair work requiring an expenditure of \$30,000 to \$499,000 also falls under the guidelines of Informal Bids. Depending on the project, the using department in conjunction with the Purchasing Manager will write specifications and obtain informal bids from qualified vendors. If there are questions, contact the Purchasing Manager for clarification.

IV. AWARDING THE CONTRACT

The award must be made to the lowest, responsible, and **qualified bidder** taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract (G.S. 143-129 and 143-131).

The Purchasing Manager analyzes all bids received and solicits recommendations from the Department Heads concerned. After examination of the recommendations, the Purchasing Manager shall formulate his/her decision or recommendation to the County Manager or County Commissioners.

After the bid is awarded by the County Manager or the County Commissioners, all bid bonds (if required), except for the bid bond from the successful bidder, shall be returned.

A contract shall be issued with formal specifications as a written contract, at the discretion of the Purchasing Manager, depending on the complexity of the public bid. All contracts must be accompanied by a Purchase Order, must be signed by the County Manager, and pre-audited by the Finance Director to be binding.

V. BONDS

When not waived, bonds will be requested in the formal bid range depending on the need in the specifications.

A. Bid Bonds

Bids on contracts for construction or repair work in the formal bidding range must be accompanied by a bid bond or deposit in the amount of not less than 5% of the bid. This security is held by the local government to guarantee that the successful bidder will execute the contract and provide performance and payment bonds if required. If a bidder fails to execute his or her bid or refuses to enter a contract, the unit may retain the bid deposit or seek payment under the bid bond.

B. Performance Bonds

Are required for all construction and repair projects costing \$300,000 or more. Performance bonds are designed to secure the performance of the contract. In the event of a default by the contractor, the local government can look to a third party or use the funds deposited to complete the project.

C. Payment Bonds

Are required for all construction and repair projects costing \$300,000 or more. Payment bonds ensure that the contractor will pay for materials and will pay subcontractors.

VI. M/WBE REQUIREMENTS

It is the policy of the County to prohibit discrimination in any manner based on race, color, creed, national origin, sex, age, disabilities, or sexual orientation. The County will pursue an affirmative policy of fostering, promoting, and conducting business with minority- and women-owned business enterprises. M/WBE program is to promote equality of economic opportunities for Minority and Women's Business Enterprises and to eliminate barriers. Purchasers should consider M/WBE firms for procurement purchases. The purchasing division is available to assist purchasers with identifying M/WBE companies. Purchasers should consider M/WBE firms for required materials, equipment, or service. To search for registered M/WBE (HUB) merchants go to:

<https://ncadmin.nc.gov/businesses/historically-underutilized-businesses-hub>
or contact the M/WBE Office.

VII. THE PURCHASING SCHEDULE

The Purchasing Division has established the below stated times as goals for processing requisitions once they have been received. In most cases your requisitions will be processed within these times. If you have not received a purchase order and it has been longer than the time limit stated below, contact the Purchasing Manager.

*** Requisition with an expenditure of \$5,000-\$89,999.00: 5-20 Working Days
Informal Bids are required!**

*** Requisition with an expenditure > \$90,000: 30-60 Working Days
Formal Bids are required!**

All Formal Bids will need to be completed by the Purchasing Manager.

VIII. PRICING INFORMATION

When obtaining quotations from vendors, make sure to get all the necessary information needed and forwarded it to the Purchasing Division along with your requisition or requisition number:

- Include the vendor's correct name. If they are a new vendor a W-9 will need to be received in Finance's Accounts Payable department.
- Include the complete name of the person who is quoting the prices.
- Discuss shipping instructions to determine whether to add freight to

the order.

- State whether the vendor can ship the requested items in the appropriate time needed.
- List the date quotations were received; Old quotations may no longer be valid.
- Identify the County and the Department's name to the vendor. Some vendors offer cities and government agencies a better discount.
- Provide the vendor with the quantity of items to be purchased. Larger quantities purchased often reduce the cost per unit.
- Never change the quantity of the order without verifying it with the vendor.
- Units of measure, examples: gallons to gallons, not gallons to quarts, should always be the same for both quantity and pricing.
- No additional charges should be added to the order. (Examples: set-up charges, etc.)
- Never discuss one vendor's pricing and delivery terms with another vendor. This may lead to unfair competition. Make sure that the vendor realizes the need for their best quote the first time.
- **Do not accept lower prices from a vendor who realizes they are about to lose an order.** This is necessary to ensure that initial quotes are always their lowest/best quotes.

IX. PREPARING A REQUISITION FOR PURCHASE

To obtain a Purchase Order, a Requisition for purchase must be completed in MUNIS. If done manually the Requisition and MOA must be signed by the department head or approved signatory and submitted to the purchasing department. (See Requisition & MOA) If the requisition is computer generated the same applies, but approval will be electronic, and the MOA must be attached

with your back up documentation. (See PO-Requisition & Purchase Order Cheat Sheets)

Exhibit I: PO-Requisition & Purchase Order Cheat Sheets

Exhibit II: Requisition

Exhibit III: MOA

X. THE PURCHASE ORDER

After the requisition for purchase has been submitted and approved, the Purchasing Department will convert the requisition into a purchase order.

Purchase Orders will be in MUNIS and can be accessed electronically once the items have been checked to ensure all items have been budgeted for and the amount of the purchase order has been pre-audited. The Purchasing Manager and the Finance Director must sign all purchase orders to be valid.

The following items are addressed in the PO-Requisition & Purchase Order Cheat Sheets for your reference:

- Rejection of Requisitions
- Workflow
- Attaching Documents
- Printing Purchase Orders

XI. CHANGING OR CANCELING A PURCHASE ORDER

A. Creating a Change Order

As soon as a copy of a Purchase Order is printed, it should be proofed of accuracy. If errors are found utilize the PO-Change Order Cheat Sheet for step-by-step instructions on how to correct your purchase order. You may contact the purchasing department for assistance if needed.

Exhibit IV: PO-Change Order Cheat Sheet

B. Canceling a Purchase Order

To cancel a Purchase Order, write “VOID” across the purchase order, if already printed. To cancel the Purchase Order in MUNIS, utilize PO-Change Order Cheat sheet instructions. The funds in the account codes on your Purchase Order will be encumbered until it is canceled. As soon as the Purchase Order is canceled, the funds will automatically return to their original

line-item account, if canceled during the current budget year.

Confirming Purchases

County employees are prohibited from obligating the County by initiating orders for goods or services prior to the actual receipt of a Purchase Order to the vendor. Such unauthorized orders constitute a confirming purchase and must be approved by the County Manager before payment by the Finance Department. State law says that if you obligate the County, you may be held responsible for the payment.

North Carolina General Statute 159-28 states:

“(a) Incurring Obligations - No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year.”

The penalties are stated as:

“(e) Penalties. - If an officer or employee of a local government or public authority incurs an obligation or pays out or causes to be paid out any funds in violation of this section, he/she and the sureties on his/her official bond are liable for any sums so committed or disbursed.”

XII. PURCHASING CARDS

The purchasing card program has been established in the County to provide an easy-to-use tool for purchasing small dollar goods and services. The card allows us to further streamline the purchasing process. It reduces paperwork and handling costs and allows us to quickly get the goods and services we need to serve our customers.

The purchasing card is as easy to use as any Visa or MasterCard credit card and is just as widely accepted. You may use the card at any business that currently accepts credit cards including hardware stores, grocery stores, and department stores. Any merchant who accepts a Visa should accept your County Visa purchasing card. You may also use the card to order supplies by mail or phone and make hotel reservations.

Purchasing cards are a valuable tool and the County trusts that all employees will use the cards wisely. The success of this program depends on you and your commitment to using the purchasing card to buy the items needed for our customers to receive quality services.

A cardholder that is making unauthorized purchases for which the purchasing card is not intended, such as travel and entertainment or any other item not approved by his /her approving manager, may be liable of the total dollar amount of such unauthorized purchases plus administrative fees charged by the bank in connection with the misuse. The cardholder may be subject to one or more of the following actions depending on the severity and repetitiveness of the violation:

- Cardholder advised to stop using the card outside of policy.
- The Cardholder and Cardholder Manager will be notified of the infraction by the Division Program Administrator.
- The Cardholder may also be advised of Card Administrator for appropriate action.

Misuse or abuse of the card will reduce the effectiveness of the program. Vital statistical and managerial reporting relies on the appropriate use of the card.

If unauthorized purchases and or FRAUD is detected, the following steps may be taken:

- Immediate cancellation of the card
- Removal of cardholder's buying authority
- Possible termination of employment

Any violations involving suspected theft, fraud, or similar misuse of a Procurement Card, which has been reported to the Department Card Administrator shall be forwarded to the State Bureau of Investigation or other law enforcement agency.

NOTE: Any questions or concerns pertaining to the Purchasing Card please contact the Purchasing Card Administrator.

XIII. EMERGENCY PURCHASES

An emergency purchase is permitted when such is required to protect the health and/or safety of County employees and the citizens of Wayne County on the property of the County or its citizens and when normal purchasing procedures are inadequate or impossible.

Definition:

Emergency Requisition - A requisition processed to encumber necessary funds for an emergency purchase which has already occurred during the present-day office hours or during the immediately preceding day during non-office hours. The determination of this emergency status is to be made by the Department Head or immediate designee and is intended to occur only in those few circumstances where there is a major situation that demands immediate action.

If, according in the judgment of the Department Head, an emergency exists which necessitates immediate purchase of materials or services to continue department operations, you must notify the Purchasing Division of the Emergency Purchase. A requisition and written explanation of emergency purchase must be sent to the Purchasing Division. Procrastination or failure to properly plan for purchases is not considered an emergency.

XIV. STATE CONTRACTS

The State of North Carolina allows all local government agencies to participate in any of their contracts for the purchase of supplies and equipment. Entering these contracts provides lower costs to the County due to quantity buying power. The Purchasing Division, with the Finance Director's approval, decides which contracts Wayne County will participate. If there are any questions about State Contracts, please contact the Purchasing Division.

XV. SOLE SOURCE PURCHASES

The Sole-source exception provides that the bidding requirements do not apply when:

- Performance or price competition for a product are not available.
- A needed product is available from only one source of supply.
- Standardization or compatibility is the overriding consideration.

In the event there is only one vendor capable of providing a particular good or service, the competitive pricing procedures outlined in this manual may be waived by the Purchasing Manager. Whenever a Department Head or his/her designee determines to purchase goods or services from a "sole source", he/she shall document on the request why only one company or individual can provide the goods or services required. Purchases made under G.S. 143-129 (e) (6) set out below, will be followed.

XVI. PIGGYBACK PURCHASING

The Purchasing Division may use the piggybacking process whenever necessary to purchase apparatus, supplies, materials, and equipment. Contracts in the informal range can be used as a tool to solicit additional bids, but no board actions are necessary. For purchases of \$90,000 and above, the provisions of G.S. 143-129(g), set out below, will be followed:

Wavier of Bidding for Previously Bid Contracts. - When the governing board of any political subdivision of the State, or the manager or purchasing official or delegated authority 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 the required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:

- The United States of America or any federal agency.
- The State of North Carolina or any agency or political subdivision of the state
- 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 another 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, in a newspaper of general circulation in the area served by the governing body, that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Rules issued by the Secretary of Administration pursuant to G.S. 143-49 (6) shall apply with respect to participation in State term contracts.

XVII. PROFESSIONAL SERVICES:

Normal competitive procedures are not required in securing professional services such as attorneys, auditors, and other professional people. Although not required, it is sometimes in the best interest of the County to seek competitive bids on contracts even when state law does not require it.

XVIII. CHECK REQUEST

There are certain instances when Purchase Orders are not required because the items by nature are not subject to normal purchasing procedures. In such cases, a Check Request is required to process payment. Check Request Forms are sent directly to the Finance Department and do not have to be sent to Purchasing.

XIX. SURPLUS EQUIPMENT

Effective May 1, 2009, any departments wishing to dispose of any County property via surplus, sales, transfer, etc., must follow the procedure outlined below. This policy provides a standard procedure for the disposition of all County property. No one is permitted to donate, give away, sell, or otherwise dispose of any surplus or excess property, except by the procedure outlined in this policy. Disposition procedures are as follows:

- Complete a Wayne County [Asset Disposal Form](#). This form can be accessed from the Finance Office's webpage under "Finance Forms" then "Purchasing Policies and Form." [Instructions on Completing an Asset Disposal Form](#) can also be found on the same webpage.
- Contact the Finance office @ 919-731-4009 to receive a sequence number for the form.
- The Asset Disposal Form must be signed by the Department Manager. Additionally, all IT-related assets (i.e. computer, printer, camera, etc.) must be signed by the IT Director or an IT employee appointed by the IT Director.
- Forward the completed form to Facility Services, along with a copy to the Finance office.
- Place a [Track-it Work Order](#) with Facility Services requesting removal of the item(s). Note on the work order the sequence number from the Disposal Form.
- For items to be sold on Gov Deals, the department manager must notify in writing the Purchasing Manager what items are to be sold on Gov Deals along with a completed Asset Disposal Form. Additionally, the appropriate Gov Deals forms must be completed. The forms are located on the Finance Office's webpage <http://www.waynegov.com/page/191>. These

forms need to be sent to the Purchasing Manager. The County Manager must approve all previous surplused personal property before being sold on Gov Deals. All items with a greater value of \$5,000.00 must be approved by the Board of Commissioners.

- Facility Services will complete the “receiving information” section of the Disposal Form when the items are picked up by Facility Services.

Exhibit V: Asset Disposal Form

XX. VENDOR APPLICATION

The County has requirements for businesses that wish to be on the County's vendor list. All vendors must complete a Vendor Application Form which can be obtained by utilizing the Finance Office's Webpage under “Finance Forms then “Purchasing Policies and Forms.” This aids the Purchasing Division in selecting vendors for purchases. All vendors must have a W-9 on file with the Finance Office and must adhere to the Insurance Requirements listed below:

Exhibit VI: Vendor Application

XXI. WAYNE COUNTY INSURANCE REQUIREMENT

Contractor shall always maintain during the term of this Agreement, at the contractor's sole expense:

A. Commercial General Liability Insurance

Contractor shall maintain Commercial General Liability insurance, including coverage for products and completed operations liability, contractual liability, liability from independent contractors, property damage liability, bodily injury liability, and personal injury liability with limits of not less than \$1,000,000 per occurrence, and \$1,000,000 annual aggregate. The limits may be satisfied by a combination of primary and excess insurance. The coverage shall be written on an occurrence basis.

B. Business Automobile Insurance

At all times while the Contractor's representatives are conducting on-site work, the Contractor shall maintain Business Auto insurance for any owned, hired, rented, or borrowed vehicle with a limit of not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage liability. The limit may be satisfied by a combination of primary and excess insurance.

C. Workers Compensation & Employers Liability Insurance

At all times while the Contractor's representatives are conducting on-site work, Contractor shall maintain statutory Workers Compensation insurance in accordance with the laws of the North Carolina. The contractor shall also maintain Employers' Liability insurance with limits not less than \$1,000,000 per accident and \$1,000,000 each employee for injury by disease.

D. General Requirements

1. Wayne County shall be named as an additional insured under Contractor's automobile and general liability insurance. In the event of a loss arising out of, or related to, the Contractor's services performed under this Agreement, Contractor's Liability insurance shall be primary (pay first) with respect to any other insurance which may be available to the County, regardless of how the "other insurance" provisions may read.
2. The workers compensation policy must contain a waiver of subrogation in favor of the County.
3. Contractor shall be responsible for insuring all its own personal property, improvements, and betterments.
4. All insurance policies put forth to satisfy the above requirements shall require the insurer to provide a minimum of sixty (60) days notice to the County of any material change in coverage, cancellation, or non-renewal.
5. All insurance put forth to satisfy the above requirements shall be placed with insurance companies licensed to provide insurance in the state of North Carolina. Any deductibles or self-insured retentions in the required insurance shall be subject to approval by the County.
6. Prior to beginning the work, the contractor shall provide certificates of insurance to the County as evidence of the required coverage. Contractor agrees to provide complete copies of policies if requested. Failure of Contractor to provide timely evidence of insurance, or to place coverage with insurance companies acceptable to the County, shall be viewed as Contractor's delaying performance entitling the county to all appropriate remedies under the law including termination of the contract.

XXII. SPECIAL PROCEDURES

A. Procurement Procedures with Federal Funds

The purpose of this policy is to establish guidelines that meet or exceed the procurement requirements for the purchase of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract.

1. Policy

Application of Policy. This policy applies to contracts for purchases, services, and construction or repair work funded with federal financial assistance (direct or reimbursed) which includes, but is not limited to, direct grants, USDA grants and loans, CDBG funds, FEMA disaster assistance grants, and the Highway Planning, Research, and Construction Program. The requirements of this Policy also apply to any sub recipient of the funds.

All federally funded projects, loans, grants, and sub-grants, whether funded in part or, 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.

2. Compliance with Federal Law

All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. §200.317 through §200-326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. The County of Wayne will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the County of Wayne have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.

3. Contract Award

All contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract. Consideration shall be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

4. No Evasion

No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this policy or state and federal law.

5. Contract Requirements

All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R Section § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.

6. Contractor's Conflict of Interest

Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be excluded from competing for such requirements.

7. Approval and Modification

The Administrative procedures contained in the Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

8. Procedures

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

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

B. General Procurement Standards and Procedures

1. Necessity

Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items (no stockpiling).

The Purchasing Department and/or the Requesting Department should check with the federal surplus property agency prior to buying added items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.

2. Clear Specifications

The Purchasing Department will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.

3. Notice of Federal Funding

All bid solicitations must acknowledge the use of federal funding for the contract. In addition, all prospective bidders or offerors must be acknowledged that funding is contingent upon compliance with all terms and conditions of the funding award.

4. Compliance by Contractors

All solicitations should inform prospective contractors that they will need to comply with all applicable federal laws, regulations, executive orders, FEMA requirements, and terms and conditions of the funding award.

5. Fixed Price

Solicitations must state that the bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts are prohibited. Time and materials contracts are prohibited in most circumstances. Time and Materials (Cost-Plus) contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A Time and materials contract shall not be awarded without the express written permission of the federal agency or state pass-through agency that awarded the funds.

6. Use of Brand Names

When possible, performance or functional specifications are preferred to allow for more competition, leaving the determination of how to

reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and “or equal” must be included in the description.

7. Lease versus Purchase

Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach. Note: This comparison is necessary for most FEMA financial assistance programs following an emergency or major disaster declaration.

8. Dividing Contract for M/WBE Participation

If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.

9. Documentation

Documentation must be maintained by the Purchasing Department and/or the Requesting Department detailing the history of all procurements. The documentation should include procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor’s responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request.

10. Cost Estimate

For all procurements costing \$150,000 or more, the Purchasing Department and/or Requesting Department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of comparable products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.

11. Contract Requirements

The Requesting Department must prepare a written contract incorporating the provisions referenced in Section II. C. "Contract Award" of this Policy.

12. Debarment

No contract shall be awarded to a contractor included on the federally debarred bidder's list. Prior to preparing the contract, the Purchasing Department or the Requesting Department must verify that the contractor is not on the federally debarred bidder's list.

13. Contractor Oversight

The Requesting Department receiving the federal funding must maintain oversight of the contract to ensure that the contractor is performing in accordance with the contract terms, conditions, and specifications.

14. Open Competition

Solicitations shall be prepared in a way to be fair and provide open competition. The County shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding; specifying a brand name without allowing for "or equal" products, or other unnecessary requirement that have the effect of the restricting competition.

15. Geographic Preference

No contract shall be awarded based on geographic preference.

16. Prequalification

If time allows contractors for construction and repair projects will be prequalified in accordance with the County's Pre-Qualification for Capital Improvement Projects Exhibit V of the Wayne County Purchasing Policy and Procedure manual. Protests for denial of prequalification will be in accordance with the pre-qualification policy.

Exhibit VII: Prequalification Policy

17. Bid Protests and Disputes

A. Purpose

To establish a written bid protest procedure.

B. Procedure

Any party which is a prospective bidder, offeror, or contractor that may be aggrieved by the solicitation must submit a written protest within five (5) calendar days prior to the opening of the Request for Bid and/or the Request for Proposal.

Any party which is an actual bidder, offeror, or contractor that may be aggrieved by the award of a contract, must submit a written protest within five (5) days of County transmitting via fax or email the announcement of intent to award.

The protest must be addressed to the office of the Wayne County Purchasing Director and must include all the following information:

- Name, address, telephone number, facsimile number, and email of the protester.
- Signature of the protester or authorized agent.
- The bid name and/or bid number.
- A detailed statement of the legal and factual grounds of protest including copies of relevant documents.
- Any supporting exhibits, evidence, or documents to substantiate any claims.
- All information establishes that the protester is an interested party for the purpose of filing a protest.
- The form of relief requested.

After careful consideration of all relevant information, and consultation with the County Attorney, the Purchasing Director shall make a written decision.

A decision of the Purchasing Director may be appealed to the Finance Officer. This appeal must be in writing and be delivered to the office of the Finance Officer within seven (7) calendar days of the date the Purchasing Director faxed or emailed the decision.

The Finance Officer will then have seven (7) calendar days to render a decision. This decision may be appealed to the County Manager within seven (7) calendar days of the date the Finance Officer faxed or emailed the decision.

The County Manager will then have seven (7) days to render a final decision.

All costs incurred by a protesting party in connection with a protest shall be the sole responsibility of the protesting party.

C. Specific Procurement Procedures

Either the Purchasing Department or the requesting Department shall solicit bids in accordance with the requirements under this Section of the Policy based on the type and cost of the contract.

Purchase Contracts

Service Contracts (except for A/E professional services)

Construction/Repair/Facility Improvement/Renovation

Up to \$10,000:

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

Procedures are as follows:

- No bidding is required.
- The price must be considered fair and reasonable.
- To the extent practicable, purchases must be distributed among qualified suppliers.

Contract must be in writing (this could be in the form of a purchase order)

Purchase Contracts

Service Contracts (except for A/E Professional Services)

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

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

Procedures are as follows:

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

Service Contracts (\$90,000 up to \$150,000)

Purchase Contracts (\$90,000 and above)

Shall be procured using a combination of the most restrictive requirements of the Uniform Guidance “Sealed Bid” procedure (2 C.F.R. §200.320(c)) and state formal bidding procedures (G.S. 143-129)

Procedures are as follows:

- Cost or price analysis is required prior to soliciting bids.
- Complete specifications or purchase description must be available to all bidders.
- Public Advertisement: (Electronic Advertising is authorized)
 - Legal notice must reserve to the governing board the right to reject any or all bids only for “sound documented reasons.”
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
- Solicitation from adequate number of known suppliers.
- Bids must be submitted sealed.
- Public Bid Opening
- Must have two (2) sealed bids submitted.
- Bids may only be rejected for “sound documented reasons.”
- Award contract as a fixed price. A Not to exceed basis is permissible for service contracts only where obtaining a fixed price is not feasible.
- Award to lowest, responsive, responsible bidder

- Contract must be in writing (purchase contracts may be in the form of a purchase order; service contracts and construction repair require use of contract template)
- Cannot use a cooperative purchasing program as an Exception to the Bidding
- Governing board approval is not required (per local policy, governing board has delegated award authority to County Manager)

Service Contracts (except for A/E Professional Services)

\$150,000 and above

Shall be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(d)) when the “sealed bid” procedure is not appropriate for the service being sought.

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

Procedures are as follows for competitive proposal method:

- Publicly advertised. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an “adequate number” of qualified firms.
- Solicitation from adequate number of qualified firms.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
- Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
- All responses must be considered to the maximum extent practical.
- Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
 - Award the contract to the responsible firm with most advantageous proposal considering price and other factors identified in the RFP.
 - Governing board approval is required per local policy.
 - Award the contract on a fixed-price or cost-reimbursement basis.
 - Must have written contract with federal contract provisions included.
 - Cannot use a cooperative purchasing program as an Exception to the Bidding

Construction/Repair/Facility Improvement/Renovation

\$3,500 up to \$150,000:

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

Procedures are as follows:

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

Construction/Repair/Facility Improvement/Renovation

\$150,000 up to \$500,000:

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

Procedures are as follows:

- Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
- Complete specifications must be made available to all bidders.
- Public Advertisement: Advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids (formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
- Solicitation from adequate number of known suppliers.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
- Bids must be submitted sealed.
- Public Bid Opening
- Must have two (2) sealed bids submitted prior to opening.
- 5% Bid Bond (a bid that does not contain a bid bond cannot be counted toward the two (2) bid requirement).
- Performance and Payment Bonds for 100% of contract price
- Bids may only be rejected for “sound documented reasons.”
- Contract awarded on firm-fixed price basis.
- Award to lowest responsive, responsible bidder
- Must have written contract with federal contract provisions included.
- Governing Board approval is not required.

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

- *Formal HUB (historically underutilized business) participation required under G.S. 143-128.2, including local government outreach efforts and bidder good faith efforts shall apply.*
- *Separate specifications shall be drawn up for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143-128(a).*
- *The project shall be bid on using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under G.S. 143-129(a1).*

Construction/Repair/Facility Improvement/Renovation

\$500,000 and above:

Shall be procured using a combination of the most restrictive requirements of the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129)

Procedures are as follows:

- Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
- Complete specifications must be made available to all bidders.
- Separate specifications shall be drawn up for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143-128(a).
- The project shall be bid on using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under G.S. 143-129(a1).
- Public Advertisement: (Electronic Advertising is authorized)
 - Legal notice must reserve to the governing board the right to reject any or all bids only for “sound documented reasons.”
- Solicitation from adequate number of known suppliers.
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
- Good Faith MBE Requirements/Affidavits must be submitted.
- Bids must be submitted sealed and in paper form.
- Public Bid Opening
- Must have three (3) sealed bids submitted before opening.
- 5% Bid Bond (a bid that does not contain a bid bond cannot be counted toward the three (3) bid requirement).
- Performance and Payment Bonds for 100% of contract price
- Bids can only be rejected for “sound documented reasons.”

- Contract awarded on firm-fixed Price basis.
- Award to lowest, responsive, responsible bidder
- Must have written contract with federal contract provisions included.
- Governing Board approval is required (cannot be delegated)
- Governing board may reject and all bids only for “sound documented reasons.”

Professional Services (Architectural and Engineering Services)

Under \$150,000

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

Procedures are as follows:

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

Professional Services (Architectural and Engineering Services)

\$150,000 and over

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

Procedures are as follows:

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

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

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

D. EXCEPTIONS

Non-competitive contracts are allowed **only** under the following conditions and with the written approval of the federal agency or state pass-through agency that awarded the federal funds:

1. Sole Source

A contract may be awarded without competitive bidding when the item is available from only one source. The Purchasing Department and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the governing board.

2. Public Exigency

A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from competitive bidding.

3. Inadequate Competition

A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from several sources, as required under this Policy does not result in a qualified winning bidder.

4. Federal Contract

A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.

5. Awarding Agency Approval

A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law.