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# Lincoln County, North Carolina

# Purchasing Policy

Developed by: Purchasing Office

Effective Date: February 5, 2018

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## INTRODUCTION

This manual was created to assist employees who are responsible for purchasing supplies, goods, and services on the County's behalf and to assure conformity with the County's purchasing rules and policies. It also guides the Purchasing Office which is responsible for assisting County departments and agencies in this process. Resolution number 2010-18 contains the purchasing provisions adopted by resolution of the County Commission. (See Appendix A for a copy of this resolution.) This manual expands on the resolution by explaining the unambiguous steps and forms essential for each of the methods of purchasing set out in Section II. Copies of this manual are available on the county's website [www.lincolncounty.org](http://www.lincolncounty.org). Furthermore, all departments will be made aware of any amendment to the purchasing manual within one business day of the change.

Before making any purchase, you should determine which method of purchase is appropriate. If you are unsure, contact the Purchasing Agent. Once the method of purchasing has been determined, you should follow the procedures listed in this manual. It is imperative that you follow all of the steps in the process so that the County complies with federal, state, and local laws. Furthermore, compliance ensures that there is a complete audit trail of each financial transaction. Failure to follow these procedures could result in a purchase being declared illegal or void, which could result in disciplinary actions.

In any purchasing decision, there is always a conflict between wanting to obtain the best quality at the best price, and the necessity of getting the product or service in the field as soon as possible. In order to minimize this conflict, each department should plan its purchases ahead of time to the greatest extent possible. Providing lead time ensures that you have the necessary products or services on time while still adhering to the required method of purchase. For products that are ordered continuously, the County may be entering into fixed price agreements/blanket quarterly PO's. Before you purchase any product, make sure that Purchasing does not have a fixed price agreement on the item. If it does, you should use that purchasing method. The list of fixed price agreements/blanket PO's is also on the county's website.

These policies and procedures are not meant to be roadblocks to you as you carry out your purchasing duties. Rather, they are simply the methods that we believe help us achieve the requirement to comply with state statutes via a consistent policy for all departments. If any department encounters conflicts or delays as the result of this policy, please have your department or agency manager contact me so we can discuss it further.

Respectfully,

Kelly G. Atkins

County Manager

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## I GENERAL PROVISIONS

This section covers the general provisions applicable to purchasing. You should be familiar with them and with the Purchasing Resolution referenced in Appendix A.

### **Mandatory Compliance: All Departments**

The purchasing policies and procedures outlined in this manual are the culmination of input from all departments and with specific directives from the County Manager. All policies and procedures have been reviewed by the Lincoln County Attorney and subsequently approved by the County Commission. **Under said policies, all governmental departments, agencies and offices under the aegis, supervision and funding of the Lincoln County Board of Commissioners shall comply with all purchasing policies and procedures as outlined in this manual.** The directive for centralized purchasing is from the Lincoln County Board of Commissioners.

### **Exemption: Sheriff's Office**

On April 7, 2014 the Lincoln County Board of Commissioners approved an amendment, at the request of the Sheriff, that exempts the Sheriff's Office from the Purchasing Policy for single purchases of apparatus, supplies, materials or equipment up to \$29,999.99 per purchase as long as budgeted funds are available. A purchase order shall be obtained prior to buying the item, and a report shall be provided to the Board of Commissioners after the purchase has been approved.

### **Iran Divestment Act**

During the 2015 legislative session, the North Carolina General Assembly enacted the Iran Divestment Act (S.L. 2015-118; SB455) ("the Act") which prohibits state agencies and local governments from entering into contracts with entities that the North Carolina State Treasurer has determined are engaged in certain investment activities in the Iranian energy sector.

The Act requires the State Treasurer's Office to publish a list of entities it has identified as investing in the Iranian energy sector and update the list every 180 days. An entity identified on the Treasurer's list (called the "Final Divestment List") is prohibited from contracting with state agencies and local governments. In addition, all entities contracting with the State and local governments are prohibited from subcontracting with any entity included on the Final Divestment List. Contracts entered into with an entity included on the Final Divestment List are rendered void by operation of the statute.

The Treasurer's office developed two lists, both of which are available here [Iran Divestment Act Resources webpage](#). The Final Divestment List provides the names of entities engaging directly in investment activities in the Iranian energy sector. The Iran Parent and Subsidiary Guidance contains the names of companies that own more than 20% of or are a majority-owned subunit or subsidiary of an entity on the Final Divestment List. Entities identified on *both* lists are subject to the Act's prohibitions, and local governments cannot enter into contracts with *any* entity identified on *either* list.



## **Divestment from Companies that Boycott Israel**

During the 2017 legislative session, the North Carolina General Assembly enacted the Divestment from Companies that Boycott Israel Act (S.L. 2017-193; H161). This legislation created a new Article 6G of Chapter 147 prohibiting the investment of state funds in or governmental contracting with any company that boycotts or is involved in a boycott of the State of Israel. The prohibition is similar to the **Iran Divestment Act** in that state agencies and local governments are prohibited from contracting with companies identified by the State Treasurer as engaging in certain activities determined by Congress and our state legislature to be against the interests of our country and state.

The Divestment from Companies Boycotting Israel Act (the Act) imposes two prohibitions. First, the Treasurer is prohibited from investing any state funds in any company that boycotts the State of Israel. Second, state agencies and local governments cannot contract with a company that boycotts the State of Israel.

The State Treasurer is charged with the responsibility of developing and publishing a list of companies that meet this definition (GS 147-86.80(a)(1)).

## **Purchase Orders**

A purchase order must be used for all purchases unless otherwise allowed. Those exceptions are using petty cash, a procurement card, recurring contractual obligations (leases, utilities, etc.), natural gas supplies and investment purchases. **Note that the money must be budgeted before a purchase order can be executed.** Directors or their designees must approve the payment of all invoices to verify that the product or service has been received in the quantity and quality specified. Change orders to purchase orders will only be issued if the amount exceeds \$500.

## **Jurisdiction; Authority**

- 1) The securing of goods and services necessary for the operation of county government is a major administrative responsibility. Under the supervision of the County Manager, this function of county government is the primary responsibility of the Purchasing Office.
- 2) Statutory provisions regulating purchasing by local governments are contained primarily in G.S. 143-129--143-135. Other specific duties, responsibilities and authorities are contained in G.S. chs. 14, 44, 66, 75, 87, 105, 153, 160A, and 159, the Local Government Budget and Fiscal Control Act. By virtue of these statutes, the County is empowered to enter into construction and repair contracts and for the procurement of apparatus, materials, and services. Authority to award contracts for procurement of supplies, and services up to \$50,000.00 has been delegated to the County Manager or his/her designee. All contracts greater than \$50,000.00 will require approval by the County Commission. Upon awarding of the contract the County Manager or his/her designee is authorized to execute said contract.
- 3) Prior to (i) entering into any agreement, (ii) making any purchase, the County must first have funds appropriated to meet financial obligations. Contracts or purchase orders requiring the payment of funds, for supplies or materials, may not be made unless a proper

appropriation appears in the budget and a sufficient unencumbered balance remains in the appropriation.

- 4) Federal Transit Authority Circular 4220.1F will be complied with for procurements utilizing Federal assistance. (Federal Transit Law, Title 49, United States Code, Chapter 53.)

**State law references:** Budgetary accounting for appropriations, G.S. 159-28.

## **Purpose**

The Purchasing Office is a service-oriented activity. As such, it exists to serve the needs of operating departments/agencies in county government.

This chapter makes reference to statutory provisions of state law. The provisions contained in this chapter reflect the current laws. It is intended that these provisions will always duplicate whatever changes occur in state law, and such provisions will be administratively updated at that time.

**Any participation in the purchasing process by departments must be with the full knowledge and agreement of the Purchasing Agent.**

## **Responsibility of Purchasing Agent**

- 1) The basic responsibilities of the Purchasing Agent are to:
  - a) Purchase goods and materials in accordance with established law and local policy; and
  - b) Operate a consolidated purchasing function for the County.
- 2) The Purchasing Agent has the responsibility to advise of the suitability, quality or quantity of equipment, material or supplies requested, and can refer such requests to the County Manager for approval. The Purchasing Office is charged with obtaining vendor quotations, terms, delivery codes, initiating and completing all formal and informal bid proceedings, issuing purchase orders, maintaining an accurate inventory of central supply and disposing of surplus property in accordance with resolutions of the County Commission.
- 3) All state and local governmental officers and employees are prohibited from entering into any contracts involving the units they serve when any such officer or employee or a firm in which he/she has a financial interest has a private interest in the contract, except when that private interest:
  - a) Involves a bank or banking institution, a savings and loan association, or a regulated utility;  
or
  - b) Provides supplies, services, or facilities to needy persons under state and federal aid programs.

**State law references:** Participation of a public officer in business transactions involving public funds, G.S. 14-234.

## **Departmental Working Relationship**

As a service agency for the County, it is the desire of the Purchasing Office to establish and maintain a close working relationship with each department. It is essential that an attitude of mutual cooperation and understanding exist between the user department and the Purchasing Office. The following guidelines will promote mutual assistance:

### **1) The user departments should:**

- a) Maintain a close check on supplies and stock.
- b) Forecast any future purchasing requirements.
- c) Request well in advance of needs whenever possible.
- d) Eliminate all unnecessary emergency or rush purchasing.
- e) Alert Purchasing regarding late deliveries.
- f) Examine items received for quality and quantity.
- g) Report promptly to the Purchasing Office any deviations in orders received. Only for sealed bid or if assistance is required.
- h) Submit by written memorandum for complaints against vendors. Only for sealed bid or if assistance is required.
- i) Indicate to Purchasing Agent or Office the exact needs of the user department when equipment or special orders requiring written specifications are involved.

### **2) The Purchasing Office should:**

- a) Check with user departments on needs when placing consolidated orders.
- b) Inform departments of contracts that might be utilized.
- c) Expedite emergency purchases as rapidly as possible in order that normal operations of a department not be disrupted.
- d) Contact vendors on late deliveries and report findings to ordering departments if department has already contacted the vendor and does not receive a resolution. Only for sealed bid or if assistance is required.
- e) Mediate between the user department and the supplier on partial deliveries, cancellation, return of merchandise and complaints if department has already contacted the supplier and an acceptable resolution was not reached. Only for sealed bid or if assistance is required.
- f) Consult with the originating department when technical equipment, special order specifications, plans or designs are involved.
- g) Consult with the ordering Director and/or his/her designee of formal or informal pre-bid conferences and bid openings.
- h) Review with Director the bids and prices received.

From the issuance of a sealed request to delivery of the order, the Purchasing Office should coordinate all action toward accomplishing the desired goal for efficient procurement of items/services requested by County departments. Only through a harmonious working association can the Purchasing Office effectively function as a support service for the departments.

## Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Alternative contracting method:* means local governments can seek authority to modify bidding requirements for particular projects, specifically design-build projects for building construction.

*Appropriation:* means an authorization granted by the County Commission to make expenditures and to incur obligations for specific purposes.

*Appropriation account:* means a budgetary account set up to record specific authorizations to spend. The account is credited with original and any supplemental appropriations and is charged with expenditures and encumbrances.

*Bid:* means a quotation specifically given a prospective purchaser upon request, usually in competition with other vendors.

*Budget document:* means the instrument used by the budget-making authority to present a comprehensive financial program to the appropriating body.

*Committee:* Refers to the Committee on standards and specifications.

*Construction Contract:* Any contract entered into between a private developer and a contractor for the design, construction, reconstruction, alteration, or repair of any building or other work or improvement required for a private developer to satisfy its obligations under a development contract. (See Section on P3)

*Construction management-at-risk:* means services are provided by a construction manager, which may include preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services and construction administration.

*Contract:* means a legal agreement between the County and another governmental agency, company, corporation, individual or group of individuals obligating the County to pay money for services rendered or products.

*Contractor:* Any person who has entered into a construction contract with a private developer. (See Section on P3)

*Department/agency head:* means the highest level of supervision and coordination within a program area.

*Design build bridging:* A design and construction delivery process whereby a governmental entity contracts for design criteria services under a separate agreement from the construction phase services of the design builder.

*Design builder:* An appropriately licensed person, corporation, or entity that, under a single contract, offers to provide or provides design services and general contracting services where services within the scope of the practice of professional engineering or architecture are performed

respectively by a licensed engineer or licensed architect and where services within the scope of the practice of general contracting are performed by a licensed general contractor.

*Design criteria:* The requirements for a public project expressed in drawings and specifications sufficient to allow the design builder to make a responsive bid proposal.

*Design professional:* Any professional licensed under Chapters 83A, 89A, or 89C of the General Statutes.

*Development contract:* Any contract between a governmental entity and a private developer under this section and, as part of the contract, the private developer is required to provide at least fifty percent (50%) of the financing for the total cost necessary to deliver the capital improvement project, whether through lease or ownership, for the governmental entity.

*Dual bidding:* means bids may be received to erect, construct, alter or repair a building under both the single-prime and separate-prime contracting systems, and the contract shall be awarded to the lowest responsible responsive bidder under the single-prime or the lowest responsible responsive bidders under the separate-prime system.

*Electronic auction:* means an auction of surplus property conducted on an Internet site.

*First tier subcontractor:* A subcontractor who contracts directly with the design builder, excluding design professionals.

*Fiscal year:* means a 12-month period of time to which the annual budget applies and at the end of which a governmental unit determines its financial position and the results of its operations. The county's fiscal year begins on July 1st and ends on June 30th each year.

*Goods and services:* means the tangible items and/or labor and materials necessary to provide an effective and economically responsible delivery of services by Lincoln County for which financial appropriations have been made by the governing authority.

*Governmental entity:* Every officer, board, department, commission, or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration, or repair of any buildings for the State or for any county, municipality, or other public body.

*Force account:* means work performed by County employees that would ordinarily be performed by outside contractors.

*Information technology:* means electronic data processing goods and services and telecommunications goods and services, microprocessors, software, information processing, office systems, and related services and consulting or other services for design or redesign of information technology supporting business processes.

*Labor or materials:* Includes all materials furnished or labor performed in the performance of the work required by a construction contract whether or not the labor or materials enter into or become a component part of the improvement and shall include gas, power, light, heat, oil, gasoline,

telephone services, and rental of equipment or the reasonable value of the use of equipment directly utilized in the performance of the work required by a construction contract.

*Minority business:* means a business of which at least 51 percent is owned by one or more minority persons or socially and economically disadvantaged individuals, or for a corporation, in which at least 51 percent of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals, and of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.

*Open Market:* means no quotation required; however, this does not mean that competition should not be sought.

*Petty cash:* means a sum of money set aside for the purpose of making change or paying small obligations for which the issuance of a formal voucher and check would be too expensive and time-consuming.

*Pre-audit:* means an examination for the purpose of determining the propriety of proposed financial transactions and financial transactions which have already taken place but which have not yet been recorded, or if such approval is required, before the approval of the financial transactions by designated officials for recording.

*Private developer:* Any person who has entered into a development contract with a governmental entity under this section.

*Professional services:* means services provided by the following licensed professionals and actuaries need not be subject to competitive bidding: practitioners of law, medicine, podiatry, dentistry, optometry, psychology, veterinary medicine, physiotherapy, public accounting and civil, mechanical, hydraulic, electrical and structural engineering, architecture, surveying, property appraisal, or professional consultations

*Public-private project:* A capital improvement project undertaken for the benefit of a governmental entity and a private developer pursuant to a development contract that includes construction of a public facility or other improvements, including paving, grading, utilities, infrastructure, reconstruction, or repair, and may include both public and private facilities.

*Purchase order:* means a legal document binding a vendor to provide a service or product and the county to pay a specified price for it.

*Purchasing agent:* means one who purchases for another; one who is authorized with the general duties and responsibilities of supervising and administering the purchasing functions

*Quote:* means to state a price for goods or services.

*Requisition:* means a request by a department/agency to the Purchasing Agent to purchase, by issuance of a purchase order, specified services or products.

*Separate-prime:* means bids for building projects are received for each subdivision of work:

- 1) Heating, ventilating and air conditioning;
- 2) Plumbing;
- 3) Electrical; and
- 4) General.

*Single-prime:* means bids for building projects are received from one contractor.

- The single-prime contractor performs all work or contracts with subcontractors for heating, ventilating and air conditioning; plumbing; and electrical.

*Sole-source item:* means when an item is of such a special nature that it is manufactured by only one company.

*State entity:* The State and every agency, authority, institution, board, commission, bureau, council, department, division, officer, or employee of the State. The term does not include a unit of local government as defined in G.S. 159-7.

*State-Supported Financing Arrangement:* Any installment financing arrangement, lease-purchase arrangement, arrangement under which funds are to be paid in the future based upon the availability of an asset or funds for payment, or any similar arrangement in the nature of a financing, under which a State entity agrees to make payments to acquire or obtain a capital asset for the State entity or any other State entity for a term, including renewal options, of greater than one year. Any arrangement that results in the identification of a portion of a lease payment, installment payment, or similar scheduled payment thereunder by a State entity as "interest" for purposes of federal income taxation shall automatically be a State-supported financing arrangement for purposes of this section.

*Subcontractor:* Any person who has contracted to furnish labor, services, or materials to, or who has performed labor or services for, a contractor or another subcontractor in connection with a development contract.

*Supplies, materials or contractual services:* means all tangible equipment, commodities, repairs or nonprofessional services necessary to operate the government

*Surplus property:* means items which are obsolete or are no longer of any value to the County.

*Unencumbered balance:* means that portion of an appropriation, which has not been expended or obligated through issuance of a purchase order.

*Using agency:* means any department, division, agency, bureau, commission, board, authority, or other unit of Lincoln County government using goods and services to carry out the duties and responsibilities of such functions and for which financial appropriations have been made by the governing authority.

*Vendor:* means one who sells a commodity or a service.

*Voucher:* means a written document which evidences the propriety of transactions and usually indicates the accounts against which they are to be recorded.

### **Authorizations for Payment**

For such recurring obligations as monthly utility bills and lease payments, a purchase order is not necessary. These invoices should be filed with the Finance Department. The GL should be listed on the invoice and signed by the Director or his/her designee, confirming that the invoice is a valid obligation to be paid.

### **Rejection of Bids**

All quote/bid requests over \$2,500 must include a standard clause which reserves the County and County Commission right to reject any and all bids or proposals, to waive any technicalities associated with the bid or proposal, and to make the award that it deems in the best interest of the County. The Purchasing Agent is responsible for making sure this clause is in all advertisements for bids.

### **Vendors in Default, Suspension/Debarment**

The Purchasing Agent shall not accept any bid or quotation from, nor issue any purchase order to, any vendor or contractor that is in default (delinquent) on the payment of any taxes, license fees, or other monies due the County. The Director or his/her designee is responsible for verifying a vendor or contractor who is in default for all bids and quotations under \$5,000. It shall be the Purchasing Agent's responsibility to verify a vendor or contractor who is in default for all bids and quotations of \$5,000 and over. The verification process is as follows:

- Log onto [www.lincolncounty.org](http://www.lincolncounty.org)
- On the left-hand side of the webpage, click on "Services." From the drop-down box menu, select "Tax Inquiry System."
- Scroll to the bottom of the page. Select either "HTML" or "JAVA" version of the Public Inquiry System.
- You will be prompted for information from that point.

Bids and quotes for Federal assistance purchases and projects shall not be accepted, nor a purchase order issued to, any vendor or contractor that is suspended or debarred per 2 CFR Part 1200 following the guidelines in 2 CFR Part 180.

### **Local Buying Preference**

It is the desire of the County to purchase from vendors located within Lincoln County and the State of North Carolina whenever possible. This can be accomplished by insuring that local vendors who have goods or services available which are needed by the County are included in the competitive purchasing process. The County has a responsibility to its residents; however, to insure that maximum value is obtained for each public dollar spent. **The County cannot and will not make purchasing decisions solely on the basis of vendor residence.** Rather, the County will endeavor to encourage local, county and state vendors and suppliers to compete for all County business.



## **Vendor Appeals**

Any party which is a perspective 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 or 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) calendar days of County transmitting the announcement of intent to award.

The protest must be addressed to Lincoln County, Purchasing Agent, 115 West Main St. Lincolnton, NC 28092 and must include the following information:

- 1) Name, address, telephone number, fax number and e-mail of protester.
- 2) Signature of the protester or authorized agent.
- 3) The bid name and number.
- 4) A detailed statement of the legal and factual grounds of protest including copies of relevant documents.
- 5) Any supporting exhibits, evidence or documents to substantiate any claims
- 6) The form for relief requested.

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

A decision of the Purchasing Agent may be appealed to the County Manager or County Commission. An appeal must be in writing and be delivered to the County Manager: 115 West Main St. Lincolnton, NC 28092 within seven (7) calendar days of the Purchasing Agents emailed decision.

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

## **Conflicts of Interest**

Conflicts of interest, and even the appearance of conflicts of interest, can seriously erode public confidence in its local government. You should always be aware of how a purchasing action might appear to the public and should adhere to Article 5, Section 3 of the Lincoln County Personnel Policy.

No elected official, appointed officer or employee of Lincoln County shall knowingly:

- 1) Engage in any business or transaction in which the person has a financial interest, which is incompatible with the proper discharge of official duties;
- 2) Disclose confidential information concerning the property, government or affairs of the government body by which such person is engaged or is a member of without proper legal authorization, or use that information to advance the financial or other private interest of such person or others;

- 3) Accept any gift from any person, firm or corporation which to his or her knowledge is interested, directly or indirectly, in business dealings with the government body he/she is a member of or by which such person is engaged; provided, however, that an elected official who is a candidate for public office may accept election campaign contributions and services in connection with any election campaign;
- 4) Represent private interests other than his or her own in any action or proceeding against the County, or any portion of its government; or
- 5) Vote or otherwise actively participate in the negotiation or the making of any contract between the County and any business or entity in which he/she has a financial interest.

Exceptions to Public officers or employees benefiting from public contracts will be followed according to G.S. 14-234.

### **Gifts and Favors**

It shall be unlawful for any contractor, subcontractor, or supplier who:

- 1) Has a contract with a governmental agency; or
- 2) Has performed under such a contract within the past year; or
- 3) Anticipates bidding on such a contract in the future

to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:

- 1) Preparing plans, specifications, or estimates for public contract; or
- 2) Awarding or administering public contracts; or
- 3) Inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

- 1) Preparing plans, specifications, or estimates for public contracts; or
- 2) Awarding or administering public contracts; or
- 3) Inspecting or supervising construction

willfully to receive or accept any such gift or favor.

A violation of subsection (a) shall be a Class 1 misdemeanor.

Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

This section shall follow Article 5, Section 2 of the Lincoln County Personnel Policy for Gifts and Favors. This section is not intended to prevent a public servant from receiving a gift that would be permitted under and G.S. 133-32 and G.S. 138A 32, or the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental

employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift. [GS.14-234]

**State law references:** Gifts and favors regulated G.S. 133-32

### **Lobbying**

No Federal funds will be used to influence anyone in connection with awarding a Federal contract, grant or cooperative agreement. 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352.

## **II METHODS OF PURCHASING**

### **Category 1: General Procurement Methods:**

Below are the methods of purchasing available to the County. You need to become familiar with all of them so that you can determine which method is appropriate for a particular purchase in your department. As stated before, if you are unsure which method to use, consult the Purchasing Agent before you make the purchase. Disagreements between the Purchasing Agent and a Director about the proper method of purchase will be resolved by the County Manager.

**STATE CONTRACT AND COOP PURCHASING SHALL BE REVIEWED FOR ITEMS OR SERVICES A DEPARTMENT WISHES TO PROCURE BEFORE PROCEEDING WITH THE ANY PURCHASING METHOD BELOW.**

#### **Purchases on the open market**

**Purchases with an expected expenditure of less than \$1,000.00 will be made on the open market without quotations;** however, competition should be sought. Purchases should be made using P-Cards when possible. See Procurement Card Policy in Appendix A.

#### **Departmental Informal Quote Process \$1,000 - \$2,499.99**

**The Departmental Informal Quote** process must be followed when the purchases of **apparatus, supplies, materials and equipment or for construction, repairs and renovation projects** with an estimated cost of \$1,000.00 but less than \$2,500.00. **The using department will follow the informal quote process which requires a purchase order being issued after having obtained three (3) quotes for the specific purchase, work or repair.** At the discretion of the Purchasing Agent or County Manager the requirement for three quotations may be reduced or

waived. All requests for a reduction or waiver of quotations must be in writing to the Purchasing Agent or County Manager. The reduction to the number or waiver of quotations will be on a case by case basis. Each vendor must be given sufficient information to assure that the quotes are for the same item, work or repair requested from each vendor. The information given the vendors should be written on the quote sheet, or attached to it, so that the Purchasing Agent can confirm what was quoted. Specific brands and models should be listed if possible. These quotes may be received via email, oral communication (either verbal or by telephone), fax, and catalog/website; however, a log must be kept on all verbal and telephone quotes. The quotes and/or telephone log sheet must be scanned and attached to the requisition (Appendix B). The original quotes and telephone bid sheet shall be retained by the using department.

### **Departmental Informal Quote Process \$2,500 - \$4,999.99**

**Informal quote** procedures must be followed when the **purchase of apparatus, supplies and equipment or construction, repairs and renovation projects** requires an estimated expenditure of \$2,500.00 but less than \$5,000.00. **The using department will follow the informal quote process which requires a purchase order being issued after having obtained three (3) quotes for the specific purchase, work or repair.** At the discretion of the Purchasing Agent or County Manager the requirement for three quotations may be reduced or waived. All requests for a reduction or waiver of bids or proposals must be in writing using the Informal Quote/Bid/Proposal Waiver Form (Appendix B) to the Purchasing Agent or County Manager. The reduction to the number or waiver of quotations will be on a case by case basis. Each vendor must be given sufficient information to assure that the quotes are for the same or a similar product or repair. The information given to the vendors should be issued on the Request for Quotes Form (Appendix B). These quotes may be received via email. **Oral communication (either verbal or by telephone) will not be accepted.** The quotes must be scanned and attached to the requisition. The original quotes shall be retained by the using department.

### **Purchasing Informal Sealed Bid and Proposal Process**

**Informal sealed bid** procedures must be followed when the **purchase of apparatus, supplies and/or equipment** requires an estimated expenditure of \$5,000.00 but less than \$90,000.00. **For construction, repairs and renovation**, informal sealed bid procedures must be followed if the project requires an estimated expenditure of \$5,000.00 but less than \$500,000.00. The informal sealed bid and proposal process requires a purchase order be issued, after having obtained three (3) sealed written bids or proposals by the Purchasing Agent for the specific work or repair. At the discretion of the Purchasing Agent and County Manager the requirement for three bids or proposals may be reduced or waived. All requests for a reduction or waiver of bids or proposals must be in writing using the Informal Quote/Bid/Proposal Waiver Form (Appendix B) to the Purchasing Agent and County Manager. The reduction to the number or waiver of bids or proposals will be on a case by case basis. Each vendor must be given sufficient information to assure that the bids or proposals are for the same work or repair requested from each vendor. The information given the vendors should be written and shall give the County the right to reject any and all bids or proposals. These bids or proposals may be received via Federal Express, UPS, U.S. Postal Service, and other delivery services. This information will be recorded on a bid

tabulation sheet and posted on the website after bid or proposal is awarded. The original bids or proposals shall be retained by the Purchasing Agent.

**Below are the specific steps involved in this process:**

- 1) The bid or proposal opening should not be held before 2:00 pm so that all Federal Express, UPS, U.S. Postal Service, and other delivery services have had ample time to deliver all bids, and the Purchasing Agent has been able to check them all. **The outer most packaging of the bids shall be sealed.**
- 2) There should be a specific cut-off date of one week prior to the bid or proposal opening for any potential submitter to request, in writing to the Purchasing Agent, for a clarification of any aspect of the bid documents. The Purchasing Agent will respond, in an addendum to all questions. Emailed questions are recommended to speed the process. All addenda must be posted to [www.lincolncounty.org](http://www.lincolncounty.org) at least 72 hours before the time for the bid or proposal opening
- 3) No change in the bid or proposal date can be made within 72 hours of the date and time set for the bid opening. Exemptions are disaster, weather or emergency that would close County offices or take County personnel away that attend the opening.
- 4) Bid and proposal packets can be received by mail or express carrier, addressed to the Purchasing Agent, or they can be hand delivered to either the Purchasing Agent or the Receptionist on the third floor of County Government Center. If hand delivered, the Purchasing Agent or the Receptionist must give the person a receipt as evidence of receiving the bid packet.
- 5) Once turned in, the bid and proposal packets cannot leave the room.
- 6) Contract must be awarded to the lowest responsible, responsive bidder taking into consideration quality, performance and the time specified in the bids for the performance of the contract.
- 7) Unit must keep a record of all bids submitted
- 8) **Construction and repair** - Must solicit participation by historically underutilized businesses and must document its efforts to recruit such participation (G.S. 142-131(b)). For each building construction or repair contract in the informal bidding range, the unit must report to the department of administration's office for historically underutilized businesses the type of project, total dollar value of the project, the dollar value of minority business participation on the project and the unit's efforts to recruit minority participation

For **purchase of apparatus, supplies, equipment and/or construction/repair over \$50,000**, an Agenda Item Memorandum (Appendix B) with the Purchasing Agent's recommendation, with the bid tabulation and specifications attached shall be submitted to the Clerk to the Board of Commissioners for inclusion on the next Commissioners' meeting for action by the County Commission.

**Purchasing Formal Sealed Bid and Proposal Process**

- A. Formal procedures must be followed when the purchase of **apparatus, supplies and/or equipment** requires an estimated expenditure of \$90,000.00 or more. **For construction, repairs and renovation**, formal bid and proposal procedures must be followed if the

project requires an estimated expenditure of \$500,000.00 or more, except where the work is to be done by County personnel (force account) and the total cost of the project will not exceed \$125,000.00, including all direct and indirect costs, or if the labor does not exceed \$50,000.00. Bidding requirements will still apply to apparatus, supplies, materials or equipment purchased for use on force account projects. Force account labor must be approved by the County Commission, and a record of all costs must be maintained for public inspection.

- B. The purchase item or construction, repair and renovations project must be advertised one time, thirty (30) days prior to the bid or proposal opening in a newspaper having general circulation in the jurisdiction where bids or proposals are being solicited, stating what the bid or proposal request is for; where specifications may be obtained; any special instructions or conditions such as: attendance at a mandatory or voluntary pre-bid conference, the place, date and time of the bid or proposal opening, and the right to reject any and all bids or proposals.
- C. All formal sealed bid and proposal processes must be pre-approved by the County Manager before advertisement begins. **All formal sealed bid and proposal projects will be awarded by the County Commission.** The Director should forward his recommended specifications to the Purchasing Agent, who shall prepare the advertisement and the specifications. If an architect or engineer is preparing the advertisement and/or specifications, they shall be prepared on a Lincoln County template (Appendix B). If the Purchasing Agent wants to change any aspect of the specifications, he/she must notify the Director. If they disagree, the County Manager shall be consulted. If there is still a disagreement, the County Manager will make the final determination.

**Below are the specific steps involved in this process:**

- 1) The bid or proposal opening should not be held before 2:00 pm so that all Federal Express, UPS, U.S. Postal Service, and other delivery services have had ample time to deliver all bids or proposals, and the Purchasing Agent has been able to check them all. **The outer most packaging of the bids shall be sealed.**
- 2) There should be a **specific cut-off date of one week prior** to the bid or proposal opening for any potential submitter to request, in writing to the Purchasing Agent or designee, for a clarification of any aspect of the bid or proposal documents. The Purchasing Agent will respond, in an addendum to all questions. Emailed questions are recommended to speed the process. All addenda must be posted to [www.lincolncounty.org](http://www.lincolncounty.org) at least 72 hours before the time for the bid opening.
- 3) No change in the bid or proposal date can be made within 72 hours of the date and time set for the bid or proposal opening. Exemptions are disaster, weather or emergency that would close County offices or take County personnel away that attend the opening.
- 4) Bid and proposal packets can be received by mail or express carrier, addressed to the Purchasing Agent, or they can be hand delivered to either the Purchasing Agent or the Receptionist on the third floor of County Government Center. If hand delivered, the Purchasing Agent or the Receptionist must give the person a receipt as evidence of receiving the bid packet.
- 5) Once turned in, the bid and proposal packets cannot leave the room.

- 6) Any submitter in attendance, or their employee or agent, will be given a blank Bid Tabulation Sheet that they can fill in as the bids are read aloud. The Bid Tabulation Sheet shall be designed for each project accordingly. A Generic Bid Tab Sheet may be used where permitted (Appendix B).
- 7) At the appointed time, each bid or proposal will be opened and read **in-public**. If less than three bids or proposals are received, the bids or proposals will be returned unopened and the project re-advertised. If only one bid is received after re-advertising, it can be accepted, opened, and read aloud.
- 8) When the bids or proposals are opened by the Purchasing Agent or designee, he/she shall read aloud each base bid and each alternate bid (add or deduct). One of the witnesses will write them on the Bid Tabulation Sheet. The Purchasing Agent will make clear, as stated in the bids or proposals, that the County may elect to use or not use any alternate bid, and will select the best bid resulting from those elections. **THIS INFORMATION NEEDS TO BE INCLUDED IN THE BID SPECIFICATIONS IN THE BID OR PROPOSAL DOCUMENTS** so that every submitter readily sees it.
- 9) After all bids or proposals are received, opened, read and recorded, the Purchasing Agent will announce that the bid or proposal documents may be inspected by the submitters at this time. No one may remove any bid or proposal documents from the presence of the Purchasing Agent.
- 10) After a reasonable time for the submitters to have reviewed the documents, the Purchasing Agent and the witnesses will double-check the entries on the Bid Tabulation Sheet, note any errors, and sign the Bid Tabulation Sheet. Bidders may remain in the room for this process.
- 11) **Copies** of the bid or proposal documents, bid bond, performance and payment bonds can then be turned over to an engineering, architectural or other consultant for review of unit pricing and a recommendation. **The original bid or proposal documents will remain in the custody of the Purchasing Agent as a public record.**
- 12) Contract must be awarded to the lowest responsible, responsive bidder taking into consideration quality, performance and the time specified in the bids for the performance of the contract.
- 13) **Construction and Repair** – 5% Bid Bond and 100% Payment and Performance Bond is required with bid submittal
- 14) Negotiation with the lowest responsive, responsible bidder prior to the award is permitted only if the bidder's price proposal exceeds the funds available for the project or purchase.
- 15) **Construction and Repair** - Successful bidder enters into the contract, or else forfeits the bid bond.

A Bid/Proposal Memorandum (Appendix B) with the Purchasing Agent's recommendation, with the bid tabulation and specifications attached shall be submitted to the Clerk to the Board of Commissioners for inclusion on the next Commissioners' meeting for action by the County Commission.

**Minority contractors; separate specifications and contract** - If the cost for the construction of a building is estimated at \$300,000.00 or more, the County has established a ten-percent (10%)

goal for participation by minority contractors in the total value of work for which a contract is awarded pursuant to G.S. 143-128. In addition, for projects totaling \$300,000.00 or more, separate specifications and contracts must be prepared for the following areas of work:

- 1) Heating, ventilating, air conditioning and accessories and/or refrigeration for cold storage (where the cooling load is 15 tons or more of refrigeration);
- 2) Plumbing and gas fittings and accessories;
- 3) Electrical wiring and installations; and
- 4) General construction work not included in the three areas of this section.

**Contracting methods** - For building construction or building repair projects \$300,000.00 and above, bids may be received by using (1) single-prime, (2) separate-prime, (3) dual bidding, (4) construction management-at-risk contract or (5) alternative contracting methods authorized pursuant to G.S. 143-135.26(9) in accordance with the following:

- 1) *Single-prime* - All bidders in a single-prime project shall be required to identify on their bid the contractors they have selected for the subdivisions or branches of work for: heating, ventilating, and air conditioning; plumbing; electrical; and general. The contract shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, and compliance with G.S. 143-128.2. A contractor whose bid is accepted shall not substitute any person as subcontractor in the place of the subcontractors listed in the original bid, except:
  - a) If the listed subcontractor's bid is later determined by the contractor to be non-responsible or nonresponsive, or the listed subcontractor refuses to enter into a contract for the complete performance of bid order; or
  - b) With the approval of the County Commission for good cause shown by the contractor.

When a contract is awarded using the single-prime method, the county shall make the dispute resolution process available to subcontractors.

- 2) *Separate-prime* - Bids shall be accepted for each subdivision of work for which specifications are required to be prepared, and bids shall be awarded separately to responsible and reliable persons regularly engaged in their respective lines of work. Each separate contractor shall be directly liable to the county and to the other separate contractors for the full performance of all duties and obligations due under the terms of the contract. Contracts shall be awarded to the lowest, responsible, responsive bidders, taking into consideration quality, performance, the time specified in the bids for performance of the contract and compliance with G.S. 143-128.2.
- 3) *Dual bidding* - Bids may be received to erect, construct, alter or repair a building under both the single-prime and separate-prime contracting systems, and the contract shall be awarded to the lowest responsible, responsive bidder under the single-prime system or to the lowest responsible, responsive bidders under the separate-prime system, taking into consideration quality, performance and compliance with G.S. 143-128.2 and time specified in the bids to perform the contract. In determining the system under which the contract will be awarded to the lowest responsible, responsive bidders, the cost of construction oversight, time for completion, and other factors the County deems appropriate may be considered. The bids



received as separate-prime bids shall be received, but not opened, no less than one hour prior to the deadline for the submission of single-prime bids. The amount of a bid submitted by a subcontractor to the general contractor under the single-prime system shall not exceed the amount bid, if any for the same work by that subcontractor under the separate-prime system.

**4) Construction management contracts**

- a) *Construction management services* - The term "construction management services" means services provided by a construction manager, which may include preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.
- b) *Construction management-at-risk services* - The term "construction management-at-risk services" means services provided by a person who:
  - i) Provides construction management services for a project throughout the preconstruction and construction phases;
  - ii) Is licensed as a general contractor; and
  - iii) Guarantees the cost of the project.
- c) *Construction manager-at-risk* - The construction manager-at-risk shall contract directly with the County for all construction, shall publicly advertise, and shall prequalify and accept bids from first-tier subcontractors for all construction work. The construction manager-at-risk shall address quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, capacity to perform, and other factors deemed appropriate by the County. The County shall require the construction manager-at-risk to submit its plan for compliance with G.S. 143-128.2 for approval by the County Commission prior to soliciting bids for the project's first-tier subcontractors. A construction manager-at-risk and first-tier subcontractors shall make a good faith effort to recruit and select minority businesses for participation in contracts pursuant to G.S. 143-128.2. A construction manager-at-risk may perform a portion of the work only if:
  - i) Bidding produces no responsible, responsive bidder for that portion of the work, the lowest responsible bidder will not execute a contract for the bid portion of the work, or the subcontractor defaults and a prequalified replacement cannot be obtained in a timely manner; and
  - ii) The County approves of the construction manager-at-risk's performance of the work.

All bids shall be opened publicly and once they are opened are public records. The construction manager-at-risk shall act as the fiduciary of the County in handling and opening bids. The construction manager-at-risk shall award the contract to the lowest responsible, responsive bidder, taking into consideration quality, performance, the time specified in the bids for the performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and other factors deemed appropriate by the County and advertised as part of the bid solicitation. The County may require the selection of a different first-tier subcontractor for any portion of the work, provided the construction manager-at-risk is compensated for any additional cost incurred. When contracts are awarded using this method, the County shall provide

for a dispute resolution procedure as provided in G.S. 143-128(g). The construction manager-at-risk shall provide a performance and payment bond to the County.

- 5) *Alternative contracting method* - Local governments (the County) can seek authority to modify bidding requirements for particular projects, specifically design-build projects for building construction. While state law allows the Design Build method of construction Lincoln County has chosen not to utilize this method of construction.
- 6) *Performance, payment and bid bonds* - When a project exceeds \$300,000.00, performance and payment bonds are required for each contract that exceeds \$50,000.00 (G.S. 143-129(c)). No bid for construction or repair work valued at \$300,000.00 or above may be considered or accepted unless, at the time of the submittal, it is accompanied by a deposit in the form of cash or certified check, in an amount equal to not less than five percent (5%) of the proposal (G.S. 143-129(b)). In lieu of making a cash deposit, the bidder may file a bid bond executed by a corporate surety licensed under the laws of the State. The successful contractor shall be required to submit performance and payment bonds to secure the faithful performance of the terms of the contract and the payment of all sums due for labor and materials.
- 7) *Reporting requirements* - The Purchasing Agent shall report to the Secretary of the State
  - a) The method used;
  - b) The total value of each project;
  - c) The bid cost and relevant post bid cost;
  - d) A detailed list of contractors and subcontractors used on the project, including identification of whether the contractor was an out-of-state contractor; and
  - e) When an out-of-state contractor was used, the reason why the contractor was selected.

The reports must be filed annually beginning April 1, 2010, and thereafter must be **filed in the year in which the project is completed.**

- 8) *Dispute resolution for building construction projects (G.S. 143-128(f1))* - The County shall provide dispute resolution procedures for all building construction or repair projects. The dispute resolution procedures are available to all parties involved in the construction project, including the architect, the construction manager, and the contractors, including all levels of subcontractors, and is available for any issue arising out of the contract or construction process as long as the matter in dispute is \$15,000.00 or more. See Section 2 for Lincoln County's MWBE Recruitment Selection and Dispute Resolution policy.
- 9) *Minority participation for building construction projects (formal bids) (G.S. 143-128)(G.S. 143-131)*
  - a) Contractors, including first-tier subcontractors on construction management-at-risk projects, must identify on their bids the minority businesses they will use on the project and the total dollar value of the bid that will be performed by minority businesses. They must also include an affidavit listing the good faith efforts they have made. If contractors intend to perform all of the work with their own forces, they must submit an affidavit.
  - b) After bids are received, the apparent lowest responsible bidder must provide either:

- i) An affidavit describing the portion of the work to be executed by minority businesses, expressed as a percentage of the total contract amount showing a percentage equal to or more than the applicable goal on the project; or
  - ii) Documentation of good faith efforts to meet the goal, including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract.
- c) Within 30 days after a contract is awarded, the successful contractor must list all identified subcontractors that will be used on the project. Failure to provide the affidavit or documentation required to demonstrate good faith efforts is grounds for rejection of a bid.
- d) A subcontractor may not be replaced except:
- i) When the subcontractor's bid is determined to be non-responsible or nonresponsive or the subcontractor refuses to enter into a contract for the complete performance of the work; or
  - ii) With the approval of the County for good cause.

When selecting a substitute contractor, the contractor must make and document good faith efforts at minority recruitment. See guidelines and minority outreach plan, on file in the Purchasing Agents office.

### **Formal bid exceptions**

Formal bids and proposals are not required for the following:

- 1) State of **emergency**. The County Commission may set aside the normal requirements in an emergency involving the health and safety of people or their property. In such cases, the County Commission may let contracts as necessary in its discretion.
- 2) If a contract for the purchase, lease or other acquisition of any apparatus, supplies, materials or equipment is with other governmental unit or agency thereof within the United States.
- 3) Exemption from bidding is allowed for purchases from contractors who have, within the past 12 months, contracted to furnish the desired item to any state or local government or agency. The contractor must be 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. This process is commonly referred to as **Piggybacking**. A prior contract must have been let under public bidding process substantially similar to G.S. 143-129, and the County Commission must approve the contract at a regular meeting on ten (10) days' notice, notwithstanding delegation of authority to award contracts. Notice may be published by electronic means.
- 4) Purchases made through a **competitive bidding group purchasing program**, which is a formally organized program that offers competitively bid purchasing services at discount prices to two or more public agencies.
- 5) Purchases using 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, or conditions as established in the state contract.

- 6) Purchase of **used** apparatus, supplies, materials, or equipment. For purposes of this subsection, remanufactured or refabricated apparatus, supplies, materials, or equipment are not deemed to be "used," and are not included in this exception.
- 7) **Guaranteed energy savings** contracts, which are governed by G.S. 143-64.10 et seq.
- 8) Purchase of **information technology** using contracts established by the State Office of Information Technology Services as provided in G.S. 147-33.82(b) and 147-33.92(b).
- 9) Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or natural gas. These purchases are subject to G.S. 143-131.
- 10) In accordance with G.S. 143-129, **single-source** items are exempt from bid procedures when performance or price competition for a product are not available, when a needed product is available from only one source of supply, or when standardization or compatibility is the overriding consideration. This subsection requires action by the County Commission notwithstanding delegation of authority to award contracts and requires a record of justification for use of the exemption.

**State law references:** Exemptions from formal bid requirements, G.S. 143-129, 143-135.

### **Fixed Price Agreements Process**

- 1) Goods or services used by one or more departments on a regular and continuing basis may be purchased under a contract covering a specified extended period of time, at an established price for such goods or services which shall be valid for the duration of the contract period. Purchase agreements under this provision shall be subject to the Sealed Bid Process set out above. The departments of the County could then purchase these goods or services on an as-needed basis throughout the agreed time period at the accepted bid price with a valid purchase order.
- 2) Any Director wishing to use the fixed price agreement process should request its use by memorandum to the Purchasing Agent, with a copy to the County Manager. In addition, the Purchasing Agent may initiate the process as well by requesting its use from the County Manager. The Purchasing Agent shall be responsible for following the Sealed Bid Process set out above to procure the best terms and price. He/she shall notify all of the departments of any additions or deletions to the list of fixed price agreements currently in effect. If any department is unsure if they have the most current listing, they should contact the Purchasing Agent. **Once the County has entered into a fixed price agreement on a particular product or service, all departments must use that agreement for its duration in obtaining that product.**

### **Category 2: Special Procurement Methods:**

#### **Emergency Purchases**

The County Manager and Purchasing Agent is authorized to waive any or all bidding requirements for the purchase of **necessary goods or services** whenever an emergency condition exists which presents a threat to the safety, health and welfare of the citizens of the County and whenever such requirements would cause undue delay in the delivery of essential services under such conditions. For documentation purposes the purchaser shall send the Purchasing Division

a completed requisition with appropriate signatures and a brief explanation of the circumstances. If necessary, a confirming purchase order will be issued to the vendor.

The user department will exercise good judgment when making emergency purchases. First, determine if a true emergency does exist. ***The North Carolina Supreme Court established elements for an emergency to be exempt in Raynor v. Commissioners of Louisburg (220 N.C.348, 17 S.E.2d 495): (1) Emergency must be present, immediate and existing; (2) If the condition can be foreseen in time to take action to prevent harm to the public or if the required bidding procedure can be completed before harm occurs, the emergency exception cannot be invoked; (3) If harm to the public can be averted through temporary measures while proper bidding is being conducted, the emergency exception cannot be used to avoid bidding; (4) Failure to take proper precautions to prevent the need for an expedited contract will not be accepted as a justification for exemption.*** Second, anticipate needs and avoid emergency situations whenever possible. Emergency orders are always costly. Vendors usually charge top prices if supplies or services must be obtained on an emergency basis.

1. During working hours the following procedure should be used for emergency purchases:
  - a. Contact the Purchasing Office and give all pertinent information to obtain a purchase order. The information needed will include the vendor name, item(s) to be purchased with quantities, expenditure account to which the item(s) will be charged and the reason for the emergency purchase. If cost is not known, list a "Not to Exceed" (NTE) amount.
    - i. After verifying available funds, a purchase order number will be issued for the expenditure and a confirming purchase order will be mailed to the vendor. Should the purchase over encumber the account balance, a Request for Transfer of Funds form will need to be completed as soon as possible.
2. After Working hours, the following procedure should be used for emergency purchases:
  - a. Contact the Purchasing Agent and give all pertinent information to obtain a purchase order. The information needed will include the vendor name, item(s) to be purchased with quantities, expenditure account to which the item(s) will be charged and the reason for the emergency purchase. If cost is not known, list a "Not to Exceed" (NTE) amount.
    - i. The packing slip or invoice received should be coded with the account(s) to be charged and signed. Please attach a brief explanation of the nature of the emergency; verify funds available, completing a Request to Transfer Funds form if needed; and forward immediately to the Finance Department for payment.
    - ii. The Director should use established vendors when it is necessary to make emergency purchases. Always obtain the best possible price and limit purchases to those items emergency related.

All emergency purchases must be approved by the Purchasing Agent or County Manager. Emergency purchases and/or repairs equal to or greater than \$50,000.00 must be reported to the County Commission at the next regular scheduled meeting.

### **State Purchases**

Whenever any goods or services are available to the County through a contract with the state government, and when such items or services meet the requirements of a using department, such item or service may be deemed to have met all the requirements of competitive bidding and may be purchased under the state contract without regard to further government requirements. Any Director wishing to use state purchasing should contact the appropriate agency and get the information on the product and pricing, then discuss it with the Purchasing Agent. The Purchasing Agent will determine whether further bidding will be required.

### **Cooperative Purchases**

The County Manager is authorized to enter into cooperative purchasing agreements with other units of government when, in his judgment, it would be in the best interest of the County. Any Director who becomes aware of such an arrangement, or wants to create such an arrangement with other units of government should contact the County Manager's office for approval to use it.

### **RFP for Technology Goods and Services**

General Statute § 143-129.8 allows local governments to use a Request for Proposal (RFP) to purchase information technology goods and services. To provide the flexibility needed in procuring these potentially complex goods and services, Lincoln County will use the RFP process for these purchases.

### **Sole Source Purchases**

Purchases of goods and/or services valued at \$1,000.00 and over and designated as a purchase from a sole source must be approved by the County Commission. Sole source purchases are ones that due to special scientific, technological, standardization, compatibility or extraordinary specifications and circumstances, are available from only one vendor. Any such purchase shall be documented on the Sole Source Justification Form (Appendix B) as to the reasons for the sole source and shall be maintained in the Office of the Purchasing Division. Any department wishing to make a sole source purchase must furnish the Purchasing Agent with a written request which fully explains why it is essential to do so. The Purchasing Agent shall make the decision or schedule it for County Commission action.

### **Procurement of Professional Services**

Normal competitive procedures cannot be utilized in securing professional services such as attorneys, planners, architects, engineers, accountants and other professional people who, in keeping with the standards of their discipline, will not enter into a competitive bidding process. A contract for professional services shall be awarded to the best-qualified proposal based on the

evaluation of the proposals and negotiation of reasonable and fair compensation for services. The maximum duration of any contracts shall be five (5) years without again requesting proposals for such general services from the professional community. The initial selection of such professional services shall be accomplished as outlined in subsection (1) below. Fees for such services may be negotiated at the time of such designation or on a project/activities basis.

1. G.S. 143-64.31 Declaration of public policy states that except in cases of special emergency involving the health and safety of the people or their property that the County is required to:
  - a. announce all requirements for architectural, engineering, surveying and construction management at risk services,
  - b. to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm
  - c. selection of a firm under this Article shall include the use of good faith efforts by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity
  - d. North Carolina resident firm providing architectural, engineering, surveying, or construction management at risk services shall be granted a preference over a nonresident firm
2. G.S.143-64.32 Written exemption of particular contracts states that:
  - a. Units of local government may in writing exempt particular projects; however, this exemption is on a per project basis and cannot be enacted as a blanket exemption when the:
    - i. proposed project has an estimated professional fee in an amount less than fifty thousand dollars (\$50,000), or
    - ii. other particular projects exempted in the sole discretion of the unit of local government.
    - iii. In order for the project to be exempt from the requirements the County must have the County Commission approval through a resolution stating the reason or reasons and the circumstances for the exemption.

#### **Design Build Contracts (G.S. 143-128.1A)**

- 1) G.S. 143-64.31 Declaration of public policy states that except in cases of special emergency involving the health and safety of the people or their property that the County is required to:
  - a) A governmental entity shall establish in writing the criteria used for determining the circumstances under which the design build method is appropriate for a project, and such criteria shall, at a minimum, address all of the following:
    - i) The extent to which the governmental entity can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications for a design builder.

- ii) The time constraints for the delivery of the project.
  - iii) The ability to ensure that a quality project can be delivered.
  - iv) The capability of the governmental entity to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design build method of project delivery.
  - v) A good faith effort to comply with G.S. 143 128.2, G.S. 143 128.4, and to recruit and select small business entities. The governmental entity shall not limit or otherwise preclude any respondent from submitting a response so long as the respondent, itself or through its proposed team, is properly licensed and qualified to perform the work defined by the public notice issued under subsection (c) of this section.
  - vi) The criteria utilized by the governmental entity, including a comparison of the costs and benefits of using the design build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143 128(a1).
- b) A governmental entity shall issue a public notice of the request for qualifications that includes, at a minimum, general information on each of the following:
- i) The project site.
  - ii) The project scope.
  - iii) The anticipated project budget.
  - iv) The project schedule.
  - v) The criteria to be considered for selection and the weighting of the qualifications criteria.
  - vi) Notice of any rules, ordinances, or goals established by the governmental entity, including goals for minority and women owned business participation and small business participation.
  - vii) Other information provided by the owner to potential design builders in submitting qualifications for the project.
  - viii) A statement providing that each design builder shall submit in its response to the request for qualifications an explanation of its project team selection, which shall consist of either of the following:
    - (1) A list of the licensed contractors, licensed subcontractors, and licensed design professionals whom the design builder proposes to use for the project's design and construction.
    - (2) An outline of the strategy the design builder plans to use for open contractor and subcontractor selection based upon the provisions of Article 8 of Chapter 143 of the General Statutes.
- c) Following evaluation of the qualifications of the design builders, the three most highly qualified design builders shall be ranked. If after the solicitation for design builders not as many as three responses have been received from qualified design builders, the governmental entity shall again solicit for design builders. If as a result of such second solicitation not as many as three responses are received, the governmental entity may then begin negotiations with the highest ranked design builder under G.S. 143 64.31 even though fewer than three responses were received. If the governmental entity deems it appropriate, the governmental entity may invite some or all responders to interview with the governmental entity.



- d) The design builder shall be selected in accordance with Article 3D of this Chapter. Each design builder shall certify to the governmental entity that each licensed design professional who is a member of the design build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by G.S. 143 64.31.
- e) The design builder shall provide a performance and payment bond to the governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. The design builder shall obtain written approval from the governmental entity prior to changing key personnel as listed in sub subdivision (c)(8)a. of this section after the contract has been awarded.

### **Design Build Bridging Contracts (G.S. 143-128.1B)**

- 1) G.S. 143-64.31 Declaration of public policy states that except in cases of special emergency involving the health and safety of the people or their property that the County is required to:
  - a) A governmental entity shall establish in writing the criteria used for determining the circumstances under which the design build method is appropriate for a project, and such criteria shall, at a minimum, address all of the following:
    - i) The extent to which the governmental entity can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications for a design builder.
    - ii) The time constraints for the delivery of the project.
    - iii) The ability to ensure that a quality project can be delivered.
    - iv) The capability of the governmental entity to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design build method of project delivery.
    - v) A good faith effort to comply with G.S. 143 128.2, G.S. 143 128.4, and to recruit and select small business entities. The governmental entity shall not limit or otherwise preclude any respondent from submitting a response so long as the respondent, itself or through its proposed team, is properly licensed and qualified to perform the work defined by the public notice issued under subsection (c) of this section.
    - vi) The criteria utilized by the governmental entity, including a comparison of the costs and benefits of using the design build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143 128(a1).
  - b) On or before entering into a contract for design build services under this section, the governmental entity shall select or designate a staff design professional, or a design professional who is independent of the design builder, to act as its design criteria design professional as its representative for the procurement process and for the duration of the design and construction. If the design professional is not a full time employee of the governmental entity, the governmental entity shall select the design professional on the basis of demonstrated competence and qualifications as provided by G.S. 143 64.31. The design criteria design professional shall develop design criteria in consultation with the governmental entity. The design criteria design professional shall not be eligible to submit

a response to the request for proposals nor provide design input to a design build response to the request for proposals. The design criteria design professional shall prepare a design criteria package equal to thirty five percent (35%) of the completed design documentation for the entire construction project. The design criteria package shall include all of the following:

- i) Programmatic needs, interior space requirements, intended space utilization, and other capacity requirements.
  - ii) Information on the physical characteristics of the site, such as a topographic survey.
  - iii) Material quality standards or performance criteria.
  - iv) Special material requirements.
  - v) Provisions for utilities.
  - vi) Parking requirements.
  - vii) The type, size, and location of adjacent structures.
  - viii) Preliminary or conceptual drawings and specifications sufficient in detail to allow the design builder to make a proposal which is responsive to the request for proposals.
  - ix) Notice of any ordinances, rules, or goals adopted by the governmental entity.
- c) A governmental entity shall issue a public notice of the request for proposals that includes, at a minimum, general information on each of the following:
- i) The project site.
  - ii) The project scope.
  - iii) The anticipated project budget.
  - iv) The project schedule.
  - v) The criteria to be considered for selection and the weighting of the selection criteria.
  - vi) Notice of any rules, ordinances, or goals established by the governmental entity, including goals for minority and women owned business participation and small business entities.
  - vii) The thirty five percent (35%) design criteria package prepared by the design criteria design professional.
  - viii) Other information provided by the owner to design builders in submitting responses to the request for proposals for the project.
  - ix) A statement providing that each design builder shall submit in its request for proposal response an explanation of its project team selection, which shall consist of a list of the licensed contractor and licensed design professionals whom the design builder proposes to use for the project's design and construction.
  - x) A statement providing that each design builder shall submit in its request for proposal a sealed envelope with all of the following:
    - (1) The design builder's price for providing the general conditions of the contract.
    - (2) The design builder's proposed fee for general construction services.
    - (3) The design builder's fee for design services.
- d) Following evaluation of the qualifications of the design builders, the governmental entity shall rank the design builders who have provided responses, grouping the top three without ordinal ranking. If after the solicitation for design builders not as many as three responses have been received from qualified design builders, the governmental entity shall again solicit for design builders. If as a result of such second solicitation not as many

as three responses are received, the governmental entity may then make its selection. From the grouping of the top three design builders, the governmental entity shall select the design builder who is the lowest responsive, responsible bidder based on the cumulative amount of fees provided in accordance with subdivision (d)(10) of this section and taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract. Each design builder shall certify to the governmental entity that each licensed design professional who is a member of the design build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by G.S. 143 64.31.

- e) The design builder shall accept bids based upon the provisions of this Article from first tier subcontractors for all construction work under this section.
- f) The design builder shall provide a performance and payment bond to the governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. The design builder shall obtain written approval from the governmental entity prior to changing key personnel, as listed under subdivision (d)(9) of this section, after the contract has been awarded.

#### **Public-private partnership construction contracts (G.S.143-128.1C)**

G.S. 143-64.31 Declaration of public policy states that except in cases of special emergency involving the health and safety of the people or their property that the County is required to:

- 1) If the governmental entity determines in writing that it has a critical need for a capital improvement project, the governmental entity may acquire, construct, own, lease as lessor or lessee, and operate or participate in the acquisition, construction, ownership, leasing, and operation of a public-private project, or of specific facilities within such a project, including the making of loans and grants from funds available to the governmental entity for these purposes. If the governmental entity is a public body under Article 33C of this Chapter, the determination shall occur during an open meeting of that public body. The governmental entity may enter into development contracts with private developers with respect to acquiring, constructing, owning, leasing, or operating a project under this section. The development contract shall specify the following:
  - i. The property interest of the governmental entity and all other participants in the development of the project.
  - ii. The responsibilities of the governmental entity and all other participants in the development of the project.
  - iii. The responsibilities of the governmental entity and all other participants with respect to financing of the project.
  - iv. The responsibilities to put forth a good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.
- 2) The development contract may provide that the private developer shall be responsible for any or all of the following:
  - i. Construction of the entire public-private project.
  - ii. Reconstruction or repair of the public-private project or any part thereof subsequent to construction of the project.

- iii. Construction of any addition to the public-private project.
  - iv. Renovation of the public-private project or any part thereof.
  - v. Purchase of apparatus, supplies, materials, or equipment for the public-private project whether during or subsequent to the initial equipping of the project.
  - vi. A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.
- 3) The development contract may also provide that the governmental entity and private developer shall use the same contractor or contractors in constructing a portion of or the entire public-private project. If the development contract provides that the governmental entity and private developer shall use the same contractor, the development contract shall include provisions deemed appropriate by the governmental entity to assure that the public facility or facilities included in or added to the public-private project are constructed, reconstructed, repaired, or renovated at a reasonable price and that the apparatus, supplies, materials, and equipment purchased for the public facility or facilities included in the public-private project are purchased at a reasonable price. For public-private partnerships using the design-build project delivery method, the provisions of G.S. 143-128.1A shall apply.
- 4) A private developer and its contractors shall make a good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.
- 5) A private developer may perform a portion of the construction or design work only if both of the following criteria apply:
- i. A previously engaged contractor defaults, and a qualified replacement cannot be obtained after a good-faith effort has been made in a timely manner.
  - ii. The governmental entity approves the private developer to perform the work.
- 6) The following bonding provisions apply to any development contract entered into under this section:
- i. A payment bond shall be required for any development contract as follows: A payment bond in the amount of one hundred percent (100%) of the total anticipated amount of the construction contracts to be entered into between the private developer and the contractors to design or construct the improvements required by the development contract. The payment bond shall be conditioned upon the prompt payment for all labor or materials for which the private developer or one or more of its contractors or those contractors' subcontractors are liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor or services for which the private developer or its contractors or subcontractors are liable. The total anticipated amount of the construction contracts shall be stated in the development contract and certified by the private developer as being a good-faith projection of its total costs for designing and constructing the improvements required by the development contract. The payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the development contract. The development contract may provide for the requirement of a performance bond.
    - (a) Subject to the provisions of this subsection, any claimant who has performed labor or furnished materials in the prosecution of the work required by any

contract for which a payment bond has been given pursuant to the provisions of this subsection, and who has not been paid in full therefor before the expiration of 90 days after the day on which the claimant performed the last labor or furnished the last materials for which that claimant claims payment, may bring an action on the payment bond in that claimant's own name to recover any amount due to that claimant for the labor or materials and may prosecute the action to final judgment and have execution on the judgment.

- (b) Any claimant who has a direct contractual relationship with any contractor or any subcontractor but has no contractual relationship, express or implied, with the private developer may bring an action on the payment bond only if that claimant has given written notice of claim on the payment bond to the private developer within 120 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which that claimant claims payment, in which that claimant states with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished.
- (c) The notice required by sub-subdivision b. of this subdivision shall be served by certified mail or by signature confirmation as provided by the United States Postal Service, postage prepaid, in an envelope addressed to the private developer at any place where that private developer's office is regularly maintained for the transaction of business or in any manner provided by law for the service of summons. The claimants' service of a claim of lien on real property or a claim of lien on funds as funds as allowed by Article 2 of Chapter 44A of the General Statutes on the private developer shall be deemed, nonexclusively, as adequate notice under this section.
- b) Every action on a payment bond as provided in this subsection shall be brought in a court of appropriate jurisdiction in a county where the development contract or any part thereof is to be or has been performed. Except as provided in G.S. 44A-16(c), no action on a payment bond shall be commenced after one year from the day on which the last of the labor was performed or material was furnished by the claimant.
- c) No surety shall be liable under a payment bond for a total amount greater than the face amount of the payment bond. A judgment against any surety may be reduced or set aside upon motion by the surety and a showing that the total amount of claims paid and judgments previously rendered under the payment bond, together with the amount of the judgment to be reduced or set aside, exceeds the face amount of the bond.
- d) No act of or agreement between the governmental entity, a private developer, or a surety shall reduce the period of time for giving notice under sub-subdivision (2)b. of this subsection or commencing action under subdivision (3) of this subsection or otherwise reduce or limit the liability of the private developer or surety as prescribed in this subsection. Every bond given by a private developer pursuant to this subsection shall be conclusively presumed to have been given in accordance with the provisions of this subsection, whether or not the bond is drawn as to conform to this subsection. The provisions of this subsection shall be conclusively presumed to have been written into every bond given pursuant to this subsection.

- e) Any person entitled to bring an action or any defendant in an action on a payment bond shall have a right to require the governmental entity or the private developer to certify and furnish a copy of the payment bond, the development contract, and any construction contracts covered by the bond. It shall be the duty of the private developer or the governmental entity to give any such person a certified copy of the payment bond and the construction contract upon not less than 10 days' notice and request. The governmental entity or private developer may require a reasonable payment for the actual cost of furnishing the certified copy. A copy of any payment bond, development contract, and any construction contracts covered by the bond certified by the governmental entity or private developer shall constitute prima facie evidence of the contents, execution, and delivery of the bond, development contract, and construction contracts.
- 7) A payment bond form containing the following provisions shall comply with this subsection:
- a) The date the bond is executed.
  - b) The name of the principal.
  - c) The name of the surety.
  - d) The governmental entity.
  - e) The development contract number.
  - f) All of the following:
    - i) "KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above named [governmental entity], hereinafter called [governmental entity], in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents."
    - ii) "THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal entered into a certain development contract with [governmental entity], numbered as shown above and hereto attached."
    - iii) "NOW THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the construction or design work provided for in the development contract, and any and all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue."
    - iv) "IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body." Appropriate places for execution by the surety and principal shall be provided.
- 8) In any suit brought or defended under the provisions of this subsection, the presiding judge may allow reasonable attorneys' fees to the attorney representing the prevailing party. Attorneys' fees under this subdivision are to be taxed as part of the court costs and shall be payable by the losing party upon a finding that there was an unreasonable refusal by the losing party to fully resolve the matter which constituted the basis of the suit or the basis of the defense. For purposes of this subdivision, the term "prevailing party" means a party

plaintiff or third-party plaintiff who obtains a judgment of at least fifty percent (50%) of the monetary amount sought in a claim or a party defendant or third-party defendant against whom a claim is asserted which results in a judgment of less than fifty percent (50%) of the amount sought in the claim defended. Notwithstanding the provisions of this subdivision, if an offer of judgment is served in accordance with G.S. 1A-1, Rule 68, a "prevailing party" is an offeree who obtains judgment in an amount more favorable than the last offer or is an offeror against whom judgment is rendered in an amount less favorable than the last offer.

- 9) The obligations and lien rights set forth in Article 2 of Chapter 44A of the General Statutes shall apply to a project awarded under this section to the extent of any property interests held by the private developer in the project. For purposes of applying the provisions of Article 2 of Chapter 44A of the General Statutes, the private developer shall be deemed the owner to the extent of that private developer's ownership interest. This subdivision shall not be construed as making the provisions of Article 2 of Chapter 44A of the General Statutes apply to governmental entities or public buildings to the extent of any property interest held by the governmental entity in the building.
- 10) The governmental entity shall determine its programming requirements for facilities to be constructed under this section and shall determine the form in which private developers may submit their qualifications. The governmental entity shall advertise a notice for interested private developers to submit qualifications in a newspaper having general circulation within the county in which the governmental entity is located. Prior to the submission of qualifications, the governmental entity shall make available, in whatever form it deems appropriate, the programming requirements for facilities included in the public-private project. Any private developer submitting qualifications shall include the following:
  - a) Evidence of financial stability. However, "trade secrets" as that term is defined in G.S. 66-152(3) shall be exempt from disclosure under Chapter 132 of the General Statutes.
  - b) Experience with similar projects.
  - c) Explanation of project team selection by either listing of licensed contractors, licensed subcontractors, and licensed design professionals whom the private developer proposes to use for the project's design and construction or a statement outlining a strategy for open contractor and subcontractor selection based upon the provisions of this Article.
  - d) Statement of availability to undertake the public-private project and projected time line for project completion.
  - e) Any other information required by the governmental entity.
- 11) Based upon the qualifications package submitted by the private developers and any other information required by the governmental entity, the governmental entity may select one or more private developers with whom to negotiate the terms and conditions of a contract to perform the public-private project. The governmental entity shall advertise the terms of the proposed contract to be entered into by the governmental entity in a newspaper having general circulation within the county in which the governmental entity is located at least 30 days prior to entering into the development contract. If the governmental entity is a public body under Article 33C of this Chapter, the development contract shall be considered in an open meeting of that public body following a public hearing on the proposed development contract. Notice of the public hearing shall be published in the same notice as the advertisement of the terms under this subsection.

- 12) The governmental entity shall make available a summary of the development contract terms which shall include a statement of how to obtain a copy of the complete development contract.
- 13) Leases entered into under this section are subject to approval as follows:
  - a) If a capital lease or operating lease is entered into by a unit of local government as defined in G.S. 159-7, that capital lease or operating lease is subject to approval by the local government commission under Article 8 of Chapter 159 of the General Statutes if it meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), 159-148(a)(4) or 159-153. For purposes of determining whether the standards set out in G.S. 159-148(a)(3) have been met, only the five hundred thousand dollar (\$500,000) threshold applies.
    - i. If a capital lease is entered into by a State entity that constitutes a State-supported financing arrangement and requires payments thereunder that are payable, whether directly or indirectly, and whether or not subject to the appropriation of funds for such payment, by payments from the General Fund of the State or other funds and accounts of the State that are funded from the general revenues and other taxes and fees of the State or State entities, not including taxes and fees that are required to be deposited to the Highway Fund or Highway Trust Fund, that capital lease shall be subject to the approval procedures required for special indebtedness by G.S. 142-83 and G.S. 142-84. This requirement shall not apply to any arrangement where bonds or other obligations are issued or incurred by a State entity to carry out a financing program authorized by the General Assembly under which such bonds or other obligations are payable from monies derived from specified, limited, nontax sources, so long as the payments under that arrangement by a State entity are limited to the sources authorized by the General Assembly.
- 14) A capital lease or operating lease entered into under this section may not contain any provision with respect to the assignment of specific students or students from a specific area to any specific school.
- 15) This section shall not apply to any contract or other agreement between or among The University of North Carolina or one of its constituent institutions, a private, nonprofit corporation established under Part 2B of Article 1 of Chapter 116 of the General Statutes, or any private foundation, private association, or private club created for the primary purpose of financial support to The University of North Carolina or one of its constituent institutions. (2013-401, s. 4.)

### **Real Property Acquisitions**

- 1) Easements and other limited property rights valued at less than \$25,000.00 may be negotiated and purchased by the County Attorney and the County Manager or his/her designee.
- 2) Easements and other limited property rights valued at \$25,000.00 or more shall be negotiated by the County Attorney and the County Manager or his designee, but must be approved by action of the County Commission.



- 3) All property acquired in fee simple for County use valued at less than \$25,000.00 may be negotiated and purchased by the County Attorney and the County Manager or his/her designee.
- 4) All property acquired in fee simple for County use valued at \$25,000.00 or more shall be negotiated by the County Attorney and the County Manager or his/her designee, but must be approved by action of the County Commission.
- 5) The County Commission may authorize the County Manager or his/her designee to act as their agent to acquire property at any tax lien sale.
- 6) The County shall acquire rights-of-way and utility easements, and infrastructure which is required to be dedicated by subdivision developers under provisions of the Unified Development Ordinance.

Any Director wishing to acquire any interest in property for a project must discuss it with the County Manager. The County Manager shall determine whether he/she will designate someone to negotiate on his behalf or work with the County Attorney directly on the acquisition.

### **Federally and State Funded Projects and Programs**

- 1) In accordance with the provisions of the U. S. Office of Management and Budget (OMB) Circular A-102, entitled "Grants and Cooperative Agreements with State and Local Governments," and all related provisions and laws, all Lincoln County departments, agencies and offices under the aegis of Lincoln County Commission shall comply with all federal and state procurement regulations when procuring goods and services funded in whole or in part with any federal or state grant. Further, such regulations shall supersede all local purchasing resolution provisions to the extent of any conflict.
- 2) All sub-recipient agencies receiving federal or state funds through the County of Lincoln shall also comply with the federal or state granting agency procurement regulations, which supersede all local purchasing resolution provisions.

### **Library Procurement**

- 1) The Lincoln County Library may purchase books, supplies and furniture without meeting the competitive bid requirements by purchasing through Mid-Atlantic Library Alliance (MALiA) or other competitive bidding group purchasing program with the following stipulations:
  - a) Only contracted vendors of MALiA or other competitive bidding group purchasing program will be used
  - b) Purchase Orders will be issued for orders over \$1000
- 2) The utilization of a non-contracted vendor through MALiA or other competitive bidding group purchasing program or a vendor not associated with MALiA, or other competitive bidding group purchasing program will require purchasing procedures be followed based on dollar thresholds set forth in this policy.

## **METHODS OF PROPERTY DISPOSAL**

The County Commission is authorized to sell any real or personal property owned or held by the County, and not needed for governmental or other public purposes in such manner as is required in G.S. 160A, Article 12 and G.S. 153A-176 for counties.

### **Responsibility**

- 1) Disposal of surplus property is the responsibility of the Purchasing Agent and is accomplished by trade-in at the time new equipment is purchased, transferred to another County Agency, sold public auction, electronic auction, sealed bid, negotiated offer with upset bid, or exchange. Trade-ins with purchase are specifically authorized and exempted from otherwise applicable statutes governing disposal of surplus property. A Surplus Property Form (Appendix B) should be submitted and clearly marked "Trade In" for property that is traded in, when applicable. Award of the bid may be based on both the purchase of equipment and the sale of trade-in property, taking into consideration the amount offered on the trade-in when applying the criteria for award established in G.S. 143-129. Resolution dated January 26, 2004 authorizes Lincoln County to utilize electronic auctions provided by a third party provider. Currently Lincoln County uses GovDeals for this service. The above mentioned resolution authorizes the notice for public auction for real or personal property by electronic means.
- 2) If it is determined that trade-in is not to the advantage of the County, the surplus property will be offered to all other County agencies on an equal basis.
- 3) If the property is neither traded nor transferred, it is offered for sale by public auction; electronic auction; private negotiation and sale; advertisement for sealed bids; negotiated offer, advertisement, and upset bid; or exchange. The procedures applied will be based upon the type of property (real or personal) and the value of the property at the time of sale.

### **Declaring Personal Property Surplus**

All personal property will be declared surplus by the Director or his/her designee by completing a Surplus Property Form (Appendix B). When replacing equipment or motor vehicles that are considered fixed assets the completed surplus form shall be forwarded to the Purchasing Agent or designee within four weeks of placement of new/replacement asset in service. The surplus vehicle or equipment must be the same as the replacement unless prior approval has been given (dump truck for dump truck or car for car). It is the intent of the Lincoln County Government not to add to the fleet of vehicles or equipment unless approved prior to the purchase. After completion of said form it shall be submitted to the Director for approval. The Director will submit the form to the Purchasing Agent or designee which will initiate the disposal process. The department submitting the Surplus Property Form will take surplus item(s) to the Field Operations Center until sold and picked up by the buyer. Keys for the vehicles shall be placed in the lock box located at the Field Operations Center.

### **Condition of Surplus Property**

- 1) All property -- regardless of cost -- that has been declared surplus must be free of cannibalization. No factory parts are to be stripped from the vehicle or equipment. Furthermore, no parts are to be salvaged and replaced with inferior parts. Tires may be swapped if they match an existing vehicle in-service.
- 2) All vehicles and equipment must be cleaned and made as presentable as possible prior to submittal to the Purchasing Department for disposal.

### **Disposal Process**

- 1) The Purchasing Agent or designee will compile a listing of obsolete property from the Surplus Property Forms every month or as necessary Any Director who requests transfer of items to his department must make a request to the Purchasing Agent within five working days. Where multiple requests are made by Directors for transfer of an item the Purchasing Agent shall make the decision of which Department will receive the transfer. The Purchasing Agent will update the list for inclusion on the agenda of the next County Commission meeting.
- 2) The Purchasing Agent or designee will take photographs of surplus property listed on the Surplus Property Form(s). All items will be posted to GovDeals website for the next auction. Lincoln County will list vehicles and motorized equipment for a minimum of twenty-one (21) days and all other items for a minimum of fourteen (14) days.
- 3) The Purchasing Agent or designee shall determine the starting bid taking into consideration the present market value, depreciation, condition of the property, and other factors affecting value. After a determination of the starting bid, the Purchasing Agent or designee, by any manner deemed necessary, is authorized to sell or exchange any property for fair market value and has full authority to convey good title to the property. A record of all transactions shall be kept generally describing the property sold or exchanged, to whom it was sold, or with whom exchanged, and the amount of money or other consideration received for each sale or exchange.

### **Viewing/Inspection of Surplus Property**

- 1) Appointments will be scheduled buy the Purchasing Agent or designee Monday through Friday 0830-1100 and 1330-1600 at the Field Operations Center.

### **Payment for the Item/Completing the Sale**

- 1) Payment and terms are as listed :
  - a. Full Payment is due not later than 5 business days from the time and date of the Buyer's Certificate (GovDeals only) or at the completion of the sale through other methods.
  - b. Acceptable forms of payment are:
    - i. U. S. Currency
    - ii. Certified Cashier's Check
    - iii. Money Order
    - iv. Company Check (with Bank Letter guaranteeing funds – **mandatory**)
    - v. Checks shall be made payable to: Lincoln County Government.

- vi. Credit and Debit Cards (Lincoln County reserves the right to recover fees associated with use of credit and debit cards that are not processed through GovDeals.)
- 2) **GovDeals Only:** Purchasing will receive an e-mail confirmation after the auction closes with a seller's certificate. When payment is received through GovDeals, Purchasing will receive an email with the Bill of Sale. **Items shall not be released until Purchasing has a copy of the BOS.**
- 3) **All Other Methods:** The buyer or their agent will contact the Finance Department to arrange payment, and Purchasing for removal of the item(s). The Finance Department will complete the process by collecting the money, issuing a receipt to the buyer or their agent and removing items associated with fixed assets from the County's asset listing.
- 4) Upon arrival of the buyer or their agent, the Purchasing Agent or designee will ask to see the seller's certificate (GovDeals) or receipt from Finance for verification of payment.
- 5) **GovDeals Only:** The buyer or agent will sign a copy of the Bill of Sale as proof of their picking up the item(s). The Purchasing Agent will attach the signed BOS to the ACH Payment form received from GovDeals and fill out and attach a Daily Cash Report. These forms will be forwarded to the Finance Department. The Finance Department will complete the process by removing items associated with fixed assets from the County's asset listing.

#### **Removal of purchase from County Buildings or Property**

- 1) All items must be removed within 10 business days from the time and date of issuance of the Seller's Certificate or payment to the Finance Department. A storage fee of \$10.00 a day will be assessed starting on the eleventh day. Items with imposed storage fees will not be released until payment for storage fees are paid at the Finance Office.
- 2) Purchases will be released only upon receipt of payment as specified.
- 3) Successful bidders are responsible for loading and removal of any and all property awarded to them from the place where the property is located as indicated on the website and in the Seller's Certificate.
- 4) The Buyer will make all arrangements and perform all work necessary, including packing, loading and transportation of the property. Buyer is responsible for any damages caused during removal to County property. Under no circumstances will Lincoln County Government assume responsibility for packing, loading or shipping.
- 5) The only role that the County will serve during this time is as an overseer or verifier.
- 6) Property may be removed Monday through Friday 0830-1100 and 1330-1600, excluding legal holidays.

#### **Reporting**

- 1) The Purchasing Agent will provide the County Manager with a report no less than once a quarter with the amount of money generated from the sale of surplus property.

#### **Unsold Items**

- 1) The County Manager and/or the Purchasing Agent may discard any personal property that:
  - a. Is determined to have no value;
  - b. Remains unsold or unclaimed after the County has exhausted efforts to sell the property using any applicable procedures; or
  - c. Poses a threat to the public health or safety.

### **Sale to Employees**

- 1) Any County employee who has the responsibility of declaring an item to be surplus property shall not purchase or obtain the item under any circumstances for personal use.

### **Sheriff's unclaimed, confiscated, abandoned, and seized property (G.S. Chapter 15, Article 2)**

Unclaimed, confiscated, abandoned and seized property in the possession of the Sheriff's Department shall follow the procedures set out below and set forth in G.S. Chapter 15, Article 2 for disposal. The money received from such disposal must go to the County's school system. The following processes must be followed:

- 1) items have remained unclaimed for a period of 180 days with the exception of bicycles;
  - a. an advertisement published one time in a newspaper in Lincoln County containing a notice to the effect that such articles are in the custody of the Lincoln County Sheriff's department, and requiring all persons who may have or claim any interest therein to make and establish such claim or interest not later than 30 days from the date of the publication of such notice or in default thereof, or such articles will be sold and disposed of. Such notice shall contain a brief description of the said articles and such other information that may be considered necessary or advisable to reasonably inform the public as to the kind and nature of the article about which the notice relates.
  - b. The proceedings for disposal of unclaimed bicycles may be started after a waiting period of sixty (60) days. The bicycles may be donated to a charitable organization exempt under section 501(c)(3) of the Internal Revenue Code. If the bicycles are to be donated, the notice shall state that information as the intended disposition if they are not claimed.

### **Awarding Service Weapons to Retiring Law Enforcement Officers**

Resolution #2010-54 (Appendix A) authorizes the County Manager to award service weapons to any sworn Lincoln County Deputy meeting the following criteria:

- 1) Deputy is qualified for retirement
- 2) Is in good standing with the department at the time of retirement
- 3) On whose behalf the Lincoln County Sheriff has filed a written request with the County Manager.

### **Disposal of Removed Library Books**

The Library Director may dispose of removed or damaged books using the following methods:

- 1) GovDeals
- 2) Public Book Sale
- 3) Private Negotiated Sale. For large quantities only. Must have County Managers approval.

Books must be deemed surplus by the Library Director. A generic list of books to be disposed shall be submitted to the Purchasing Agent or designee to be included on the Surplus Property Form for Board of Commissioners approval at a regularly scheduled meeting.

All other library property shall be disposed of following normal procedures outlined in this policy under “**Methods of Property Disposal**”.

### **Sale of Surplus Property to Fire and Rescue Departments**

Resolution #2010- (Appendix A) authorizes the sale of surplus property to fire and rescue departments that service Lincoln County if the following criteria are met:

- 1) A request must be submitted by the Fire Chief or Rescue Captain to the Purchasing Agent
- 2) The department is a nonprofit 501(c)3 organization

# Appendix A

**Finance**

**Procurement Cards (P-Cards)**

Approved: August 20, 2012

**POLICY:**

Procurement Cards (P-cards) provide a more rapid turnaround of purchases for low dollar value goods, and reduce paperwork and handling costs. By using the P-card, the traditional requisition, pricing inquiry, order placement, delivery of goods, and invoice payment cycle is greatly simplified. Personnel who receive P-cards may initiate transactions and receive goods in person, by telephone or through the Internet within the limits of this policy. Payments to vendors are via the Bank of America Procurement Card System.

**DEFINITIONS:**

Abbreviations

PCPS	Procurement Card Purchasing System
P Card	Procurement Card

Definitions

Vendor:	Company from which a cardholder is purchasing materials, equipment or services.
Cardholder:	Individual issued a procurement card giving authorization to make purchases in accordance with the established procedures.
Supervisor:	Person who the procurement cardholder reports to. This individual shall review and approve a cardholder's monthly statement of account.
Administrator:	Person(s) responsible for the details of the procurement card program and all cardholder inquiries. Lincoln County designates the Finance Director as the Administrator.
Statement of Account:	Monthly listing of all transactions by the cardholder issued by the bank directly to the cardholder.
Single Purchase	



Limit: Dollar amount limitation of purchasing authority delegated cardholder.  
This dollar limit may vary from cardholder to cardholder.

Monthly

Purchase Limit: Total monthly dollar limitation of purchasing authority delegated to a cardholder. This dollar amount may vary from cardholder to cardholder.

Departmental

Administrator: The person designated within a department to be the initial contact, coordinator, and approver of procurement card transactions and statements.

### **RECEIVING A P-CARD:**

- 1) Directors may propose personnel to be cardholders by completing a "Procurement Cardholder Enrollment Form" (Exhibit A)
- 2) The proposed cardholder shall be issued a copy of this procedure, and shall be required to sign a "Procurement Card Employee Agreement (Exhibit B) indicating that the cardholder understands the procedure and the responsibilities of a Procurement Card Cardholder.
- 3) The Procurement Card Administrator will determine the dollar limitations issued to the cardholder.
- 4) The Procurement Card Administrator shall maintain all records of credit card requests and credit limits assigned to cardholders. The Procurement Card Administrator shall also maintain records of cardholder transfers, lost or stolen cards and cards destroyed.

### **AUTHORIZED P-CARD USE:**

- 1) The Cardholder will receive a procurement card with her name embossed on it. It is for use ONLY by the Cardholder. Authorization is limited to the person named on the card and no one else. The cardholder is responsible for all usage of her is card.
- 2) Use of the Procurement Card shall be limited to the following conditions:
  - a. The total value of a transaction shall not exceed a cardholder's single purchase limit. Purchases cannot be split into multiple transactions to stay within the single purchase limit.
  - b. The total value of a transaction(s) shall not exceed the cardholder's monthly purchase limit.
  - c. Spending limits will be strictly adhered to.
- 3) The cardholder will inform the vendor that the goods are taxable.

### **UNAUTHORIZED P-CARD USE:**

- 1) The procurement card MAY NOT BE USED for the following:
  - a. Anything that is not a necessary and authorized purchase for the operation of the County
  - b. Personal purchases
  - c. Identification

- d. A purchase that exceeds the preset limit for a cardholder's single purchase limit
  - e. Air travel, rail travel, meals and entertainment expenses
  - f. Cash Advances
  - g. Telephone calls or monthly services
  - h. Vendor types, which have Merchant Blocking (Exhibit C)
- 2) A cardholder who makes unauthorized purchases or carelessly uses the procurement card may be liable for the total dollar amount of such unauthorized purchases plus any administrative fees charged by the bank in connection with the misuse. The cardholder will also be subject to disciplinary action, which may include termination.

### **MAKING A PURCHASE**

- 1) The County's Purchasing Policy permits the purchase of goods or services with a value of \$500 or less, from a "Vendor of Choice." This implies the possibility of not comparing sources or competition between vendors for smaller purchases. However, it is also policy to seek competition and the lowest prices within the parameters of quality and delivery. Accordingly, whenever making a P-card purchase, the cardholder will check as many sources of supply as reasonable to the situation to assure best price and delivery, and when possible, use existing vendors.
- 2) Cardholders will utilize the following "checklist" when making a purchase by phone or internet:
- a) To secure the best pricing available, solicit a reasonable number of sources that provide the materials or service.
  - b) Confirm that the vendor agrees to accept the P-card.
  - c) Direct the vendor to include the following information on the shipping label and packing list:
    - i) Cardholder's name and telephone number
    - ii) Complete delivery address
    - iii) The words "PROCUREMENT CARD PURCHASE"
    - iv) The vendor's order number
  - d) It is extremely important that all purchases be sent to the cardholder ordering the merchandise as this will ensure that the documents necessary for the record keeping listed in the following section are readily available to the cardholder.
  - e) If necessary, advise the individual within your area who receives merchandise of the vendor's name and order number, anticipated delivery date, number of boxes expected, carrier (UPS, Fed Ex, etc) and to notify the cardholder when delivered.

### **CARDHOLDER RECORD KEEPING**

- 1) Documentation and retaining a printed copy of receipts will be proof of purchase when making over the counter, telephone or internet p-card purchases. The monthly statement of accounts will use the documentation to verify the purchases. When the

purchase is made over the counter, the cardholder shall retain the invoice and "Customer Copy" of the charge receipt. The cardholder is responsible to check that the vendor lists the quantity, fully describes the item(s) and includes sales tax, prior to the cardholder signing the slip.

- 2) Upon receipt of telephone orders, retain all shipping documentation.
- 3) If ordering by internet, print out a copy of the order and confirmation of order.
- 4) When making a purchase the cardholder shall complete the "Missing Purchase Receipt Log" (Exhibit D) if the receipt is missing.

## **REVIEW OF MONTHLY STATEMENT**

- 1) At the end of each billing cycle, the Finance Department will send the Cardholder a monthly statement of account that will list the Cardholder's transactions for that period.
- 2) The Cardholder shall check each transaction listed on the monthly statement against sales receipts and any other shipping documents to verify charges are correct. The original sales receipts, (packing slip, invoice, cash register tape and credit card slips, etc.) for all items listed on the monthly statement MUST be neatly attached, in billing sequence, to the statement. This data attachment is critical to provide audit substantiation.
- 3) The careful matching of complete support documents to the statement is vital to the successful use of this program. Each receipt shall include the General Ledger code or other documentation to ensure the proper coding of the expense. After review, the Cardholder shall sign the statement, and present the monthly statement to the approving supervisor and departmental administrator for approval and signature. After reviewing and approving the statement, the Departmental Administrator will forward all documents to Accounts Payable for incorporation with other Cardholders' statements to be reconciled with a monthly summary provided by the bank.
- 4) The approving Supervisor and Departmental Administrator shall check the cardholder's monthly statement and other documents to confirm with the cardholder the following items as a minimum:
  - i) Receipts and shipping documents exist for each document
  - ii) The goods were received or the services were performed
  - iii) The Cardholder has complied with the applicable procedures, including this PCPS procedure.
- 5) The approving Supervisor's and Departmental Administrator's signature/approval of a cardholder's monthly statement indicates that the cardholder was authorized to make those purchases and those purchases were made in accordance with the applicable procedures.
- 6) The cardholder shall review the monthly statements and secure the Approving Supervisor's approval within five (5) working days of receipt of statement. Approved monthly statements and appropriate logs and documents shall be forwarded immediately to Accounts Payable.
- 7) If the cardholder does not have documentation of a transaction listed on the monthly statement, he/she shall complete and submit a Missing Purchase Receipt Log (Exhibit D) which includes a description of the item(s) purchased, date of purchase, vendor's name and the reason for the lack of supporting documentation.

- 8) P-card Returns – If an item is not satisfactory, received wrong, damaged and/or defective, duplicate order, etc., the cardholder should make contact with the vendor to explain the problem and inquire about return policies.
- 9) If the cardholder is disputing a charge, he/she shall complete a Dispute Form (Exhibit E) and include it with the statement package.
  - i) On returned item(s) with a credit voucher, the cardholder shall verify that the credit is on the monthly statement.
- 10) If purchased items or credits are not listed on the monthly statement, the cardholder shall retain the appropriate transaction documentation until the next monthly statement. If the purchase or credit does not appear on the statement within 60 days after the date of purchase, the cardholder or Department Administrator shall notify the Procurement Card Administrator.
- 11) If items purchased with the Procurement Card are found to be unacceptable, the cardholder is responsible for obtaining replacement or correction of the items as soon as possible. Items are in dispute if the vendor has not replaced or corrected the item by the date the P-cardholder receives her monthly statement.
- 12) All purchases and monthly statements will be audited by the Finance Department.
- 13) The bank will issue statements monthly. The Finance Department will send these statements to the appropriate Department Administrator and Approving Supervisor.
- 14) More than two (2) reminders to a cardholder that an approved monthly statement is delinquent will be grounds for withdrawing the P- Card from that user.

### **P-CARD SECURITY**

- 1) It is the cardholder's responsibility to safeguard the P-card and the account number to the same degree that a cardholder would safeguard her personal credit information.
- 2) The cardholder must not allow anyone to use her account number. A violation of this trust will result in the cardholder having her card withdrawn and will face disciplinary action.
- 3) If the card is lost or stolen the cardholder shall immediately notify the Bank at 1-800-XXXXXX. Representatives are available 24 hours a day. Advise the representative that the call is regarding a VISA Procurement Card.
- 4) The cardholder also shall notify the Procurement Card Administrator (Finance Director) at 704-736-8488 no later than the next business day after reporting the card as lost or stolen.
- 5) The Procurement Card Administrator will request the issuance of a replacement card for lost or stolen cards. Subsequently, if the reported card is found, then the card shall be turned in to the Procurement Card Administrator for destruction.

### **P-CARDHOLDER SEPARATION FROM COUNTY EMPLOYMENT**

Prior to separation from Lincoln County, the P-cardholder shall surrender the P-card, current receipts and other documents to her Approving Supervisor. Upon receipt, the Approving Supervisor will review, approve and forward to Accounts Payable with the month end statement. The P-card should also be forwarded to the Procurement Card Administrator for destruction.

The P-cardholder's final pay check shall be held for the separating employee until her Approving Supervisor has approved any outstanding P-card charges for said cardholder and the P-card has been received by the Procurement Card Policy Administrator.

**FORMS ATTACHED:**

- Resolution approving Procurement Card Policy
- Procurement Cardholder Enrollment Form (Exhibit A)
- Procurement Cardholder Employee Agreement (Exhibit B)
- Vendor Type / Merchant Blocking (Exhibit C)
- Missing Purchase Receipt Log (Exhibit D)
- Vendor Dispute Form (Exhibit E)

**FOR MORE INFORMATION CONTACT:** Finance Director or Purchasing Officer

Exhibit "A"



**LINCOLN COUNTY**  
**PROCUREMENT CARD**  
**CARDHOLDER ENROLLMENT FORM**

Department: \_\_\_\_\_

Department Administrator: \_\_\_\_\_

Department Administrator Telephone No.: \_\_\_\_\_

Cardholder's Full Name: \_\_\_\_\_

Cardholder's Name: \_\_\_\_\_

(This is the Name to Appear on the Procurement Card)

Cardholder's Phone Number: \_\_\_\_\_

Card Limit Level/Per Transaction: \$ \_\_\_\_\_

Card Limit Level/Per Day: \$ \_\_\_\_\_

Card Limit Level: \$ \_\_\_\_\_

Directors Signature: \_\_\_\_\_

Exhibit "B"



LINCOLN COUNTY  
PROCUREMENT CARD  
EMPLOYEE AGREEMENT

I, \_\_\_\_\_, hereby request a Procurement Card. As a holder, I agree to comply with the following terms and conditions regarding my use of the card.

- I understand that I am being entrusted with a valuable tool, a Procurement Card, and I will be making financial commitments on behalf of the Lincoln County. I will strive to obtain the best value for the County by obtaining the best price available when possible.
- I understand that the Lincoln County is liable to Bank of America for all charges made on the card.
- I agree to use this Card for approved purchases only and agree not to charge personal purchases. I understand that my Departmental Administrator, County Procurement Card Administrator and the Finance Department will audit the use of this card and report, and take appropriate action on any discrepancies.
- I will follow the established procedures for the use of the card. Failure to do so may result in either revocation of my use of privileges or other disciplinary actions including discipline in accordance with Personnel Procedure.
- I understand that my personal credit will not be affected by any use of the Lincoln County Procurement Card.
- I have received a copy of the Procurement Card Policy and Procedures concerning the use of the card and I understand the requirements of the card's use.
- I agree to return the card immediately upon request or upon termination of employment (including retirement). Should there be any organizational change which causes my cost center to likewise change, I also agree to return my card and arrange for a new card to be issued, if appropriate.
- If the card is lost or stolen, I agree to notify the Procurement Card Administrator and Bank of America immediately.

Employee Signature

Date

Department

Director's Signature

Date

Exhibit C

**VENDOR TYPE  
MERCHANT BLOCKING**

The types of merchants listed below are blocked by Lincoln County for Procurement Card use. This means that there will be no acceptance of the credit card at the Point of Sale from Merchants in these Categories.

- Restaurants
- Bars/taverns
- Fast food restaurants
- Retail liquor
- Airlines
- Car rentals
- Cash-
- Wire transfers
  - Money orders
  - Manual cash distribution
  - Automatic cash distribution
  - Travelers checks
  - Savings bonds
- Other travel-
  - Taxis/limousines
  - Bus lines
  - Cruise lines
  - Toll and bridge fees
  - Travel agencies
  - Auto parking lots
  - Train travel
- Other services
  - Funeral services
  - Dating/escort services
  - Baby sitting services
  - Massage parlors
  - Miscellaneous personal services
  - Child care services
- Health services
  - Ambulance service
  - Doctors
  - Hospitals
  - Dentist
  - Opticians
  - Miscellaneous medical service
- Financial services



Financial institutions  
Insurance sales  
Security brokers

LINCOLN COUNTY						
Procurement Card Missing Purchase Receipt Log						
Cardholder:			Reviewed By:			
Department/Division:			Date:			
Vendor Name	Description	City G/L Account No.	Net Purchase	NC State Tax	County Tax	Comments
Total Amount			\$0.00	\$0.00	\$0.00	

**LINCOLN COUNTY  
Procurement Card Purchasing System  
Vendor Dispute Form**

\_\_\_\_\_  
**Cardholder Name**

\_\_\_\_\_  
**Card Number**

\_\_\_\_\_  
**Vendor Name**

\_\_\_\_\_  
**Vendor Rep Name**

\_\_\_\_\_  
**Department/Division**

\_\_\_\_\_  
**Date Form Completed**

Invoice/ Ticket No.	Invoice Total	Item(s) in Dispute	Unit Price	Sales Tax	Total (Items) in Dispute only	Credit to be issued (Yes/No)

**1. Please give a brief description of the dispute and what the expected outcome.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Return Authorization Number issued by vendor: \_\_\_\_\_

**RESOLUTION #2010-54: A RESOLUTION ADOPTING A POLICY ON  
AWARDING SERVICE WEAPONS TO RETIRING LAW ENFORCEMENT  
OFFICERS IN THE LINCOLN COUNTY SHERIFF'S OFFICE**

THAT WHEREAS, the Board of Commissioners is requested periodically to award a deputy sheriff's service weapon to him upon his retirement, and this has been a long-standing tradition within the law enforcement community; and

WHEREAS, the Board of Commissioners always has honored these requests from the Sheriff; and

WHEREAS, in order not to delay the process with what is a formality, the Board of Commissioners wishes to establish a policy under which the County Manager can make a determination on awarding said service weapons;

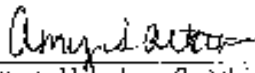
NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of Lincoln County, North Carolina as follows:

Section 1. That the County Manager is hereby authorized to award the service weapon of any Lincoln County Sheriff's Office sworn deputy to said deputy 1) who has qualified for retirement; 2) is in good standing with the department at the time of retirement; and 3) on whose behalf the Lincoln County Sheriff has filed a written request with the County Manager.

Section 2. That this resolution shall become effective on October 18, 2010.

Adopted this 18<sup>th</sup> day of October, 2010.

  
\_\_\_\_\_  
Alex E. Patton  
Chairman, Board of Commissioners

  
\_\_\_\_\_  
Attested by: Amy S. Atkins  
Clerk to the Board

## Surplus Property

### Donations to Fire and Rescue Departments

Approved: July 16, 2012

#### **A. POLICY:**

Lincoln County supports the Volunteer Fire Departments and Rescue Departments that serve our County by, when possible, selling surplus vehicles to them. Any Fire Department or Rescue Department operating in Lincoln County is eligible to receive a surplus vehicles.

#### **B. PURPOSE:**

This procedure outlines the process for selling surplus vehicles to Fire Departments and Rescue Departments who operate in Lincoln County.

#### **PROCEDURE:**

1. The Fire Chief of a fire department or the Captain of a Rescue Department must submit a request for a surplus vehicle in writing to the Purchasing Agent. This request may be submitted in advance of identification of a specific vehicle or at the time the vehicle is placed on the surplus property list.
2. Requests for surplus vehicles will be processed in the order they are received unless there are extenuating circumstances. In those cases the Purchasing Agent shall make a determination of which department will receive the vehicle.
3. Many, but not all, of the vehicles which are declared surplus are from the Sheriff's Office. Fire Chief's and Rescue Department Captains may wish to consult the Sheriff Office fleet manager to determine what vehicles may be coming available. Identification of a vehicle, however, does not automatically mean the fire or rescue department will receive the vehicle.
4. Each month, or every other month, depending on the amount of surplus equipment that is identified, the Purchasing Agent will publish a list of surplus equipment identified by the various County departments. The Purchasing Agent or designee will circulate this list to the County Directors, Fire Departments and Rescue Departments in the County.
5. The Lincoln County Department Director, Fire Chief or Rescue Department Captain will have approximately one week to notify the Purchasing Agent or designee that they are interested in a vehicle. The surplus property list will have the "last date to

request transfer” listed. If requests are not received by the “last date to transfer” date, the County will proceed with disposing of the items.

6. Any Lincoln County department director who identifies a vehicle or piece of equipment that can be used by their department will be eligible to receive the equipment as a first priority.
7. Vehicles that are not requested by any County department is eligible for donation to Fire Departments or Rescue Departments operating in Lincoln County.
8. Once the written request is received by the Purchasing Agent or designee, they will prepare a resolution to be submitted to the Board of County Commissioners for approval (Exhibit A).
9. If approved by the Board, the Fire Chief or Rescue Captain must get a signed copy of the resolution from the Clerk of the Board, and take to the Purchasing Agent (704-736-8478) to arrange for title transfer and then pick up date.
10. The Purchasing Agent will process the transfer of title to the Department.

**FORMS ATTACHED:**

- Sample Resolution approving Donation of Vehicle to Fire Department

**FOR MORE INFORMATION CONTACT:** Purchasing Agent

**Surplus Property  
Donations to Fire/Rescue Departments  
Exhibit A**

**RESOLUTION #2012-  
RESOLUTION TO SELL LINCOLN XXX VOLUNTEER FIRE DEPARTMENT  
A SURPLUS COUNTY VEHICLE FOR \$1.00**

**WHEREAS**, the County Commission is authorized to sell any real or personal property owned or held by the County, which is not needed for governmental or other public purposes (GS 160A, Article 12 and G.S.153A-176); and

**WHEREAS**, Lincoln County’s process for disposal of surplus property was approved in March, 2010 as part of the Purchasing Policy; and

**WHEREAS**, on a regular basis, lists are submitted to the Board of County Commissioners for approval to dispose of surplus property, and these lists often include vehicles; and

**WHEREAS**, the XXX Volunteer Fire Department is a nonprofit 501 (c) 3 organization which provides a valuable service to the residents of our County; and

**WHEREAS**, the XXX Volunteer Fire Department has requested to purchase a surplus XXX vehicle from the County which would be used for day to day operations;

**NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED,**

That Lincoln County agrees to sell the XXX Volunteer Fire Department a vehicle that has been deemed surplus by the Board of County Commissioners for the price of \$1.00.

That this resolution shall become effective on August 20, 2012.

Adopted this 20<sup>th</sup> day of August 2012.

LINCOLN COUNTY

By: \_\_\_\_\_  
Alex Patton, Chairman  
Board of Commissioners

ATTEST:

\_\_\_\_\_  
Amy S. Atkins, Clerk to the  
Board of Commissioners

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Insert Resolution Here



# Appendix B

**VENDOR REGISTRATION FORM**

**Lincoln County Purchasing  
 Third Floor Citizens Center, 115 West Main Street  
 Lincolnton, NC 28092  
 Phone (704)736-8478 Fax (704)735-0273  
 Email: [jhenry@lincolncounty.org](mailto:jhenry@lincolncounty.org)**

Substitute <b>IRS Form W-9</b>	<b>Request for Taxpayer Identification Number and Certificate</b>	
<b>Company Name:</b>		
Business Name if different from above:		
Taxpayer ID # (TIN)	SSN (for individuals)	
Select Filing Status: <input type="checkbox"/> Individual/Sole Proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Corporation Enter the tax classification (D = disregarded entity, C = Corporation, P = Partnership ▶ _____ <input type="checkbox"/> Other		
<b>Sign Here▶</b>		<b>Date▶</b>

Lincoln County is required to pay North Carolina state and local sales tax. Please state whether you are set up to collect these taxes on your invoices. Yes <input type="checkbox"/> No <input type="checkbox"/>
---

<b>Address for Accounts Payable (Remit to):</b>		
Street or PO Box:		
<b>City:</b>	<b>State:</b>	<b>Zip:</b>
DBA/Trade Name:		
Contact Person:	Title:	
<b>Phone:</b>	<b>Fax:</b>	<b>Email:</b>

<b>Address for Purchase Orders:</b>		
Street or PO Box:		
<b>City:</b>	<b>State:</b>	<b>Zip:</b>
<b>Telephone:</b>	<b>Fax:</b>	<b>Email:</b>

<b>Address for Bids:</b>		
Street or PO Box:		
<b>City:</b>	<b>State:</b>	<b>Zip:</b>
<b>Telephone:</b>	<b>Fax:</b>	<b>Email:</b>

over→

<b>Will your company accept electronic purchase orders? Yes <input type="checkbox"/> No <input type="checkbox"/></b>
If Yes list email address:
<b>Will your company accept faxed purchase orders? Yes <input type="checkbox"/> No <input type="checkbox"/></b>
If Yes list fax number:

<b>Commodities/Services:</b> Please use the space below to describe the commodities you sell or the services you wish to provide to Lincoln County, or attach line cards or other information to this form.

<b>Invoice Payment Terms:</b> Lincoln County payment terms are <b>Net 30 days</b> from date of receipt of invoice unless any available terms are indicated on the invoice. Do you agree to these terms? Yes <input type="checkbox"/> No <input type="checkbox"/>
--

<b>Shipping Terms:</b> Prepaid FOB Destination (Lincoln County Department’s Location). Do you agree to these terms? Yes <input type="checkbox"/> No <input type="checkbox"/>
--

<p><b>MINORITY, WOMEN OWNED and DISABLED BUSINESS ENTERPRISE (MWBE) VENDOR INFORMATION</b></p> <p>To qualify for MWBE vendor status, 51% of the company must be owned and controlled by one of the following: (please check all that apply):</p> <p>African American <input type="checkbox"/> American Indian <input type="checkbox"/> Female <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian <input type="checkbox"/>          Disabled <input type="checkbox"/> or Socially/Economically Disadvantaged <input type="checkbox"/></p>
--

**Certification: I certify that the number shown on this form is my correct taxpayer number and that all other information is accurate. I understand that any missing information can delay payment.**

\_\_\_\_\_

(Print Name)
(Title)
(Date)
(Signature)

The County reserves the right to reject any and all bids or proposals, to waive any technicalities associated with the bid or proposal, and to make the award that it deems in the best interest of the County.

**VERBAL QUOTE BID SHEET**

Vendor: \_\_\_\_\_ LC Employee's Name: \_\_\_\_\_  
 Contact: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Items	Brand & Model #	Qty.	Unit Price	Freight	TTL Cost

**VERBAL QUOTE BID SHEET**

Vendor: \_\_\_\_\_ LC Employee's Name: \_\_\_\_\_  
 Contact: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Items	Brand & Model #	Qty.	Unit Price	Freight	TTL Cost

**VERBAL QUOTE BID SHEET**

Vendor: \_\_\_\_\_ LC Employee's Name: \_\_\_\_\_  
 Contact: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Items	Brand & Model #	Qty.	Unit Price	Freight	TTL Cost

**SOLE SOURCE JUSTIFICATION FORM**

*(FOR ITEMS COSTING \$1,000.00 OR MORE)*

Department: \_\_\_\_\_ Division: \_\_\_\_\_

Vendor: \_\_\_\_\_

Item: \_\_\_\_\_

Estimated Expenditure: \$ \_\_\_\_\_

*(Check all boxes that apply)*

- Sole source request is for the original manufacturer; there are no area distributors.
- Parts and Equipment are not interchangeable with similar parts of another manufacturer.
- This is the only known item that will meet the specialized needs of department or perform the intended function.
- The parts or equipment is required to permit standardization.
- None of the above applies. A detailed explanation and justification is contained in the attached memorandum.

The undersigned requests that competitive procurement be waived and that the vendor identified as the supplier of the material or service described in this sole source justification be authorized as a sole source for the material or service.

\_\_\_\_\_  
*(Director)*

\_\_\_\_\_  
*(Date)*



**Lincoln County Informal Quote/Bid Reduction or Waiver Request**

Department: \_\_\_\_\_ Date: \_\_\_\_\_

Item(s) Quoted: \_\_\_\_\_

**Departmental Informal Quotes (\$1,000 - \$4,999.99)**

The department listed is requesting a (Reduction) or (Waiver) in the three quote requirement for the listed item(s) on the following grounds:

Department Head Signature: \_\_\_\_\_

**Purchasing Informal Bids (\$5,000 - \$89,999.99/\$499,999.99)**

RFB/RFP#: \_\_\_\_\_

The Purchasing Agent is requesting a (Reduction) or (Waiver) in the three bid requirement for the listed RFB/RFP on the following grounds:

Reduction/Waiver is      Granted      Denied

Purchasing Agent Signature: \_\_\_\_\_

Reduction/Waiver is      Granted      Denied

Assistant County Manager Signature: \_\_\_\_\_

**Lincoln County Departmental Request for Quotes (\$2,500 - \$4,999.99)**

Department: \_\_\_\_\_ Date: \_\_\_\_\_

Item(s) Quoted: \_\_\_\_\_

**Specifications**

--

**Lincoln County reserves the right to reject any and all quotes, to waive any technicalities associated with the quote and to make the award that it deems in the best interest of the County. The County's payment terms are NET 30.**

By submitting this Quote, the potential bidder/contractor certifies the following:

- This proposal is signed by an authorized representative of the firm.
- All insurance certificates, licenses, product information and MSDA as required to be submitted is attached
- All required submittals have been attached
- All labor and material cost, direct and indirect, have been determined and included in the proposed cost

Therefore, in compliance with this Request for Quote, and subject to all conditions herein, the undersigned offers and agrees, if this proposal is accepted within 60 days from the date of the received, to furnish the subject services and/or items.

Item			
Price			

Item			
Price			

Company & Sales Rep: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Sales Rep Signature: \_\_\_\_\_

Department Head Signature: \_\_\_\_\_

Purchasing Agent Signature: \_\_\_\_\_



## **LINCOLN COUNTY GENERAL CONTRACT TERMS AND CONDITIONS**

As used herein, the terms "Service Provider," "Vendor" and "Contractor" may be used interchangeably to refer to the party contracting with Lincoln County pursuant to that Contract or Proposal made pursuant to an RFP (as the case may be) of which these Terms and Conditions have been made a part.

1. **DEFAULT AND PERFORMANCE BOND:** In case of default by the Contractor, the County may procure the articles or services from other sources and hold the Contractor responsible for any excess cost occasioned thereby. Lincoln County reserves the right to require performance bond or other acceptable alternative guarantees from successful bidder without expense to the County.
2. Upon the Contractor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Contractor, Lincoln County may immediately terminate, for cause, this contract and all other existing contracts the Contractor has with the County, and debar the Contractor from doing future business with Lincoln County.
3. **GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the items offered prior to their delivery, it shall be the responsibility of the Contractor to notify, in writing, the issuing purchasing office at once, indicating the specific regulation which required such alterations. Lincoln County reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the contract.
4. **AVAILABILITY OF FUNDS:** Any and all payments to the Contractor are dependent upon and subject to the availability of funds to the agency for the purpose set forth in this agreement.
5. **TAXES:** Any applicable taxes shall be invoiced as a separate item. By execution of the bid document the vendor certifies that it and all of its affiliates, (if it has affiliates); collect(s) the appropriate taxes.
6. **SITUS:** The place of this contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
7. **GOVERNING LAWS:** This contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
8. **NO COLLUSION OR CONFLICT OF INTEREST:** By responding to this RFP, the Service Provider shall be deemed to have represented and warranted that the Proposal is not made in connection with any competing Service Provider submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud.
9. **INSPECTION AT CONTRACTOR'S SITE:** Lincoln County reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective contractor prior to contract award, and during the contract term as necessary for the County's determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the contract.
10. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. Lincoln County is responsible for all payments to the Contractor under the contract.

- 11. AFFIRMATIVE ACTION:** The Contractor will take affirmative action in complying with all federal and state requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
- 12.** Title VI is part of the Civil Rights Act of 1964, as amended, and its implementing regulations provide that no person shall be subject to discrimination on the basis of race, color or national origin under any program or activity that receives federal financial assistance.
- 13.** For our purposes, "national origin" equates to individuals who have a limited proficiency with the English language and their primary language is not English, hence, the term "limited English proficiency" or LEP.
- 14. CONDITION AND PACKAGING:** Unless otherwise provided by special terms and conditions or specifications, it is understood and agreed that any item offered or shipped has not been sold or used for any purpose and shall be in first class condition. All containers/packaging shall be suitable for handling, storage or shipment.
- 15. STANDARDS:** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and /or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type of device offered and furnished. Further, all items furnished shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.
- 16. PATENT:** The Contractor shall hold and save Lincoln County, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, on account of any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this contract, including use by the government.
- 17. ADVERTISING:** Contractor agrees not to use the existence of this contract or the name of Lincoln County as part of any commercial advertising.
- 18. ASSIGNMENT:** No assignment of the Contractor's obligations nor the Contractor's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Contractor, Lincoln County may:
  - a. Forward the Contractor's payment check directly to any person or entity designated by the Contractor, and
  - b. Include any person or entity designated by contractor as a joint payee on the Contractor's payment check.
  - c. In no event shall such approval and action obligate Lincoln County to anyone other than the Contractor, and the Contractor shall remain responsible for fulfillment of all contract obligations.
- 19. INSURANCE COVERAGE and GENERAL REQUIREMENTS:** During the term of the contract, the contractor at its sole cost and expense shall provide commercial insurance of such type and with

such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits:

- a. Coverage:
- b. **Workers' Compensation** - The Contractor shall provide and maintain Workers' Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of Contractor's employees who are engaged in any work under the contract. If any work is sublet, the Contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.
- c. **Commercial General Liability** - 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 \$1,000,000.00 per occurrence, and \$1,000,000.00 annual aggregate. The limits may be satisfied by a combination of primary and excess insurance. The coverage shall be written on an occurrence basis.
- d. **Automobile** - 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 \$1,000,000.00 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.
- e. General:
- f. Prior to beginning the work, Contractor shall provide written evidence of insurance as requested by the County to confirm that these insurance requirements are satisfied.
- g. Lincoln 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.
- h. The workers compensation policy must contain a waiver of subrogation in favor of the County.
- i. Contractor shall be responsible for insuring all of his/her own personal property, improvements, and betterments.
- j. All insurance policies put forth to satisfy the above requirements shall require the insurer to provide a minimum of thirty (30) days notice to the County of any material change in coverage, cancellation, or non-renewal.
- k. 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.
- l. 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, 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.

- 20. GENERAL INDEMNITY:** The Contractor shall hold and save Lincoln County, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the Contractor provided that the contractor is notified in writing within 30 days that the County has knowledge of such claims. The Contractor represents and warrants that it shall make no claim of any kind or nature against Lincoln County's agents who are involved in the delivery or processing of contractor goods to the County. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.
- 21. CONTRACT AND OR AGREEMENT TERM LENGTH:** The duration of this contract and or agreement shall be for one year unless noted on the signature page. No contract and or agreement shall extend 60 days past the renew date. Contract and or agreements may be extended, upon agreement of the parties, for up to a total of five years from the original contract or agreement date. However; the contract and or agreement will not be automatically renewed past the contract and or agreement dates listed on the initial signature page.
- 22. CANCELLATION (TERM CONTRACTS ONLY):** All contract obligations shall prevail for at least ninety (90) days after the effective date of the contract. After that period, in addition to the provisions of the paragraph entitled Price Adjustments, for the protection of both parties, this contract may be canceled in whole or in part by either party by giving thirty (30) days prior notice in writing to the other party.
- 23. QUANTITIES (TERM CONTRACTS ONLY):** The award of a term contract neither implies nor guarantees any minimum or maximum purchases thereunder.
- 24. PRICE ADJUSTMENTS (TERM CONTRACTS ONLY):** Any price changes, downward or upward, which might be permitted during the contract period, must be general, either by reason of market change or on the part of the contractor to other customers.
  - a. Notification:** Must be given to the issuing purchasing authority, in writing, concerning any proposed price adjustments. Such notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the change is general in nature.
  - b. Decreases:** The County shall receive full proportionate benefit immediately at any time during the contract period.
  - c. Increases:** All prices shall be firm against any increase for 180 days from the effective date of the contract. After this period, a request for increase may be submitted with the County reserving the right to accept or reject the increase, or cancel the contract. Such action by Lincoln County shall occur not later than 15 days after the receipt by Lincoln County of a properly documented request for price increase. Any increases accepted shall become effective not later than 30 days after the expiration of the original 15 days reserved to evaluate the request for increase.

- d. **Invoices:** It is understood and agreed that orders will be shipped at the established contract prices in effect on dates orders are placed. Invoicing at variance with this provision will subject the contract to cancellation. Applicable North Carolina sales tax shall be invoiced as a separate item.

**25. CRIMINAL CONVICTIONS CHECKS:** Lincoln County is committed to providing a crime free environment for its staff and citizens. If the contractual requirements requires your personnel will have access to various areas of County Facilities. The County reserves the right to require a criminal convictions check on owners, officers, employees and any other workers of the Contractor and their subcontractors at any time upon written request. The Contractor or the Contractor's direct representative shall accompany all new employees to the jobsite and present them to the Contract Administrator. At that time, if a criminal convictions check has been requested the Contractor shall provide a criminal history (not a letter) including traffic records, by presenting a document from a reputable company providing statewide searches covering a minimum of the last seven (7) years to the Contract Administrator. The criminal history shall match the name on state issued picture identification card. Out of state searches shall be required for persons living in the state of North Carolina for less than seven (7) years. The names, addresses and birth dates of each person that enters County property (including the owners and subcontracts) in the performance of this contract shall be supplied with the criminal history on company letterhead signed by a representative duly authorized to sign on behalf of the company. This history shall be provided to the Contract Administrator at least twenty-four (24) hours prior to any person performing work under this contract. Persons without this criminal history may be turned away and not allowed to work on any property owned or utilized by the County until proper documentation is submitted and approved by the Contract Administrator.

The County reserves the right to keep any person from being assigned to work on its property if that person (1) has been convicted of a criminal offense since the age of eighteen (18), or (2) been found at any time to have an outstanding warrant or a pending court case, or, (3) if related to his/her work at the County, has current habitual problems with traffic related issues such as no driver's license, no vehicle tags, and/or no insurance. The Contractor must disclose the criminal convictions records of all persons proposed to work on property with the designated county official.

During the term of this contract, the Contractor shall comply with these procedures for any new owner, officer, employee and any other worker of the Contractor and their subcontractors upon proper written notification by the Contract Administrator.

The Contract Administrator shall maintain all criminal convictions checks in a secure locked container for the term of the contract. At the end of the contract period the Contract Administrator shall ensure that the files have been returned to Contractor or destroyed in such a manner as to prevent disclosure of any kind.

**26. EMPLOYEE VERIFICATION:** Contractor shall verify and provide photo identification of each of its employees, and require the same of any subcontractors hired by Contractor. Contractor shall further utilize employees or subcontractors that speak fluent English such that they can

understand any directions of the Contractor or County, and be understood in their responses thereto. Contractor at all times it is entered into a contract with Lincoln County shall comply, to the extent applicable, with Article 2 of Chapter 64 of the North Carolina General Statutes, and shall further ensure that any subcontractors performing work for Company shall at all times comply with Article 2 of Chapter 64 of the North Carolina General Statutes. Contractor shall further execute an affidavit on a form provided by Lincoln County averring such compliance as stated herein.

- 27. IRAN DIVESTMENT ACT:** For new procurements and new, renewed, or assigned contracts with Lincoln County on or after February 26, 2016, each bidder or vendor must affirm that it is not listed on the State Treasurer's Final Divestment List found at [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran) as of the date of signature. The certification shall be due at the time a bid is submitted or the time a contract is entered into, renewed, or assigned. (G.S. 147-86.55-69)
- Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Lincoln County. (G.S. 147-86.55-69.) Any existing contracts with these Iran-linked persons will be allowed to expire in accordance with the contract's terms. (G.S. 147-86.55-69.) Contracts valued at less than \$1,000.00 are exempt from this restriction. (G.S. 147-86.55-69.) In addition, Lincoln County may contract with, but is not required to, a listed individual or company if it makes a good-faith determination that (1) the commodities or services are necessary to perform its functions and (2) that, absent such an exemption, it would be unable to obtain those commodities or services. (G.S. 147-86.55-69.) Any such exemption shall be entered by Lincoln County into the procurement record. The Act provides that vendors to Local Government Units may not utilize any subcontractor found on the State Treasurer's Final Divestment List. (G.S. 147-86.55-69.) It shall be each vendor's responsibility to monitor its compliance with this restriction.
- 28. DIVESTMENT FROM COMPANIES THAT BOYCOTT ISRAEL:** NCGS 147 Article 6G Effective November 1, 2017

NORTH CAROLINA  
LINCOLN COUNTY  
CONTRACT FOR SERVICES

THIS CONTRACT is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ hereinafter referred to as the "Contractor", and Lincoln County, a body corporate and politic, established pursuant to the laws of the State of North Carolina, hereinafter referred to as the "County."

WITNESSETH:

WHEREAS, the County desires to procure a contractor to perform services; and

WHEREAS, the County has completed necessary steps for retention of professional and other services under applicable County policies; and

WHEREAS, the County has agreed to engage the Contractor, and the Contractor has agreed to contract with the County, for performance of services as described, and according to the further terms and conditions, set forth herein.

NOW THEREFORE, in consideration of sums to be paid to the Contractor, and other good and valuable consideration, the Contractor and County do contract and agree as follows:

Scope of Services

The Contractor shall perform for the County the following described services:  
Construct new pavement section and associated drainage improvements for entrance road to The Optimist Club Park following recommendations outlined in a report prepared by Kessel Engineering Group, PLLC titled *Report of Pavement Design and Specifications* dated November, 2013.

Time of Performance

In performing the services described in this Contract, it is mutually agreed that time is of the essence. The Contractor shall begin work \_\_\_\_\_ and work shall be completed by 5:00 pm on \_\_\_\_\_.

Contractor acknowledges that the failure of the Contractor to timely perform this Contract shall cause County severe consequential damages, the extent of which are difficult to ascertain. In the event the services under the Contract are not completed by this date, the Contractor shall be assessed liquidated damages of \$0 for each day's delay beyond the completion date. If liquidated damages are not applicable to this Contract, insert '(0) zero' in the space above.

Compensation; Time of Payment

For services to be performed hereunder, the County shall pay the Contractor \$\_\_\_\_\_ as outlined in Attachment "A".

Workmanship and Quality of Services

All work performed under this Contract shall be performed in a workmanlike and professional manner, to the reasonable satisfaction of the County, and shall conform to the higher standards of either (1) all prevailing industry and professional standards or (2) the specifications contained in the Request for Procurement ("RFP") upon which Contractor's bid was based, the terms and conditions of which are incorporated herein by reference thereto.

Notices

All notices, requests for payment, or other communications arising hereunder shall be sent to the following:

Lincoln County

Attn: John Henry

Telephone: 704 736 8478

115 West Main Street

Lincolnton, NC 28092

Contractor :

Minority or Women Owned Businesses

The County of Lincoln prohibits discrimination in any manner on the basis of race, color, creed, national origin, sex, age or handicap or sexual orientation and will pursue an affirmative policy of fostering, promoting and conducting business with women and minority owned business enterprises. The County of Lincoln has adopted a goal of 15% for participation by minority or women-owned businesses in order to reach the above stated goal.

7. Subcontracts

Contractor shall not subcontract work hereunder without the prior written consent of the County, and any such subcontract without such consent shall be null and void. If Contractor proposes to subcontract any of the work hereunder, it shall submit to the County the name of each proposed Subcontractor(s), with the proposed scope of work, which its Subcontractor is to undertake.

The County shall have the right to reject any Subcontractor, which it considers unable or unsuitable to satisfactorily perform. Contractor shall not enter into any cost reimbursable agreements with any proposed Subcontractor without County's prior written authorization.

Notwithstanding any consent by the County to a proposed subcontract, Contractor shall remain responsible for all subcontracted work and services. Contractor agrees it shall be as fully responsible to the County for the acts and omission of its Subcontractors, their agents, representatives, and persons either directly or indirectly employed by them as it is for the acts and omissions of the persons directly employed by Contractor.



Neither this provision, this Contract, the County's authorization of Contractor's agreement with Subcontractor, County's inspection of a Subcontractor's facilities, equipment or work, or any other action taken by the County in relation to a Subcontractor shall create any contractual relationship between any Subcontractor and the County. Contractor shall include in each of its subcontracts a provision embodying the substance of this article and shall exhibit a copy thereof to the County before commencement of any work by a Subcontractor. Contractor's violation of this provision shall be grounds for the County's termination of the contract for default, without notice or opportunity for cure.

#### 8. Insurance

Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract, the coverage and limits described hereunder. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract. For additional requirements see Lincoln County Terms and Conditions Paragraph 1.16, the requirements of which are incorporated herein by reference thereto.

**Professional Liability** – In the event that Contractor is engaged in professional services requiring a license (such as, by way of illustration and not limitation, engineering or architectural services), Contractor shall procure and maintain at all times during this Contract a professional liability policy with an insurer having an A.M. Best's rating of at least "A," containing limits of no less than \$1,000,000 per claim.

All insurance companies utilized by Contractor must be authorized to do business in North Carolina and be acceptable to the County's Risk Manager.

#### 9. Intellectual Property

Any information, data, instruments, documents, studies, reports or deliverables given to, exposed to, or prepared or assembled by the Contractor under this Contract shall be kept as confidential proprietary information of the County and not divulged or made available to any individual or organization without the prior written approval of the County. Such information, data, instruments, documents, studies, reports or deliverables will be the sole property of the County and not the Contractor.

All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks and trade secrets invented, developed, created or discovered in performance of this Contract shall be the property of the County.

Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographs, designs, text, software, or documentation created as part of the Contractor's performance of this project shall vest in the County. Works of authorship and contributions to

works of authorship created by the Contractor's performance of this project are hereby agreed to be 'works made for hire' within the meaning of 17 U.S.C. 201.

10. Force Majeure

Except as otherwise provided in any environmental laws, rules, regulations or ordinances applicable to the parties and the services performed under this Contract, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Either party to the Contract must take reasonable measures and implement reasonable protections when a weather event otherwise defined as a force majeure event is forecast to be eligible to be excused from the performance otherwise required under this Contract by this provision.

11. Advertising

The Contractor shall not use the existence of this Contract, or the name of the County of Lincoln, as part of any advertising without the prior written approval of the County.

12. Cancellation

The County may terminate this Contract at any time by providing thirty (30) days written notice to the Contractor. In addition, if Contractor shall fail to fulfill in timely and proper manner the obligations under this Contract for any reason, including the voluntary or involuntary declaration of bankruptcy, the County shall have the right to terminate this Contract by giving written notice to the Contractor and termination will be effective upon receipt. Contractor shall cease performance immediately upon receipt of such notice.

In the event of early termination, Contractor shall be entitled to receive just and equitable compensation for costs incurred prior to receipt of notice of termination and for the satisfactory work completed as of the date of termination and delivered to the County. Notwithstanding the foregoing, in no event will the total amount due to Contractor under this section exceed the total amount due Contractor under this Contract. The Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of this Contract, and the County may withhold any payment due to the Contractor for the purpose of setoff until such time as the County can determine the exact amount of damages due the County because of the breach.

Payment of compensation specified in this Contract, its continuation or any renewal thereof, is dependent upon and subject to the allocation or appropriation of funds to the County for the purpose set forth in this Contract.

13. Laws/Safety Standards

The Contractor shall comply with all laws, ordinances, codes, rules, regulations, safety standards and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and/or authority.

All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Electrical Engineers for pressure vessels; the Underwriters' Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type(s) of devices offered and furnished. Further, all items furnished by the Contractor shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution.

Contractor must comply with *North Carolina Occupational Safety and Health Standards for General Industry, 29CFR 1910*. In addition, Contractor shall comply with all applicable occupational health and safety and environmental rules and regulations.

Contractor shall effectively manage its safety and health responsibilities by taking actions to protect workplace safety, including, but not limited to, the following actions:

A. Accident Prevention

Prevent injuries and illnesses to its employees and others on or near its work site. Contractor managers and supervisors shall ensure personnel safety by strict adherence to established safety rules and procedures.

B. Environmental Protection

Protect the environment on, near, and around its work site by compliance with all applicable environmental regulations.

C. Employee Education and Training

Provide education and training of Contractor's employees before they are exposed to potential workplace hazards or other hazards as required by specific OSHA Standards.

14. Miscellaneous

The Contractor shall be responsible for the proper custody and care of any property furnished or purchased by the County for use in connection with the performance of this Contract, and will reimburse the County for the replacement value of its loss or damage.

The Contractor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. County has contracted with Contractor to obtain a specific result, but the manner and means of obtaining such result are to the Contractor's discretion, so long as Contractor abides with all federal, state and local laws and regulations, and abides by the terms of this Contract. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. Contractor

represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of or have any individual contractual relationship with the County.

15. Audit

The Contractor shall keep accurate records and books of account showing all charges, disbursements or expenses made or incurred by Contractor in the performance of the service herein. County shall have the right, upon thirty (30) day notice to audit at any time up to three (3) years after payment of its final invoice, the direct costs, expenses, and disbursements made or incurred in connection with the services to be performed herein as well as for the validity of the representations made in the compensation provisions of this Contract and may examine Contractor's books and records relating to these several areas. County may execute a technical audit of project progress at any time during the duration of the Agreement. County will allow a minimum of 72 hours of notice of a pending onsite inspection of project materials. All materials are subject to be inspected and may include, but are not limited to, equipment, records, files, reports, correspondence, medication, logs, acquisition, etc., procedure manuals, and QA/QC procedures manual.

16. Changes

This Contract constitutes the final agreement between the parties, and may not be changed, waived or amended except by a change order or other document, in writing, signed by all parties hereto.

17. Definitions.

All references to days in this Contract shall mean calendar days, all other capitalized terms, if not specifically defined, shall be defined by their ordinary and custom usage.

18. Effective Date

This Contract is not effective until the Contractor has been formally provided a Purchase Order number by email or letter.

19. Documentation and Project Completion

Upon completion of the project, Contractor shall furnish, at no extra charge any required closeout documentation including, but not limited to, a signed:

Project completion notice approved, in writing by County's Contracting Officer, Contracting Officer's representative and Contractor detailing:

- Warranties and/or guarantees,
- Project-related training materials and/or training plan;
- Any licensing;
- Resolution of all claims, losses or damages;
- Contracted or plan for tech support, when appropriate;
- Required deliverables;
- Return of all properties;

- Resolution of unresolved issues;
- Release of all monies owed;
- All records; and
- Items paid for by the County;

The County shall recognize each project as complete only upon written confirmation by all parties to this Contract.

20. Electronic/CADD Documents

Contractor shall be required to provide or deliver electronic or computer-aided design and drafting (CADD) files, if specifically required by the Scope of Services. In the case of any discrepancy or difference between electronic files and hard copies of drawings or files, hard copies shall control. Due to the easily alterable nature of electronic files, there will be no warranties either express or implied, with respect to the accuracy, completeness, merchantability, or fitness for any particular purpose, except that if only electronic or CADD files are delivered then Contractor will agree to replace any defective electronic or CADD file delivered or provided by Contractor and if Contractor is provided notice of such defect within 180 days of County's receipt. Electronic and/or CADD files shall be developed based on standard formatting, layering, drafting and design practice, unless specifically directed otherwise by the County in writing.

21. Incorporation of Documents/Complete Agreement

This Contract, and any documents incorporated below, represent the entire Contract between the parties and suspend all prior oral or written statements, agreements or Contracts.

Specifically incorporated into this Contract are the following attachments, or if not physically attached, are incorporated fully herein by reference:

- A. County Standard Terms and Conditions, dated October 2013 as may be amended from time to time.
- B. Lincoln County Utility Standards.
- C. The Lincoln County MWBE Recruitment, Selection and Dispute Resolution Procedures can be obtained from the Lincoln County website at [www.lincolncounty.org](http://www.lincolncounty.org).
- D. Attachment "A". \_\_\_\_\_ proposal dated \_\_\_\_\_ excluding "\_\_\_\_\_ Conditions of the Agreement".

In cases of conflict between this Contract and any of the above incorporated attachments or references, the terms of this Contract shall prevail.

The remainder of this page remains blank intentionally.

IN WITNESS WHEREOF, the Contractor has executed the foregoing with the signature(s) of its duly authorized officer(s), under seal, and the County has executed with the signature of its County Manager, attested by its Clerk to the Board, with the official seal affixed, the day and year first above written.

**CONTRACTOR:**

**COUNTY OF LINCOLN**

By:

By:

\_\_\_\_\_

\_\_\_\_\_

County Manager

\_\_\_\_\_  
Printed Name/Title

(If corporate)

ATTEST:

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

Clerk to the Board

\_\_\_\_\_  
Printed Name/Title

(Affix Seal)

(Affix Seal)

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Fiscal Officer

**Internal use only:**

Project Code: \_\_\_\_\_

Funding Information

- Fund Number: \_\_\_\_\_
- Fund Amount: \_\_\_\_\_

## Contract Award Letter

**[Insert date here]**

**[Insert proponent's name here]**

**[Insert proponent's full address here]**

**Attention:** **[Insert proponent's contact name here]**

**SUBJECT:** **Notice of Award: [Insert RFP Number and Title of RFP/RFT here]**

**[Name of Org]** is pleased to advise that you are the selected proponent pursuant to the above-noted procurement process.

Enclosed please find three (3) copies of the Agreement for your signature. Please return all copies of the executed Agreement as well as the following documentation to the address set out above within fifteen (15) calendar days of receipt of this notice:

**- [List any additional documentation requirements or authorization forms]**

Failure to provide these documents to **[Name of Org]** within the specified timeline may result in the rescission of your selection in accordance with the rules of this procurement process.

Following execution of the Agreement by **[Name of Org]**, one original signed copy will be returned to you for your records.

Please be advised that this notice of award letter should not be construed as permission from **[Name of Org]** to begin the work detailed in the Agreement. **[Name of Org]** will not be responsible or liable for any expenses related to the Deliverables, and the selected proponent is not to accept work requests prior to the execution of the Agreement by **[Name of Org]**. Work may begin pursuant to the Agreement when:

- (a) the Agreement signed by both parties is returned to the selected proponent, and
- (b) written permission is expressly given to the Supplier by **[Name of Org]** Representative to begin work under the Agreement.

If you have any questions concerning this process, please contact **[contact's name]** at **[contact's phone number]**.

Sincerely,

**[Insert signatory's name and title here]**



Date

Name

Firm Name

Address

RE: NOTICE-TO-PROCEED FOR Project Title  
Contract No.  
Purchase Order No.  
Collier County Project No.

Dear Mr./Ms. :

This letter serves as Lincoln County's official NOTICE TO PROCEED (NTP) to your Company to commence with the above referenced project. This NTP is issued pursuant to Contract # . The purchase order number is shown above and a copy of the P.O. is enclosed.

This NTP is limited to the scope of work for: Project Title for the lump sum price of \$ OR Time and Materials Not to Exceed . Please include the purchase order number, contract number and project number on each invoice to facilitate the payment process.

Commencement date for the services associated herewith shall be considered to be date. The substantial completion date shall be considered to be date. Final completion of all work shall be considered to be date.

If you have any questions, please contact me.

Sincerely,

Name

Title

C: Name, Procurement Strategist



## Asset Transfer Record

Asset Number: \_\_\_\_\_

Transferred From: \_\_\_\_\_

Account Number: \_\_\_\_\_

Date Acquired: \_\_\_\_\_

VIN or Serial Number: \_\_\_\_\_

Description of Asset

Transferred to: \_\_\_\_\_

Account Number: \_\_\_\_\_

Transfer Date: \_\_\_\_\_

\_\_\_\_\_  
Transfer Approved By;

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date Received in Finance Dept.

\_\_\_\_\_  
By



**LINCOLN COUNTY**

**MWBE**

**RECRUITMENT, SELECTION**

**and**

**DISPUTE RESOLUTION**

**PROCEDURES**

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**OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF  
 MINORITY BUSINESSES FOR PARTICIPATION IN LINCOLN COUNTY GOVERNMENT  
 BUILDING CONSTRUCTION OR REPAIR CONTRACTS**

**I. General**

In accordance with G.S. 143-128.2, these guidelines establish goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on LINCOLN COUNTY building construction or repair projects in the amount of \$300,000 or more. The outreach plan shall also be applicable to the selection process of architectural, engineering, and Construction Manager-at-Risk services.

For purchases and projects funded by Federal assistance, DBE firms must be certified in accordance with 49 CFR Parts 23 and 26.

LINCOLN COUNTY has a current verifiable goal of 10 percent for minority participation for building construction or repair projects. The goal will be reviewed every 5 years.

### **A. INTENT**

It is the intent of these guidelines that LINCOLN COUNTY GOVERNMENT, as awarding authority for building construction or repair projects, and the contractors and subcontractors performing the construction contracts awarded shall cooperate and in good faith do all things legal, proper, and reasonable to achieve the goal of 10 percent for participation by minority businesses in each building construction or repair project as required by GS 143-128.2. Nothing in these guidelines shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.

### **B. DEFINITIONS**

- 1) **Minority** - a person who is a citizen or lawful permanent resident of the United States and who is:
  - a) Black, that is, a person having origins in any of the black racial groups in Africa;
  - b) Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;
  - c) Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, the Pacific Islands;
  - d) American Indian, that is, a person having origins in any of the original peoples of North America; or
  - e) Female
- 2) **Minority Business (MBE)** - means a business:
  - a) In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
  - b) Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
  - c) The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
  - d) The firm meets the Small Business Administration's size standards and does not exceed \$23.98 million in gross annual receipts for DBE (\$56.42 million for ACDBE's).
- 3) **Socially and economically disadvantaged individual** - means the same as defined in 15 U.S.C. 637: Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.
- 4) **Owner** – LINCOLN COUNTY GOVERNMENT.

- 5) **Designer** – Any person, firm, partnership, or corporation which has contracted with Lincoln County Government to perform architectural or engineering work.
- 6) **Bidder** - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
- 7) **Contract** - A mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials, or services, including construction, and obligating the buyer to pay for them.
- 8) **Contractor** - Any person, firm, partnership, corporation, association, or joint venture which has contracted with Lincoln County Government to perform building construction or repair work.
- 9) **Subcontractor** - A firm under contract with the prime contractor or construction manager at risk for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract.

## II. MINORITY OUTREACH PLAN AND GUIDELINES

### A. Owner Responsibilities

Lincoln County Government will employ the following strategies to encourage participation from MBEs.

- 1) Work with minority-focused and small business groups that support MBE inclusion in the solicitation of bids. These groups include CVCC Small Business Development Center and the Small Business Technology Center.
- 2) Place emphasis on the importance of soliciting certified MBE firms for subcontracting opportunities at pre-bid conferences and in the bid documents. Examine specifications to identify special subcontracting opportunities and strongly encourage prime contractors to solicit bids for subcontracts from MBE firms.
- 3) Provide detailed information to majority contractors concerning the bidding and good faith efforts requirements by holding meetings with the contractors.
- 4) Assess the effectiveness of the MBE program, and identify opportunities to enhance it by evaluating MBE participation and compliance and reviewing the good faith efforts provided in bid packages.
- 5) Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified MBE firms that have expressed an interest in Lincoln County Government projects. Identify these opportunities and contact interested businesses no later than 10 days prior to the bid opening and provide a list of prime contractors who plan to participate in the project.
- 6) Build new and strengthen existing business relationships through networking. Continue communicating with other North Carolina public agencies to find out how their MBE outreach programs are working and to share “best practices” and ideas to improve programs.
- 7) Participate in educational opportunities throughout the community as they become available and offer training sessions to share Lincoln County Government’s outreach plan with interested businesses and organizations

- 8) Be visible through participation in trade shows and business organizations of interest to MBE firms, majority contractors, and small businesses, and provide information to the general public about the MBE program, and continue outreach efforts to the business community.
- 9) Enhance Lincoln County Government's web page by including the outreach plan and guidelines, listing good faith efforts, creating links to MBE resources, and creating awareness of specific subcontracting opportunities.
- 10) Make available to minority-focused agencies a list of subcontracting opportunities when they are identified, no later than 10 days prior to the bid opening, and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
- 11) Maintain or continue to maintain a database specifically for MBE firms and majority contractors to ensure those firms wishing to do business with Lincoln County Government have access to up-to-date information.
- 12) Advertise upcoming bid opportunities in minority-focused media.
- 13) Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.

### **B. Designer Responsibilities**

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer will:

- 1) Attend the scheduled pre-bid conference to explain minority business requirements to the prospective bidders.
- 2) Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities.
- 3) Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
- 4) Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) – (i.e. bidders' proposals for identification of the minority businesses that will be utilized with corresponding total dollar value of the bid and affidavit listing good faith efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) - prior to recommendation of award.
- 5) During construction phase of the project, review documentation for contract payment to MBEs (e.g. state form "Appendix E: MBE Documentation for Contract Payment" <http://interscope2.doa.state.nc.us/Guidelines/MBE/MBGuidelines2002R.pdf>) for compliance with minority business utilization commitments. Submit this form with monthly pay applications to the Owner.

### **C. Contractor Responsibilities**

Under the single-prime bidding, the separate-prime bidding, construction manager at risk, and alternative contracting methods, contractor(s) will:

- 1) Attend the scheduled pre-bid conference.
- 2) Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.

- 3) During the bidding process, comply with the owner's requirements listed in the proposal for minority participation.
- 4) Identify on the bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit listing good faith efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).
- 5) Make documentation showing evidence of implementation of Prime Contractor, CM-at-Risk and First-Tier Subcontractor responsibilities available for review by Lincoln County Government, upon request.
- 6) Upon being named the apparent low bidder, the bidder shall provide one of the following: (1) an affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal; or (2) if the percentage is not equal to the applicable goal, then documentation of all good faith efforts taken to meet the goal. The documentation must include evidence of all good faith efforts that were implemented including any advertisements, solicitations, and evidence of other specific actions demonstrating recruitment and selection of minority businesses for participation in the contract. Failure to comply with these requirements is grounds for rejection of the bid and award to the next lowest responsible and responsive bidder.
- 7) The contractor(s) shall identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values.
- 8) The contractor(s) shall submit with each monthly pay request(s) and final payment(s) documentation for contract payment to MBEs (e.g. state form "Appendix E: MBE Documentation for Contract Payment" <http://interscope2.doa.state.nc.us/Guidelines/MBE/MBGuidelines2002R.pdf>) for designer's review.
- 9) During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner in writing, of the circumstances involved. The prime contractor shall make a good faith effort to replace a minority business subcontractor with another minority business subcontractor.
- 10) If during the construction of a project additional subcontracting opportunities become available, the contractor shall make a good faith effort to solicit sub-bids from minority businesses.

### **III. Minority Business Responsibilities**

#### **A. Certification**

While minority businesses are not required to become certified in order to participate in Lincoln County Government building construction or repair projects, it is recommended that they become certified and take advantage of appropriate technical assistance that is made available. Certification can be obtained from the following agencies:

North Carolina Department of Administration Historically Underutilized Business (HUB) certification

North Carolina Department of Transportation Minority/Disadvantaged/Women-owned Business certification

Small Business Administration 8(a) certification

Other governmental agencies on a case-by-case basis

## **B. Other Responsibilities**

Minority businesses that are contacted by owners or bidders must respond promptly whether or not they wish to submit a bid.

## **IV. MINIMUM COMPLIANCE REQUIREMENTS**

All written statements or affidavits made by the bidder shall become a part of the agreement between the Contractor and Lincoln County Government for performance of the contract. Failure to comply with any of these statements, affidavits, or with the minority business guidelines shall constitute a breach of the contract. A finding by Lincoln County Government that any information submitted either prior to award of the contract or during the performance of the contract is inaccurate, false, or incomplete shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of Lincoln County Government whether to terminate the contract for breach.

In determining whether a contractor has made good faith efforts, Lincoln County Government will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, diligence, and results of these efforts. Contractors are required to earn at least 50 points for good faith efforts. Failure to file a required affidavit or documentation demonstrating that the contractor made the required good faith effort, is grounds for rejection of the bid. Good faith efforts include:

- 1) Contacting minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor or available on State or local government maintained lists at least 10 days before the bid or proposal date and notifying them of the nature and scope of the work to be performed. (10 points)
- 2) Making the construction plans, specifications, and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bid or proposals are due. (10 points)
- 3) Breaking down or combining elements of work into economically feasible units to facilitate minority participation. (15 points)
- 4) Working with minority trade, community, or contractor organizations identified by the Office for Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses. (10 points)
- 5) Attending any pre-bid meetings scheduled by the public owner. (10 points)
- 6) Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors. (20 points)



- 7) Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without sound reasons based on their capabilities. Reasons for rejection of a minority business based on lack of qualification should be documented in writing. (15 points)
- 8) Providing assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisting minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit. (25 points)
- 9) Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible. (20 points)
- 10) Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash flow demands. (20 points)

## **V. DISPUTE RESOLUTION PROCEDURES**

Pursuant to G.S. 143-128 (f1), all disputes involving contractors on a building construction or repair project with Lincoln County Government shall be resolved pursuant to LINCOLN COUNTY GOVERNMENT'S DISPUTE RESOLUTION POLICY

In addition to these guidelines, there will be issued with each construction bid package provisions for providing minority business participation in LINCOLN COUNTY GOVERNMENT projects.

# State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts

County of \_\_\_\_\_

(Name of Bidder)

Affidavit of \_\_\_\_\_

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

- 1 – (10 pts) Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2 - (10 pts) Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3 – (15 pts) Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 – (10 pts) Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 – (10 pts) Attended prebid meetings scheduled by the public owner.
- 6 – (20 pts) Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 – (15 pts) Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8 – (25 pts) Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- 9 – (20 pts) Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts) Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he/she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

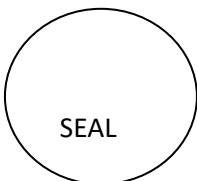
Title: \_\_\_\_\_

State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Notary Public: \_\_\_\_\_

My commission expires: \_\_\_\_\_



**State of North Carolina -- AFFIDAVIT B --**  
**Intent to Perform Contract with Own Workforce.**

County of \_\_\_\_\_

Affidavit of \_\_\_\_\_  
(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_  
\_\_\_\_\_ contract.  
(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

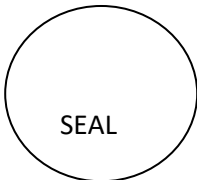
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he/she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_ 20\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

## State of North Carolina - AFFIDAVIT C – Portion of the Work to be Performed by Minority Firms

County of \_\_\_\_\_

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the portion of the work to be executed by minority businesses as defined in GS143-128.2(g) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsible, responsive bidder within 72 hours after notification of being low bidder.

Affidavit of \_\_\_\_\_ I do hereby certify that on the  
(Name of Bidder)

\_\_\_\_\_  
(Project Name)

Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below.

Attach additional sheets if required

Name and Phone Number	*Minority Category	Work description	Dollar Value

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

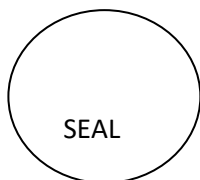
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies thathe/she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

## State of North Carolina -- AFFIDAVIT D

### Good Faith Efforts

County of \_\_\_\_\_

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 10% participation by minority business is not achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of \_\_\_\_\_ I do hereby certify that on the  
 (Name of Bidder)

\_\_\_\_\_  
 (Name of Project)

Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. (Attach additional sheets if required)

Name and Phone Number	*Minority Category	Work description	Dollar Value

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

**Examples** of documentation that may be required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- A) Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B) Copies of quotes or responses received from each firm responding to the solicitation.
- C) A telephone log of follow-up calls to each firm sent a solicitation.
- D) For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E) Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F) Copy of pre-bid roster.
- G) Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.

- H) Letter detailing reasons for rejection of minority business due to lack of qualification.
- I) Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

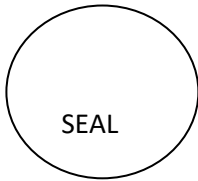
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he/she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_ day of 20\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_



## MBE DOCUMENTATION FOR CONTRACT PAYMENTS

Prime Contractor/Architect: \_\_\_\_\_

Address & Phone: \_\_\_\_\_

Project Name: \_\_\_\_\_

Pay Application #: \_\_\_\_\_ Period: \_\_\_\_\_

The following is a list of payments made to Minority Business Enterprises on this project for the abovementioned period.

MBE Firm Name	*Indicate Type of MBE	Amount Paid This Month	Total Payments To Date	Total Amount Committed

\*Minority categories: Black, African American (B), Hispanic (H), Asian American (A), American Indian (I), Female (F), Social and Economically Disadvantage (D)

Date: \_\_\_\_\_

Approved/Certified By:

\_\_\_\_\_

*Name*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Signature*

**SUBMIT WITH EACH PAY REQUEST & FINAL PAYMENT**



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**RULES IMPLEMENTING MEDIATED  
SETTLEMENT CONFERENCES IN  
LINCOLN COUNTY CONSTRUCTION PROJECTS**

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## DISPUTE PROCEDURES

### RULES IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN LINCOLN COUNTY CONSTRUCTION PROJECTS

#### I. INITIATING MEDIATED SETTLEMENT CONFERENCES

- A. Purpose of Mandatory Settlement Conferences. These Rules are promulgated to implement a system of settlement events, which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.
- B. Initiating the Dispute Resolution Process
- i. Any party to a Lincoln County contract and who is a party to a dispute arising out of the construction process in which the amount in controversy is at least \$15,000 may submit a written request to Lincoln County for mediation of the dispute.
  - ii. Prior to submission of a written request for mediation to Lincoln County, the parties requesting mediation,
    - a. If a prime contractor, must have first submitted its claim to the Project Designer for review. If the dispute is not resolved through the Project Designer's instructions, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit their written request for mediation to Lincoln County.
    - b. If the party requesting mediation is a subcontractor, it must first have submitted its claim for mediation to the prime contractor with whom it has a contract. If the dispute is not resolved through the Prime Contractor's involvement, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit its written request for mediation to Lincoln County.
    - c. If the party requesting mediation is the Project Designer, then it must first submit its claim to Lincoln County to resolve. If the dispute is not resolved with Lincoln County's involvement, then the Project Designer's dispute is ripe for mediation in the Formal Dispute Resolution Process, and the Project Designer may submit its written request to Lincoln County for mediation.

#### II. SELECTION OF MEDIATOR

- A. Selection of Certified Mediator by Agreement of the Parties. The parties may select a certified mediator pursuant to the Rules by agreement within 21 days of requesting mediation. The requesting party shall file with Lincoln County a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.
- B. Nomination and Lincoln County Approval of a Non-Certified Mediator. The parties may select a mediator who does not meet the certification requirements of these

Rules but who, in the opinion of the parties and Lincoln County is otherwise qualified by training or experience to mediate the action.

If the parties select a non-certified mediator, the requesting party shall file with Lincoln County a Nomination of Non-Certified Mediator within 10 days of the request. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of compensation of the mediator; and state that the mediator and opposing counsel have agreed upon the selection and rate of compensation.

Lincoln County shall rule on said nomination, shall approve or disapprove of the parties' nomination and shall notify the parties of its decision.

- C. Appointment of Mediator by Lincoln County. If the parties cannot agree upon the selection of a mediator, the party or party's attorney shall notify Lincoln County and request, on behalf of the parties, that Lincoln County appoint a mediator. The request for appointment must be filed within 10 days after request to mediate and shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, Lincoln County shall appoint a certified attorney mediator. If no preference is expressed, Lincoln County may appoint a certified attorney mediator or a certified non-attorney mediator.
- D. Mediator Information Directory. To assist the parties in the selection of a mediator by agreement, the parties are free to utilize the list of certified mediators maintained in any county participating in the Superior Court Mediation Settlement Conference Program. Lincoln County participates in this program.
- E. Disqualification of Mediator. Any party may request replacement of the mediator by Lincoln County for good cause. Nothing in this provision shall preclude mediators from disqualifying themselves.

### III. THE MEDIATED SETTLEMENT CONFERENCE

- A. Where Conference is to be Held. Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in Lincoln County. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.
- B. When Conference is to be Held. The deadline for completion of the mediation shall be not less than 30 days or more than 60 days after the naming of the mediator.
- C. Request to Extend Deadline for Completion. A party, or the mediator, may request that Lincoln County extend the deadline for completion of the conference. Such request shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the County.

Lincoln County may grant the request by setting a new deadline for completion of the conference.

- D. Recesses. The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the conference.
- E. The mediated settlement conference shall not be cause for the delay of the construction project, which is the focus of the dispute.

#### IV. DUTIES OF PARTIES AND OTHER PARTICIPANTS IN FORMAL DISPUTE RESOLUTION PROCESS

##### A. Attendance.

- i. All parties to the dispute originally presented to the Designer or Prime Contractor for initial resolution must attend the mediation. Failure of a party to a construction contract to attend the mediation will result in Lincoln County withholding of monthly payment to that party until such party attends the mediation.
- ii. Attendance shall constitute physical attendance, not by telephone or other electronic means. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.
- iii. Attorneys on behalf of parties may attend the mediation but are not required to do so.
- iv. Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.

B. Finalizing Agreement. If an agreement is reached in the conference, parties to the agreement shall reduce the terms to writing and sign it along with their counsel.

C. Mediation Fee. The mediation fee shall be paid in accordance with N.C.G.S. §143-128(g).

D. Failure to compensate mediator. Any party's failure to compensate the mediators in accordance with N.C.G.S. §143-128(g) shall subject that party to a withholding of said amount of money from the party's monthly payment by Lincoln County.

#### V. AUTHORITY AND DUTIES OF MEDIATORS

##### A. Authority of Mediator.

- i. Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.
- ii. Private Consultation. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.
- iii. Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants,

attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

B. Duties of Mediator

- i. The mediator shall define and describe the following at the beginning of the conference:
  - a. The process of mediation;
  - b. The difference between mediation and other forms of conflict resolution;
  - c. The costs of the mediated settlement conference;
  - d. That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their legal rights if they do not reach settlement;
  - e. The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
  - f. Whether and under what conditions communications with the mediator will be held in confidence during the conference;
  - g. The inadmissibility of conduct and statements as provided by N.C.G.S. §7A-38.1(1);
  - h. The duties and responsibilities of the mediator and the participants; and
  - i. That any agreement reached will be reached by mutual consent.
- ii. Disclosure. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
- iii. Declaring Impasse. It is the duty of the mediator to timely determine that an impasse exists and that the conference should end.
- iv. Reporting Results of Conference. The mediator shall report to Lincoln County within 10 days of the conference whether or not the parties reached an agreement. If an agreement was reached, the report shall state the nature of said agreement. The mediator's report shall inform Lincoln County of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. Lincoln County may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
- v. Scheduling and Holding the Conference. It is the duty of the mediator to schedule the conference and conduct it prior to the deadline of completion set by the Rules. The mediator shall strictly observe deadlines for completion of the conference unless said time limit is changed by a written order from Lincoln County.

VI. COMPENSATION OF THE MEDIATOR

- A. By Agreement. When the mediator is stipulated by the parties, compensation shall be as agreed upon between the parties and the mediator provided that the provision of N.C.G.S. §143-128(g) are observed.
- B. By Appointment. When the mediator is appointed by Lincoln County, the parties shall compensate the mediator for mediation services at the rate in accordance with the rate charged for Superior Court mediation. The parties shall also pay to the mediator a one-time per case administrative rate in accordance with the rate charged for Superior Court mediation, which is due upon appointment.

VII. MEDIATOR CERTIFICATION

All mediators certified in the Formal Dispute Resolution Program shall be properly certified in accordance with the rules certifying mediators in Superior Court in North Carolina. (Except when otherwise allowed by Lincoln County upon the request of the parties to the mediation.) When selecting mediators, the parties may designate a preference for mediators with a background in construction law or public construction contracting. Such requirements, while preferred, are not mandatory under these Rules.

VIII. All mediators chosen must either demonstrate they are certified in accordance with the Rules Implementing Scheduled Mediated Settlement Conference in Superior Court or must gain the consent of Lincoln County to mediate any dispute in accordance with these Rules.

IX. RULE MAKING.

These Rules are subject to amendment by Lincoln County at any time the County deems it appropriate.

X. TIME LIMITS.

Any time limit provided for by these Rules may be waived or extended by the mediator it appoints for good cause shown. If the mediator has not yet been appointed, the Designer of Record shall decide all waivers or extensions of time for good cause shown.



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# Lincoln County Vendor Requirements

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## **HOW TO DO BUSINESS WITH LINCOLN COUNTY**

The procedures listed outline “How to Do Business” with Lincoln County. They are intended for use as a guide to the County’s purchasing methods and practices. While this document may not answer all questions related to doing business with Lincoln County, it does provide a foundation for our purchasing system.

It is the practice of Lincoln County to obtain the maximum value for each tax and utility dollar spent.

The basic goals of the County’s purchasing program are:

1. To comply with the legal and ethical requirements of public purchasing and procurement
2. To assure vendors that impartial and equal treatment is afforded to all who wish to do business with the County
3. To receive maximum value for each dollar spent by awarding purchase orders to the lowest responsible bidder, taking into consideration quality, performance, technical support, delivery schedule, past performance and other relevant factors
4. To provide County departments the required goods, equipment, and services at the time and place needed and in the proper quantity and quality
5. To consistently expedite, in a professional manner, the search for sources of supplies, the development of new sources, the selection of suppliers, commitment, follow-up, and adjustments
6. To promote good and effective vendor relations, cultivated by informed and fair buying practices and strict maintenance of ethical standards
7. To effect maximum feasible standardization of products used within and among departments in order to obtain better prices.

### **Purchasing Procedures**

Purchase Orders will be issued for all purchases of \$1,000.00 and over. To be valid, the Purchase Order must be completed and signed by the Finance Director and Purchasing Agent. The procedure outlined is designed to take full advantage of a centralized purchasing system.

The issuance of purchase orders by unauthorized County employees or officials will not be recognized by the County and payment of these obligations will not be approved. Obtaining supplies, materials, equipment or services without a purchase order is considered an unauthorized purchase. Purchase Orders will not be issued after the purchase is made except in emergency situations. In order to properly process a vendor's invoice(s) for payment, a

packing slip or vendor's delivery ticket must be signed by an authorized County employee and the purchase order number must be indicated. The County's payment terms are net 30 days and all shipments must be prepaid FOB Destination (Departments of Lincoln County Government). The County does not pay freight charges. The County only issues Blanket PO's for services and will not be for a period longer than 90 days. Any blanket PO's amount will be issued as a "Not to Exceed" (NTE) amount.

**Purchases of apparatus, supplies, materials and/or equipment**

All purchases of apparatus, supplies, materials and/or equipment for items with an estimated cost of \$1,000.00 or over but less than \$2,500.00 will be made only after receiving three (3) quotes by the requesting department. These quotes may be received via email, oral communication (either verbal or by telephone), fax, and/or catalog; however, a log must be kept on all verbal and telephone quotes.

All purchases of apparatus, supplies, materials and/or equipment for items with an estimated cost of \$2,500.00 or over but less than \$5,000.00 will be made only after receiving three (3) quotes by the requesting department. These quotes must be written and may be received by email.

A Request for Sealed Bid/Proposals (RFB/P) will be used for purchases of apparatus, supplies, materials, equipment with an estimated cost of \$5,000 to \$89,999.00 with or without advertising and must be sealed.

The Formal Bidding Procedures will be used for purchases of apparatus, supplies, materials, and/or equipment with an estimated cost of \$90,000.00 or more and must be advertised and sealed.

**All Quotes and Bids of \$5,000.00 or more regardless of degree of formality shall be directed to the Purchasing Division.**

**Construction and Repair Contracts**

Construction and/or repair contracts with an estimated cost of \$1,000.00 or more but less than \$2,500.00 will be made only after receiving three (3) quotes by the requesting department. These quotes may be received via email, oral communication (either verbal or by telephone), fax, and/or catalog; however, a log must be kept on all verbal and telephone quotes.

Construction and/or repair contracts with an estimated cost of \$2,500.00 or more but less than \$5,000.00 will be made only after receiving three (3) quotes by the requesting department. These quotes must be written and may be received by e-mail.

A Request for Sealed Bid/Proposals (RFB/P) will be used for construction and/or repair contracts with an estimated cost of \$5,000 to \$500,000.00 with or without advertising and must be sealed. Formal HUB requirements must be used for projects costing \$300,000 and above.

The Formal Bidding Procedures will be used for construction and/or repair with an estimated cost of \$500,000.00 or more and must be advertised and sealed.

**Bid Award**

Bid awards, purchase orders and/or contracts will be issued to the lowest responsible, responsive bidder, taking into consideration quality, performance and time specified for the performance of the contract. Time of delivery and prompt payment discounts will be considered in breaking tie bids.

**Rejection of Bids**

The County reserves the right to reject any and all bids or proposals, to waive any technicalities associated with the bid or proposal, and to make the award that it deems in the best interest of the County.

**Local Buying**

It is the desire of the County to purchase from vendors located within Lincoln County and the state of North Carolina whenever possible. This can be accomplished by insuring that local vendors who have goods or services available which are needed by the County are included in the competitive purchasing process. To insure that maximum value is obtained for each public dollar spent, **the County cannot and will not make purchasing decisions solely on the basis of vendor residence.** Rather, the County will endeavor to encourage local, county and state vendors and suppliers to compete for all County business.

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# Lincoln County Insurance Requirements

## GL of \$250,000.00

### I. Contractor Insurance Requirements

Contractor shall maintain at all times 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 \$250,000 per occurrence, and \$250,000 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 \$250,000 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 North Carolina. Contractor shall also maintain Employers' Liability insurance with limits of not less than \$100,000 per accident and \$100,000 each employee for injury by disease.

#### D. General Requirements

- i. Prior to beginning the work, Contractor shall provide written evidence of insurance as requested by the County to confirm that these insurance requirements are satisfied.
- ii. Lincoln 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.
- iii. The workers compensation policy must contain a waiver of subrogation in favor of the County



- iv. Contractor shall be responsible for insuring all of his/her own personal property, improvements, and betterments.
- v. All insurance policies put forth to satisfy the above requirements shall require the insurer to provide a minimum of thirty (30) days notice to the County of any material change in coverage, cancellation, or non-renewal.
- vi. 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.
- vii. 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, 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.

# LINCOLN COUNTY INSURANCE REQUIREMENTS

## GL of \$1,000,000.00

### I. Contractor Insurance Requirements

Contractor shall maintain at all times 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 North Carolina. Contractor shall also maintain Employers' Liability insurance with limits of not less than \$1,000,000 per accident and \$1,000,000 each employee for injury by disease.

#### D. General Requirements

- i. Prior to beginning the work, Contractor shall provide written evidence of insurance as requested by the County to confirm that these insurance requirements are satisfied.
- ii. Lincoln 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. Additional insured endorsements must be attached to Contractor's evidence of insurance and must be ISO

- forms CG 2010 (1185) or CG 2010 (0704) in combination with CG 2037 (0704) or the equivalent.
- iii. The workers compensation policy must contain a waiver of subrogation in favor of the County
  - iv. Contractor shall be responsible for insuring all of his own property and equipment.
  - v. 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.
  - vi. 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.
  - vii. 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, 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.

# LINCOLN COUNTY INSURANCE REQUIREMENTS

## Extended Coverage

### I. Contractor Insurance Requirements

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

#### i. 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. The products-completed operations coverage shall be maintained for a period of not less than two (2) years after completion of the Contractor's work as set forth in this Agreement.

### II. 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.

### III. 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 North Carolina. Contractor shall also maintain Employers' Liability insurance with limits of not less than \$1,000,000 per accident and \$1,000,000 each employee for injury by disease.

### IV. General Requirements

- i. Prior to beginning the work, Contractor shall provide written evidence of insurance as requested by the County to confirm that these insurance requirements are satisfied.
- ii. Lincoln 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. Additional insured endorsements must be attached to Contractor's evidence of insurance and must be ISO forms CG 2010 (1185) or CG 2010 (0704) in combination with CG 2037 (0704) or the equivalent.

- iii. The workers compensation policy must contain a waiver of subrogation in favor of the County
- iv. Contractor shall be responsible for insuring all of his own property and equipment.
- v. 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.
- vi. 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.
- vii. 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, 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.



**Lincoln County Requirements for Purchase Contracts**

<b>Contract Amount</b>	<b>\$0 - \$999.99</b>	<b>\$1,000 - \$2,499.99</b>	<b>\$2,500 - \$4,999.99</b>	<b>\$5,000 - \$89,999.99</b>	<b>\$90,000 and above</b>
<b>Responsibility</b>	Department			Purchasing	
<b>Advertisement</b>	No advertisement required. If the estimated cost is \$50,000 and over, advertisement will be posted on the County website.				Must be advertised on the County website and in a local newspaper at least 30 days before opening.
<b>Minimum Number of Quotes/Bids/Proposals</b>	Not required	Minimum of three (3) required. May request a waiver or reduction of this requirement from the Purchasing Agent or County Manager. Waivers and Reductions are on a case by case basis.			Must receive three (3). If less than three (3) are received, they must be returned unopened and start the process over.
<b>Form of Bids</b>	Not required	Email, verbal/telephone (must keep a log), catalog and/or website	Email	Sealed	Sealed
<b>Record of Bids</b>	Kept by department			Kept by Purchasing Agent	
<b>Bid Opening</b>	Not Public				Public
<b>Bid Bonds</b>	Not required. Purchasing Agent, Assistant County Manager and/or County Manager may ask for at the time of advertisement.				
<b>Performance/Payment Bonds</b>	Not required. Purchasing Agent, Assistant County Manager and/or County Manager may ask for at the time of advertisement.				
<b>HUB Participation Goals</b>	Not required				
<b>Board Approval</b>	Not required			Not required if below \$50,000.	Required
<b>Standard of Award</b>	Must award to the lowest responsive, responsible bidder taking into consideration quality, performance and the time specified in the proposal for the performance of the contract.				
<b>Public Records</b>	Public record when received	Public record when received up to \$30,000. Over \$30,000 when contract is awarded			Public record when opened
<b>Purchase Order</b>	Not required	Required			
<b>Exemptions</b>	None	Sole Source			Sole Source and Piggy Backing

## **Exceptions to Formal Purchase Contracts** (143.129)

### **Piggy Backing**

- Purchase Contracts Only over \$90,000.00
- Must have County Commission approval at a regularly scheduled meeting
- Must advertise one time and 10 days must lapse between advertisement notice and commissioner meeting
- Advertisement must contain what is being purchased (piggybacked) and from who it is being purchased and the date of the original bid
- Must be from a Bid that was competitively bid within the last twelve (12) months. Original bid must have been with any local, state of North Carolina, or any other State or Federal agency.
- Price must be the same or more favorable
- Must be with the same vendor as the original bid and for the same item
- Only minor changes can be made (basically must be a mirror image)
- If Year, Make and Model are listed in specifications of original bid you must buy the same. (To eliminate this problem specification should be written to state: of current year make, model and production.)
- Bonding is not required; however, the CM can ask for bid and performance bonds at the time of advertisement (the request must be included in the specifications)

### **Sole Source**

- Purchase Contracts over \$1,000.00
- Must have County Commission approval at a regularly scheduled meeting
- Must state in resolution why the item is not being bid ( (a) product is only available from one source, (b)compatibility and/or, standardization, (c) performance or price)



**Lincoln County Requirements for Construction and Repair Contracts (Vertical Construction)**

<b>Contract Amount</b>	<b>\$0 - \$999.99</b>	<b>\$1,000 - \$2,499.99</b>	<b>\$2,500 - \$4,999.99</b>	<b>\$5,000 - \$499,999.99</b>	<b>\$500,000 and above</b>
<b>Responsibility</b>	Department			Purchasing	
<b>Advertisement</b>	No advertisement required. If the estimated cost is \$50,000 and over, advertisement will be posted on the County website.				Must be advertised on the County website and in a local newspaper at least 30 days before opening.
<b>Minimum Number of Quotes/Bids/Proposals</b>	Not required	Minimum of three (3) required. May request a waiver or reduction of this requirement from the Purchasing Agent or County Manager. Waivers and Reductions are on a case by case basis.			Must receive three (3). If less than three (3) are received, they must be returned unopened and start the process over.
<b>Form of Bids</b>	Not required	Email, verbal/telephone (must keep a log)	Email	Sealed	Sealed
<b>Record of Bids</b>	Kept by Department			Kept by Purchasing Agent	
<b>Bid Opening</b>	Not Public				Public
<b>Bid Bonds</b>	Not required. Purchasing Agent, Assistant County Manager and/or County Manager may ask for at the time of advertisement.				5% of bid amount
<b>Performance/Payment Bonds</b>	Not required. Purchasing Agent and/or County Manager may ask for at time of advertisement.			100% of bid amount for contracts costing more than \$50,000 that are part of a project costing more than \$300,000. PA and/or CM may request for at the time of advertisement.	
<b>HUB Participation Goals</b>	Not required unless part of a state funded project worth \$100,000 or more			Good faith efforts to reach goal. Bidders must submit affidavits to verify efforts. Report to HUB office	
<b>Separate Specifications</b>	Not required			Required for each branch of work for projects \$300,000 and over	
<b>Licensed Contractor</b>	Required if contract is part of a project worth more than \$30,000				
<b>Construction Methods</b>	No specific method			Single-prime, separate-prime, dual-bidding, or CM@R for projects \$300,000 and over	
<b>Board Approval</b>	Not required			Not required if below \$50,000.	Required
<b>Standard of Award</b>	Must award to the lowest responsive, responsible bidder taking into consideration quality, performance and the time specified in the proposal for the performance of the contract.				
<b>Dispute Resolution</b>	Not required			Required	
<b>Public Records</b>	Public record when received	Public record when received up to \$30,000. Over \$30,000 when contract is awarded			Public record when opened
<b>Purchase Order</b>	Not required			Required	

**Lincoln County Requirements for Construction and Repair Contracts (Horizontal Construction)**

<b>Contract Amount</b>	<b>\$0 - \$999.99</b>	<b>\$1,000 - \$2,499.99</b>	<b>\$2,500 - \$4,999.99</b>	<b>\$5,000 - \$499,999.99</b>	<b>\$500,000 and above</b>
<b>Responsibility</b>	Department			Purchasing	
<b>Advertisement</b>	No advertisement required. If the estimated cost is \$50,000 and over, advertisement will be posted on the County website.				Must be advertised on the County website and in a local newspaper at least 30 days before opening.
<b>Minimum Number of Quotes/Bids/Proposals</b>	Not required	Minimum of three (3) required. May request a waiver or reduction of this requirement from the Purchasing Agent or County Manager. Waivers and Reductions are on a case by case basis.			Must receive three (3). If less than three (3) are received, they must be returned unopened and start the process over.
<b>Form of Bids</b>	Not required	Email, verbal/telephone (must keep a log)	Email	Sealed	Sealed
<b>Record of Bids</b>	Kept by Department			Kept by Purchasing Agent	
<b>Bid Opening</b>	Not Public				Public
<b>Bid Bonds</b>	Not required. Purchasing Agent, Assistant County Manager and/or County Manager may ask for at the time of advertisement.				5% of bid amount
<b>Performance/Payment Bonds</b>	Not required. Purchasing Agent, Assistant County Manager and/or County Manager may ask for at the time of advertisement.			100% of bid amount for contracts costing more than \$50,000 that are part of a project costing more than \$100,000. PA and/or CM may request for at the time of advertisement.	
<b>HUB Participation Goals</b>	Not required				
<b>Separate Specifications</b>	Not required				
<b>Licensed Contractor</b>	Required if contract is part of a project worth more than \$30,000				
<b>Construction Methods</b>	No specific method				
<b>Board Approval</b>	Not required			Not required if below \$50,000.	Required
<b>Standard of Award</b>	Must award to the lowest responsive, responsible bidder taking into consideration quality, performance and the time specified in the proposal for the performance of the contract.				
<b>Dispute Resolution</b>	Not required				
<b>Public Records</b>	Public record when received	Public record when received up to \$30,000. Over \$30,000 when contract is awarded			Public record when opened
<b>Purchase Order</b>	Not required			Required	

## Overview

### **Selection process for Architects and Engineers** (G.S. 143-64.31)

When the estimated fee is less than \$50,000.00:

- Must announce the requirements (qualifications)
- Selection shall be based on competence and qualifications for professional service required
- Fee cannot be considered beyond unit pricing prior to selection for negotiation
- After selection process you can negotiate a contract using a fair and reasonable fee with best qualified firm
- Selection of a firm shall include the use of good faith efforts by the public entity to notify minority firms of the opportunity to submit qualifications for consideration by the public entity
- If no contract can be reached must select the next most qualified and negotiate with them
- A North Carolina resident firm providing architectural, engineering, surveying, or construction management at risk services shall be granted a preference over a nonresident firm providing the two firms are deemed equally qualified

### **Exemption Process for Architects and Engineers** (G.S. 143.64.32)

State law allows units of local government to in writing exempt particular projects however; this exemption is on a per project basis and cannot be enacted as a blanket exemption when the:

- Proposed project has an estimated fee less than fifty thousand (\$50,000) dollars or
- Other particular projects exempted in the sole discretion of the unit of local government
- Must have the County Commission approval through a resolution stating the reason or reasons and the circumstances for the exemption

### **Selection Process for Design Build Contracts** (G.S. 143-128.1A)

MUST comply with GS 143-128.1A

- Must establish written criteria for determining when design-build is appropriate
- Governing board approval not required. County must adopt the criteria for each project.
- Criteria must include the following factors as a minimum:
  - County's ability to "adequately and thoroughly" define the project requirements
  - Time constraints for project delivery
  - County's ability to ensure that a quality project can be delivered
  - Availability of qualified staff or outside consultants experienced in design-build to manage and oversee the project
  - Good faith efforts to comply with HUD requirements and to recruit and select small businesses
  - Criteria used by County, including a cost-benefit analysis of using design-build in lieu of traditional construction bidding methods
- Qualifications must be sealed
- Qualification are not opened in public
- RFQ must be advertised on county website and in a local newspaper one time, at least thirty (30) days before opening. The RFQ must include the following items:
  - Project site

- Project Scope
- Anticipated project budget
- Project schedule
- Qualifications selection criteria and criteria weight
- Notice of the County's rules, ordinances or goals related to the project including goals for MWBE and small business participation
- Other information provided to potential design-builders in submitting qualifications
- Statement requiring each design-builder to submit with its RFP an explanation of its project team selection consisting of either:
  - List of licensed contractors, licensed subcontractors and licensed design professionals the design-builder proposes to use
  - The design-builder's strategy for selecting contractors and subcontractors based on the competitive bidding requirements
- Design-builders must certify that each licensed design professional who is a member of the design-build team, including sub consultants, was selected through the QBS selection method required under the Mini-Brooks Act
- Must receive at least three (3) responses. If less than three (3) responses are received, the County must resolicit. After second solicitation, the County may consider proposals even if three (3) are not received.
- County must evaluate and rank the three (3) most qualified respondents based on the criteria included in the RFQ.
- County may negotiate a contract at a "fair and reasonable" price with the highest ranked design-builder. If negotiations with the highest ranked design-builder are not successful, the County may initiate negotiations with the second highest ranked and so on, until the County selects a design-builder or rejects all proposals.
- Contract award does not require governing board approval
- 100% Performance and Payment bonds required for each branch of work over \$50,000.00 (G.S. 143-129(C)) and (G.S. 44A-26)
- Design-builder can only substitute key personnel after obtaining written approval for the County

## **Selection Process for Design Build Bridge Contracts (G.S. 143-128.1B)**

MUST comply with GS 143-128.1B

- Must establish written criteria for determining when design-build is appropriate
- Governing board approval not required. County must adopt the criteria for each project.
- Criteria must include the following factors as a minimum:
  - County's ability to "adequately and thoroughly" define the project requirements
  - Time constraints for project delivery
  - County's ability to ensure that a quality project can be delivered
  - Availability of qualified staff or outside consultants experienced in design-build to manage and oversee the project
  - Good faith efforts to comply with HUD requirements and to recruit and select small businesses
  - Criteria used by County, including a cost-benefit analysis of using design-build in lieu of traditional construction bidding methods
- Qualifications must be sealed

- Qualification are not opened in public
- On or before entering into a contract for design build services under this section, the governmental entity shall select or designate a staff design professional, or a design professional who is independent of the design builder, to act as its design criteria design professional as its representative for the procurement process and for the duration of the design and construction. If the design professional is not a full time employee of the governmental entity, the governmental entity shall select the design professional on the basis of demonstrated competence and qualifications as provided by G.S. 143 64.31. The design criteria design professional shall develop design criteria in consultation with the governmental entity. The design criteria design professional shall not be eligible to submit a response to the request for proposals nor provide design input to a design build response to the request for proposals. The design criteria design professional shall prepare a design criteria package equal to thirty five percent (35%) of the completed design documentation for the entire construction project. The design criteria package shall include all of the following:
  - Programmatic needs, interior space requirements, intended space utilization, and other capacity requirements.
  - Information on the physical characteristics of the site, such as a topographic survey.
  - Material quality standards or performance criteria.
  - Special material requirements.
  - Provisions for utilities.
  - Parking requirements.
  - The type, size, and location of adjacent structures.
  - Preliminary or conceptual drawings and specifications sufficient in detail to allow the design builder to make a proposal which is responsive to the request for proposals.
  - Notice of any ordinances, rules, or goals adopted by the governmental entity.
- RFQ must be advertised on county website and in a local newspaper one time, at least thirty (30) days before opening. The RFQ must include the following items:
  - Project site
  - Project Scope
  - Anticipated project budget
  - Project schedule
  - Qualifications selection criteria and criteria weight
  - Notice of the County's rules, ordinances or goals related to the project including goals for MWBE and small business participation
  - Other information provided to potential design-builders in submitting qualifications
  - Statement requiring each design-builder to submit with its RFP an explanation of its project team selection consisting of either:
    - List of licensed contractors, licensed subcontractors and licensed design professionals the design-builder proposes to use
    - The design-builder's strategy for selecting contractors and subcontractors based on the competitive bidding requirements
- Design-builders must certify that each licensed design professional who is a member of the design-build team, including sub consultants, was selected through the QBS selection method required under the Mini-Brooks Act
- Must receive at least three (3) responses. If less than three (3) responses are received, the County must resolicit. After second solicitation, the County may consider proposals even if three (3) are not received.

- County must evaluate and rank the three (3) most qualified respondents based on the criteria included in the RFQ.
- County may negotiate a contract at a “fair and reasonable” price with the highest ranked design-builder. If negotiations with the highest ranked design-builder are not successful, the County may initiate negotiations with the second highest ranked and so on, until the County selects a design-builder or rejects all proposals.
- Contract award does not require governing board approval
- 100% Performance and Payment bonds required for each branch of work over \$50,000.00 (G.S. 143-129(C)) and (G.S. 44A-26)
- Design-builder can only substitute key personnel after obtaining written approval for the County

### **Selection Process for Public Private Partnerships (P3) Contracts** (G.S. 143-128.1C)

MUST comply with GS 143-128.1C

- Must make written findings of a critical need for the project.
- Governing board must approve and adopt findings at an open meeting
- Determine programming needs for facilities to be constructed and the form in which private developers submit their qualifications.
- Must be advertised on county website and in a local newspaper one time, at least thirty (30) days before opening. Advertisement must state programming requirements, when qualifications are due and the person qualifications are to be delivered to.
- Qualifications must be sealed
- Qualification are not opened in public
- Private developers must submit the following information:
  - Evidence of financial stability (trade secrets remain confidential)
  - Experience with similar projects
  - Explanation of project team selection by either:
    - Listing licensed contractors, licensed subcontractors and licensed design professionals proposed to be used for design and construction
    - A statement outlining a strategy for open contractor and subcontractor selection based on competitive bidding.
  - Statement of the developer’s availability to undertake the P3 project and projected time line for project completion
  - Any other information requested
- Evaluate and select private developer using the Mini-Brooks Act.
  - May negotiate with one or more respondents during the evaluation process
  - Criteria for evaluation based on programming needs, project scope and any other factors related to the project deemed appropriate
- Governing board must award the development contract at an open meeting after a public hearing and at least thirty (30) days’ published notice of the terms of the contract.
  - Must be advertised on county website and in a local newspaper one time
  - Must make available a summary of the contract terms and conditions and indicate how to obtain a complete copy of the contract
- The contract must specify the parties’ interests, roles and responsibilities. At a minimum the contract must address:
  - The property interest of the county and the private developer (ownership, lease agreements or both)

- Development responsibilities of the county and the private developer (could include both construction and on-going operation and maintenance activities)
- The financing responsibilities of the county and the private developer (private developer must provide at least 50% of the financing for the total cost of the project)
- The parties' good faith efforts to comply with HUB
- The contract may require the developer to be responsible for some or all of the construction, purchase of materials and equipment and to use the same contractor(s) as the county. It may also require the developer to purchase materials at a reasonable price.
- If the project uses design-build construction, the procurement requirements of GS 143-128.1A apply
- 100% Performance and Payment bonds required for each branch of work over \$50,000.00 (G.S. 143-129(C)) and (G.S. 44A-26)
- The private developer and its subcontractors must comply with HUB participation requirements.

## Overview

### Disposal of Property (G.S. 160A-12)

#### Methods

1. Sealed bids
2. Negotiated offer & upset bid
3. Public Auction
4. Exchange

**Personal Property (informal range) valued less than \$30,000.00 may be disposed of using methods listed below:**

1. Sealed Bid
  - a. Must have resolution for sale
  - b. Advertisement one time ten (10) days prior
  - c. Sale procedures are the same as for purchasing with exception of number of days for advertisement
2. Negotiated Offer & Upset Bid
  - a. Must have resolution
  - b. Upon acceptance by council the offeror must deposit an amount equal to 5% of bid with County Clerk
  - c. Advertisement listing intent, description current bid stating ten (10) days is given for upset bid (must list when, where etc)
  - d. For upset bid the bid must be raised/increased by 10% of first \$1,000.00 & 5% of balance
  - e. The new/upset bidder must deposit an amount equal to 5% of bid with County Clerk
  - f. Re-advertisement listing current (increased) bid amount (stating ten (10) days is given for upset bid)
  - g. After upset bid start process again until no more bids are received
3. Public Auction
  - a. Must have resolution
  - b. Advertisement one time ten (10) days prior
  - c. Exchange
  - d. Must have resolution
  - e. Advertise ten (10) days prior regularly scheduled meeting with statement of intent to exchange at meeting



### **GovDeals**

Resolution dated January 26, 2004 allows Lincoln County to dispose of surplus property using electronic auction. The Purchasing Agent shall provide a listing of items to the County Clerk

### **Three (3) basic Competitive Sale Procedures**

(Formal Range)

1. Sealed bids
2. Negotiated offer & upset bid
3. Public Auction

**All Real (estate) Property and Personal property valued over \$30,000.00 must be disposed of using one of the competitive sale procedures.** Real property will have a change in advertisement/notice requirements equaling 30 days for sealed bid and public auction.

### **Seized and Abandoned Property** (G.S. 15-2)

Can only use the public auction sale method

- All money goes to local school board
- All property with the exception of bicycles must be held 180 days. Bicycles only requires a 60 day holding period

Takes two different advertisements

- First advertisement must give description of property and give a 30-day notice for claims to be made.
- Second advertisement is for auction and must be published 10 days prior to auction

### **Sale to Employees or Officials**

Officials and or employees that make or administer contracts or have a bearing on or actual decision-making authority are not allowed to purchase surplus property. There must **not** be a conflict of interest. Examples of conflicts of interest are:

- The making of a contract is any person that works with development of specifications
- Administering a contract is any person that oversees the contract performance
- Direct Benefit if 10% ownership or if receive direct income or commission or acquire property

## Overview

### MWBE and Dispute Resolution

#### Dispute Resolution

- Applies to all formal construction contracts
- May use the one adopted by the state building commission
- Or shall adopt one but must include mediation
- When adopting your own policy the amount of money in controversy must be over \$15,000.00
- Cost of mediation will be split with the County paying at least one-third

#### Minority Participation (GS 143-128.2)

##### Terms:

**Minority Business:** a business in which at least 51% is owned by one or more minority persons or socially and economically disadvantaged individual or corporation.

**Minority Person:** a person who is a citizen or lawful permanent resident of the United States and who is:

- Black
- Hispanic
- Asian American
- American Indian
- Female

MBE **building** project goals of 10% are for

- projects over \$100,000 using state funds or any combination of funds

Exemption(s)

- prefab buildings
- buildings that can be relocated

#### **Must be with bid for bid to be responsive**

- Identification of minority business participation form and
  - Affidavit A (Listing of Good Faiths Effort) ( must achieve 50 points)  
Or
  - Affidavit B (Use of Own Workforce)
- Low bidder must within 72 hours of being awarded the contract provide
  - Affidavit C ( Portion of Work to be Performed by Minority Force  
Or
  - Affidavit D (Good Faiths Effort) (Listing how you achieved fifty (50) points