

Pender County Procurement Policy



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Approval Signature: _____, Chair

Approved By: Pender County Board of County Commissioners
Chair Brad George
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I. Purpose

The purpose of this Policy is to establish guidelines and accountability that meet or exceed the procurement requirements for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when Federal, State, and/or local funds are being used in whole or in part to pay for the cost of the contract. The intention of this policy is to establish and implement a system of internal controls to ensure compliance with applicable laws and regulations while establishing procedures to ensure good stewardship of taxpayer funding.

The administrative procedures contained in this Policy have been formally adopted by the Governing Board of Pender County and may be implemented as necessary at the staff level to comply with Federal and State law. Official change of these policies must be formally adopted by the Governing Board of Pender County.

Specific procedural guidance related to the requirements described within this policy is provided by the Procurement Manager and detailed in the Procurement Guide. Either the Procurement Department or the Requesting Department shall procure all contracts in accordance with the requirements of this Policy. Any purchase or contract made contrary to the provisions of this policy may be voidable at the option of the County.

II. Policy & General Procurement Standards

- A. Application of Policy.** This policy applies to contracts for purchases, services, and construction or repair work funded with Federal and/or State financial assistance (direct or reimbursed) as well as local funds. The requirements of this Policy also apply to any subrecipient of the funds. All contracts will be considered “in the aggregate” for the fiscal year – based on the total anticipated spend for the entire fiscal year and procurement method determined accordingly.

All federally funded projects, loans, grants, and sub-grants, whether funded in part or wholly, are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) codified at 2 C.F.R. Part 200 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds.

- B. Compliance with Applicable Laws.** 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 and/or state pass-through agency that awarded the funds. Pender County will follow all applicable local, state, and federal procurement requirements when expending respective funds. The most restrictive applicable policy provisions will be applied based on funding source.

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

- C. Necessity.** Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing. Purchasing Department and/or Requesting Department is encouraged to consider surplus or buying used when feasible. When expending Federal funds, Pender County should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Purchases must be made for the purpose of conducting public service or for some other public purpose.
- D. Documentation.** Documentation must be maintained within Finance specified centralized content management system detailing the history of all procurements. The documentation should include the 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, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract as applicable. All documentation relating to the award of any contract must be made available to the granting agency upon request.

- E. Complete and Clear Specifications.** All solicitations must 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. All other factors to be used in evaluating bids or proposals should be specified within the solicitation. Technical requirements must not contain features that restrict competition. Specifications provided by a potential vendor will automatically exclude that vendor from potential bidding and award of contract.
- F. Open Competition.** Solicitations shall be prepared in a way to be fair and provide open competition. The procurement process shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive bonding, brand name specification, or other requirements that have the effect of restricting competition.
- G. Historically Underutilized Business and/or Minority/Women-owned Business Enterprise (M/WBE) Participation.** Pender County will make every effort to solicit price quotes from HUB and/or M/WBE vendors and suppliers when feasible. For Federally funded contracts, Pender County will take affirmative steps to solicit price quotes from HUB and/or M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.

If economically feasible, procurements may be divided into smaller components to allow maximum participation of small, HUB and/or M/WBE vendors. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.

- H. Cost Analysis.** For all procurements costing \$90,000 or more, the Purchasing Department and/or Requesting Department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer. Cost estimates provided by a potential vendor will automatically exclude that vendor from potential bidding and award of contract.
- I. 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. **All lease decisions must be thoroughly vetted by Finance.**

J. Vendor Prequalification. Only in accordance with N.C. G.S. 143-135.8, the Governing Board reserves the right to require vendor prequalification for construction and repair projects when expressly indicated in advance of or included in solicitation. Prequalification decisions will be promptly communicated in writing. Solicitation must explicitly establish means by which a bidder shall prequalify and, if applicable, protest of any prequalification decisions with sufficient time prior to the opening of bids for the bidder to obtain subsequent prequalification. If invoked, bids provided by any bidder not prequalified shall be deemed nonresponsive.

Projects involving federal funds in part or in whole must ensure that all prequalified vendors or products include enough qualified sources to ensure maximum open and free competition. Additionally, potential vendors may not be precluded from qualifying during the solicitation period as required under 2 C.F.R. § 200.319(e).

K. 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. It is preferred that when a brand name is used as reference, it includes “or equal” whenever possible. Brand names may only be specified when the use of an alternative is impractical, uneconomical or creates a significant hardship. Specification of a specific software system, or specific hardware must be determined by a thorough and documented analysis of competing alternatives in order to be considered for consistency and compatibility.

L. No Evasion. No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this Policy or applicable State and Federal laws. Failing to consider all costs associated with a purchase or contract or deliberately dividing the contract for the purpose of circumventing the requirements set forth in this policy or other applicable laws and regulations may constitute a violation of State law.

M. Geographic Preference. No contract shall be awarded based on a geographic preference. Only considerations for location can be given for criteria such as response times, on-site availability, familiarity and experience with the region and its specific challenges, ability to efficiently meet demands, etc. as noted in the solicitation.

N. Rejecting Bids. Any individual bid(s) may be rejected only for “sound documented reasons.” All bids may be rejected for any reason.

O. Suspension and Debarment. No contract shall be awarded to and no purchase shall be made from a contractor currently included on the Federal or State listing of suspended or debarred vendors. Vendors will be vetted prior to entry into ERP system and periodically thereafter.

P. Countywide Contracts. Every effort must be made to utilize Countywide Contracts as these contracts have been through proper solicitation requirements and potential volume-based discounts negotiated and secured. Departments should report the need for Countywide Contracts to the Procurement Manager as they arise.

Q. Predominant Aspect Review. When procurement requires both the purchase of goods and the provision of services, it is imperative to determine which element constitutes the main purpose of the transaction. In the instance where the predominant aspect is goods, the procurement method must be according to NC GS 143-129. If services are the predominant aspect, then the procurement method allows for a more flexible approach using formal or informal Requests for Proposals.

R. Formal/Sealed Bid Advertising & Opening. For contracts valued at \$90,000 and above, the bid must be formally advertised in a newspaper of general circulation for at least seven full days, best practice and typical advertisement will be for ten full days, between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the Governing Board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the Governing Board the right to reject any or all bids only for “sound documented reasons.”

Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. For formal Construction bids, a minimum of 3 bids must be received in order to open all bids, or a re-bid is required. If re-bidding, bids are permitted to be opened at the advertised bid opening, regardless of the number of bids received. For all other formal solicitations, 1 bid is sufficient for opening.

S. Contract Award. All Purchase, Construction and Repair, and Federally Funded Service Contracts shall be awarded to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract. In determining if a vendor is “responsible”, Pender County may consider factors such as skills, abilities, and resources (ex: past performance, financial conditions, etc). All other contracts (unless federally funded) will be awarded to the best overall value for Pender County based on above, along with response time, ability to meet demand, as well as other criteria specified in respective RFP/RFQ. Note that past performance may only be strongly considered when cost benefit analysis indicates justification.

- T. Contract Pricing.** Solicitations must state that 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 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 express written permission of the federal agency or state pass-through agency that awarded the funds, if applicable.
- U. Contract Requirements.** All contracts shall be in writing and the written contract must include or incorporate by reference the provisions required based on funding source. Federally funded contracts must include provisions required under 2 C.F.R § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II. **Contracts are only authorized to be executed by the Chair of the Governing Board or the County Manager.** In situations where a specific written contract may not exist, the purchase order will serve as the contract for the purchase of the goods or services.
- V. Contractor Oversight.** The Requesting Department or assigned Project Manager must maintain oversight of the contract to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.
- W. Contractor Insurance Requirements.** Insurance requirements will vary based on the scope of each contract. The Procurement Manager and County Attorney will determine what is required of each contract with consultation of Risk Management.
- X. Independent Contractors or Former County Employees.** County Departments requiring the services of independent contractors and/or former employees should refer to the Independent Contractor Checklist to determine the status and ensure compliance with the IRS Employee requirements. According to IRS regulations, when an independent contractor or a former employee is engaged to provide services, the County must determine whether they should be classified as an employee subject to withholding tax, or as an independent contractor. See Procurement Guide for updated information on how to determine if a vendor should be considered an independent contractor or an employee.
- Y. Finance Director Authorizations by Governing Board.** The Finance Director must preaudit all contracts in accordance with the Local Government Budget and Fiscal Control Act in order for the contract to be considered fully executed. The Finance Director is authorized to execute and submit any and all required documents to request reimbursement or drawdowns from outside funding agencies or escrowed funds.

- Z. County Manager Authorizations by Governing Board.** Governing Board approval is required for any and all contracts greater than \$30,000 in the aggregate for the fiscal year and/or obligate future budgets. The Governing Board has officially authorized the County Manager to execute the following:
1. Contracts less than \$30,000 in the aggregate for the fiscal year.
 2. Contracts with outside agencies or other governing agencies where the funding to be received or disbursed are explicitly included in the annual budget ordinance as previously approved by the Governing Board.
 3. Subsequent contract terms where the initial contract term was Board approved and subsequent terms are Board appropriated within negotiated pricing parameters.
 4. Contract change orders to previously Board approved contracts, less than \$30,000 in the aggregate and included in the allocated budget.
 5. Terminate contracts on behalf of the County when in the best interest of the County after consulting the County's legal counsel and providing proper written notice based on the terms of the contract.
 6. The County Manager is authorized to negotiate and conduct private sales of personal property valued at less than \$30,000, without board approval, upon the condition that the property is sold at fair market value. The County Manager must keep a record of all property sold and the sale price. Donations within these thresholds may be authorized by the County Manager to Pender County Schools and other units of Government.

III. Exceptions

Non-competitive contracts are allowed **only** under the conditions detailed below. Before attempting to make use of any of these exemptions, exceptions must be vetted by the Procurement Manager and fully documented accordingly.

- A. Routine Expenditures.** A comprehensive listing of routine expenditures is defined in the annual budget ordinance.
- B. Sole Source.** A contract may be awarded without competitive bidding when the item is available from only one source, when the vendor has an assigned territory, or when standardization or compatibility is the overriding consideration. The Procurement Department and/or Requesting Department shall document the justification for and lack of available competition for the item. In accordance with NC Procedure of Public Contracts (N.C. G.S. 143-129 (e) 6), all sole source purchases must be approved by the Governing Board.
- C. Emergency and Public Exigent Circumstances.** A contract may be awarded without competitive bidding when there is an emergency or public exigent circumstances. These circumstances exist when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding. Emergency and public exigency circumstances must be authorized by the County Manager or Finance Director and

thoroughly documented. In most circumstances, pre-positioned contracts should be in place to accommodate for potential threats. See Procurement Guide for additional direction on determining and preparing for emergent or exigent circumstances.

- D. Federal or State Contract.** A contract may be awarded without competitive bidding when the purchase is made from a Federal or State contract available on the U.S. General Services Administration or N.C. Department of Administration schedules of contracts. Specific contract documentation must be attached for current contract.
- E. Authorized Cooperative Purchasing Agreement.** A contract may be awarded without competitive bidding when the purchase is made from an authorized Cooperative Purchasing Agreement. Finance/Procurement must verify Cooperative Purchasing Agreement compliance with applicable Federal, State, and Local guidelines.
- F. Awarding Agency Approval.** A contract may be awarded without competitive bidding with the express written authorization of the Federal or State agency that awarded the funds so long as awarding the contract without competition is consistent with applicable laws. Note that per State law, local governments can only “piggy-back” on purchases in the formal procurement range that were competitively bid and the contracts were entered within the past 12 months.
- G. Subsequent Terms of an Initially Vetted Contract.** Subsequent contract terms where the initial contract term was Board approved and subsequent terms are Board appropriated within negotiated pricing parameters.

IV. Specific Procurement Procedures

Either the Procurement 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. All Pender County Policies & General Procurement Standards apply unless otherwise stated. All contract amounts must be considered in the aggregate for the fiscal year, and procurement method determined accordingly, unless otherwise authorized by the Finance Director. In order for resulting contracts to be valid, proper procurement methods must be strictly followed.

- A. Purchase of Information Technology Goods & Services** shall be procured using the “best overall proposal” standard of award in accordance with N.C. G.S. §143-129.8.
 1. A cost benefit analysis must be completed for ERP and other departmental software systems on a predetermined schedule based on the purpose and use of the software as often as economically feasible.
 2. Annual support and maintenance for software systems will be included in periodic cost benefit analysis when completed, and in subsequent years authorized under Exception G above.

B. All Other Service Contracts (except for A/E/S professional services), **Purchase Contracts, and Construction & Repair Contracts costing less than \$5,000** shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:

1. The contract may be awarded without soliciting additional pricing or bids if the price of the goods or services is determined to be fair and reasonable based on documented professional opinion of quote obtained as authorized by the Finance Department.
2. To the extent practicable, purchases must be distributed among qualified suppliers.
3. In accordance with NC Procedure of Public Contracts (N.C. G.S. §143-129 (e) 6), all sole source purchases must be approved by the Governing Board.

C. All Other Service Contracts (except for A/E/S professional services), **Purchase Contracts, and Construction & Repair Contracts costing \$5,000 up to \$90,000** shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. § 200.320(b)) as follows:

1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency might issue guidance interpreting “adequate number,” so the Requesting Department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued). For Pender County policy “adequate number” is determined to be three or more whenever possible, unless otherwise documented.
2. Contracts greater than \$30,000 in the aggregate require Governing Board approval and **HUB/M/WBE Participation** efforts apply. Contracts less than \$30,000 in the aggregate do not require Governing Board approval unless sole source exception applied. Contracts under \$30,000 must be authorized by County Manager.

D. All Other Service Contracts (except for A/E/S professional services) **costing \$90,000 and above, Purchase Contracts costing \$90,000 and above, and Building Construction & Repair Contracts costing \$90,000 up to \$300,000 and** 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 (N.C. G.S. §143-129) as follows:

1. **Cost Analysis** (Section II, Part H) is required prior to soliciting bids.
2. **Complete and Clear Specifications** (Section II Part E) must be made available to all bidders.
3. A Request for Proposals (RFP) must be publicly advertised. Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP. Consider all responses to the publicized RFP to the maximum extent practical. Must have a written method for conducting technical evaluations of proposals and awarding the winning bid.

4. **Formal/Sealed Bid Advertising & Opening** (Section II, Part R) procedures must be followed. NOTE for construction solicitations, a minimum of 3 bids must be received in order to open all sealed bids. If 3 are not received, project must rebid and at that time any bid can be considered regardless of the number received. For all other formal solicitations, 1 bid is sufficient for opening.
5. For Construction and Repair Contracts, a separately sealed 5% bid bond is required of all bidders to count towards minimum. Performance and payment bonds of 100% of the contract price is required of the winning bidder.
6. For All Other Service Contracts over \$250,000 may use “competitive proposal” procedure when the “sealed bid” procedure is not appropriate for the particular type of service being sought as determined by the Finance Department.

E. Construction or repair contracts costing \$300,000 and above must comply with Section D as well as the following additional requirements:

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

F. Contracts for Architectural and Engineering and Surveying Services using the Qualifications Based Selection Process shall be procured using the state “Mini-Brooks Act” requirements (N.C. G.S. §143-64.31) as follows:

1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. **HUB and/or M/WBE Participation** efforts apply.
3. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
4. Proposals must be solicited from an “adequate number of qualified sources” (an “adequate number” is considered three or more unless express written authorization obtained from County Manager or Finance/Procurement Office).
5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm. Price cannot be a factor in the initial selection of the most qualified firm.
6. Consider all responses to the publicized RFQ to the maximum extent practical.
7. Rank respondents based on qualifications and select the best qualified firm.
8. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successfully, repeat negotiations with the second-best qualified firm.
9. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated. Governing Board approval is

required unless the Governing Board has delegated award authority to an individual official or employee.

10. For State and Locally funded projects, the County Manager is authorized to exempt the County from the requirements of N.C. G.S. §143-64.32 (commonly referred to as the Mini- Brooks Act). This exemption provides the county with the ability to select an architect, engineer, surveyor, or alternative construction delivery method firm by whatever method it chooses (or no method at all). This exemption is capped at \$50,000, meaning the estimated cost of the contract cannot exceed this amount. Contracts with an estimated cost of \$50,000 must be procured via Qualification Based Selection (QBS). This exemption does not preclude or waiver any other county, state, or federal procurement requirement.

V. Conflicts of Interest and Gifts

This provision is to establish conflicts of interest guidelines that meet or exceed those required under 2 C.F.R. § 200.318(c)(1). This applies when procuring goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects funded in part or whole with federal or State financial assistance (direct or reimbursed). This policy also applies to any subrecipient of the funds.

The employee responsible for managing a federal or State financial assistance award shall review the notice of award to identify any additional conflicts of interest prohibitions or requirements associated with the award, and shall notify all officers, employees, elected officials, governing body members, and agents, including subrecipients, of the requirements of this policy and any additional prohibitions or requirements.

A. Conflicts of Interest. In addition to the prohibition against self-benefiting from a public contract under N.C. G.S. 14-234, no officer, employee, elected official, governing body member, or agent of Pender County may participate directly or indirectly in the selection, award, or administration of a contract supported by a federal or State award if he or she has a real or perceived conflict of interest. A real or perceived conflict exists when any of the following parties has a financial or other interest in or receives a tangible personal benefit from award of a contract:

1. the officer, employee, elected official, governing body member, or agent involved in the selection, award, or administration of a contract;
2. any member of his or her immediate family (as defined in Personnel Policy);
3. his or her partner; or
4. an organization which employs or is about to employ any of these parties.

Any officer, employee, elected official, governing body member, 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. The County Manager and elected officials should report any conflict of interest directly to the Governing Board via the Chair of the Board. Any such conflict shall be disclosed in writing to the federal or

State award agency or pass-through entity in accordance with applicable Federal or State awarding agency policy.

Contractors that are related to County personnel having any influence over the decisions to consider or award a contract are strictly prohibited from bidding or accepting award of County contracts.

- B. Gifts or Favors.** In addition to the prohibition against accepting gifts and favors from vendors and contractors under N.C. G.S. 133-32, officers, employees, elected officials, governing body members, and agents of Pender County are prohibited from accepting or soliciting gifts, gratuities, favors, or anything of monetary value from contractors, suppliers, or parties to subcontracts. Exceptions include but are not limited to: honoraria, souvenirs/promotional items of nominal value (less than \$25), meals at banquets, gifts to professional organizations, and non-business customary gifts from family and friends.
- C. Violations.** 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.