



# Lee County Purchasing and Contracting Policy

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**Lee County, North Carolina  
Finance Department**

*Through vision and leadership, setting the standard for professional local government.*



# Lee County Purchasing and Contracting Policy

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# Lee County Purchasing and Contracting Policy

## *Introduction*

This purchasing policy and procedures manual is intended for use as a guide to Lee County's purchasing methods and practices. When used properly, the policies and procedures will enable the County to obtain needed materials, equipment, supplies, and services efficiently and economically.

The understanding and cooperation of all employees is essential if the County is to obtain the maximum value for each tax dollar spent. While this manual does not answer all questions related to purchasing, it does provide the foundation for a sound purchasing policy.

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 contracts and/or purchase orders to the lowest responsible, responsive 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 promote good and effective vendor relations, cultivated by informed and fair buying practices and strict maintenance of ethical standards.

## Purchasing Summary

Listed below is a summary of the County's procedures with more detail to follow:

Amount of Purchase	Appropriate Procedure
Less than \$500	No purchase order required Most reasonable price Verify that there is an appropriation authorizing the purchase or obligation Ensure that sufficient funds will remain in the appropriation to pay the amounts that are expected to come due in the fiscal year
\$500.00 - \$4,999.99	Purchase order required Most reasonable price
\$5,000.00 - \$29,999.99 Purchases and Services	Purchase order required Contact the Purchasing Agent Informal sealed bids 3 Quotes or State Contract
\$30,000.00 – \$89,999.99 Purchases and Services	Purchase order required Contact the Purchasing Agent Informal sealed bids 3 Quotes or State Contract Award by Board of Commissioners General Statute 143-131
Equipment costing \$90,000 and above (includes lease to purchase items)	Purchase order required Contact the Purchasing Agent Formal bid procedures Award by Board of Commissioners General Statute 143-129
Construction and/or renovation =>\$30,000 and <\$300,000 NC General Statute 143-131	Purchase order required Contact the Purchasing Agent Informal sealed bid procedures Informal Good Faith Efforts County Outreach Minority Business Reporting (HUBSCO) Dispute Resolution (\$15,000 or more) Written Contract required Award by Board of Commissioners
Construction and/or renovation =>\$300,000 NC General Statute 143-128	Purchase order required Contact the Purchasing Agent Formal bid procedures Formal Good Faith Efforts County Outreach Minority Business Reporting (HUBSCO) Dispute Resolution Written Contract required Award by Board of Commissioners

Departments receiving non-county funds must also follow the purchasing guidelines established by the funding agency if these requirements are different from the County's procedures.

# *General Guidelines for Purchasing*

## **Local Buying**

The County wants to ensure 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 vendors and suppliers to compete for all County business.

## **Planning**

Planning for purchases should be done on a short-term and long-term basis, thereby minimizing small orders and last minute purchases. Planning will also reduce the number of trips required to obtain materials and minimize clerical and supervisory time spent on documenting purchases.

## **Buying Proper Quality**

Quality and service are as important as price, and it is the duty of the requesting department to secure the best, most economical, quality that will meet but not exceed the requirements for which the goods and/or services are intended. In some instances, the lowest price does not necessarily mean the lowest cost.

## **Conflicts of Interest**

County employees and officers who are involved in making contracts on behalf of Lee County are governed by North Carolina General Statute (NCGS) 14-234 Conflict of Interest Law, which prohibits direct benefit from said contracting. Violation of the statute is a Class 1 misdemeanor. Violation of the General Statute can lead to disciplinary action under the County's Personnel Policy.

## **Gifts and Favors**

In addition to the prohibition against accepting gifts and favors from vendors and contractors under NCGS 133-32, officers, employees, and agents of Lee County are prohibited from accepting or soliciting gifts, gratuities, favors, or anything of monetary value from contractors, suppliers, or parties to subcontracts. Items of nominal value valued at less than \$25 which fall into one of the following categories may be accepted:

1. Promotional items
2. Honorariums for participation in meetings; or
3. Meals furnished at banquets.

## **E-verify**

Pursuant to North Carolina General Statute 143-133.3, the County will not enter into a contract unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 64 of the General Statutes.

## **Iran Divestment Act**

Pursuant to North Carolina General Statute 147-86.60, the County will not enter into a contract with a contractor identified on a list created by the State Treasurer pursuant to North Carolina General Statute 147-86.58.

## **Israel Boycott**

Pursuant to North Carolina General Statute 147-86.82, the County will not enter into a contract with a contractor identified on a list created by the State Treasurer pursuant to North Carolina General Statute 147-86.81.

## **Uniform Guidance**

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

## **Debarred Vendors**

The County will not enter into a contract with a contractor or subcontractor that is debarred or suspended from doing business in North Carolina.

## **Appropriations and Encumbrances**

Under the Local Government Budget and Fiscal Control Act, all expenditures must be supported by an appropriation. In NCGS 159-28 (b), bills, invoices, or other claims against a local government or public authority may be approved if 1) the amount is determined to be payable and 2) the budget or project ordinance includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed. Contracts, including purchase orders, must include a pre-audit certificate signed by the Finance Officer.

Encumbrances include all outstanding purchase orders, unpaid invoices and agreements or contracts that have not been completed for which the County has an obligation to expend funds. Encumbrances against an appropriation are an obvious reduction in the amount available for future expenditures, and only when the encumbrances are recorded is a true report of the financial condition of a department or County evident.

## **Lee County Outreach Plan for Minority Business Participation**

In accordance with NCGS 143-128.2, the County has established goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on Lee County's 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, surveying, construction manager-at-risk services, design-build services and public-private partnership construction services. The formal range requires the contractors to complete the Good Faith Outreach for minority business solicitation. In addition to the formal bid range (over \$300,000) requirement, projects in the informal range of \$30,000 to \$300,000 require the County to solicit minority

participation in contracts for the erection, construction, alteration or repair of any building awarded pursuant to this section. The County shall maintain a record of contractors solicited and shall document efforts to recruit minority business participation in those contracts pursuant to NCGS 143-131 (b). The informal range of \$30,000 to \$300,000 requires the County to perform the Good Faith Outreach.

Lee County has a current verifiable goal of 10 percent for minority participation for building construction or repair projects.

At the completion of a construction, renovation and/or repair project that has minority participation requirements, the department must submit minority participation reporting information to the Development Services Director who will report MWBE information for each project to the North Carolina Office of Historically Underutilized Business (NCGS 143-128.3).

The complete policy, Lee County's Minority Business/Historically Underutilized Business Participation Outreach Plan and Guidelines can be found in Exhibit D of this policy.

## ***Definition Of Responsibilities***

### **The Assistant Finance Director (designated as Purchasing Agent) responsibilities:**

- To facilitate the involvement of local vendors in the County's purchasing policy.
- To ensure impartial judgments in the selection of vendors which are based on product quality, price, warranty, and performance and vendor delivery, service, and performance.
- To comply with all County purchasing procedures and North Carolina General Statutes covering procurement and disposal.
- To assist with formal bid packets and quotation requests.
- To manage the formal bid process, including advertising for bids, notifying vendors, accepting bid proposals, opening bids, tabulating bids, and serving as the primary resource for questions from vendors.
- To review purchase requisitions.
- To maintain adequate purchasing records, including a database of vendors established in an accessible vendor file.
- Upon request, to assist departments in locating the best source for supplies, materials, and equipment.
- To assist departments in conducting negotiations with vendors concerning prices, bids, terms, deliveries, and adjustments.
- To maintain a central file of contracts.
- To assist departments with the informal bid process.

### **The Finance Officer responsibilities:**

Under the Local Government Budget and Fiscal Control Act, all contractual obligations must be supported by an appropriation that authorizes the expenditure. As required by NCGS 159-28(a), the Finance Officer will pre-audit all obligations of funds and execute the pre-audit certification.

### **Department and employee responsibilities:**

- It is the responsibility of each department to requisition goods and services in such a way as to allow time for competitive bidding, ordering, and delivery of materials. Exceptions shall be made only on rare occasions, when a true emergency exists.
- The department must obtain a completed W-9 (Request for Taxpayer Identification and Certification) from the vendor before an invoice or purchase order can be processed.
- It is the responsibility of the department head or his designee, in consultation with the Purchasing Agent, to obtain these goods based upon competitive bids and to give consideration to product price, value, quality, performance, and delivery.
- While the department head may delegate minor purchases to employees, he/she is still responsible for ensuring such purchases are made according to the provisions of this policy.
- No department head or employee is authorized to make any commitment to any salesperson or firm that will bind the County in any way. During meetings with salespersons, no employee shall make any indication that he/she will recommend a particular product for purchase.
- It is the responsibility of all Lee County employees to comply with all rules and regulations set forth herein. As directed by the County Manager, any employee deliberately violating the policy regarding unauthorized purchases shall be held personally accountable for the purchases. Violation of the purchasing policy may result in disciplinary action, up to and including dismissal.

**The Purchasing Agent's responsibilities to salespersons and vendors are to:**

- Encourage good County/vendor relations.
- Encourage businesses located within the County to participate in the County's purchasing policy, by notifying all known in-County vendors of opportunities to bid.
- Conduct business with vendors in a professional manner that promotes honesty and fairness.
- Accept, and in some cases require samples from vendors to be used for testing. A fair trial shall be given to all samples and the outcome of the test shall be presented to the vendor, in general terms.
- Make every effort to be available for appointments during normal business hours.
- Arrange interviews between salespersons and department heads when requested.
- Write all correspondence to salespersons and vendors, except when technical details can be better written by the department.
- Keep on file vendor information, catalogs, samples, price quotes, etc. to be used by all departments.

**The salesperson's responsibilities to Lee County are to:**

- Understand the needs of Lee County and try to find the right product at the right price, quality, and quantity that benefits the County as a whole.
- Conduct themselves in a professional manner: being honest about the supplies and products they represent.
- Honor purchase orders generated as a result of providing price quotes on specified items and quantities.

## ***Purchasing Methods***

Lee County practices decentralized purchasing for purchases of goods in departments. All purchases of \$500 and greater require a purchase order. The County policy requires departments to seek quotes and competition for purchases \$5,000 and over. Purchases of goods and/or services may not be split to avoid the policy. Dividing contracts or purchases in order to evade procedures is prohibited under NCGS 143-133. All purchase order requisitions are required to be approved by the assigned authority within the department, and therefore, it is his/her responsibility to make sure policy is followed.

Following the departmental requisitions approvals, purchase requisitions are thoroughly reviewed by the Purchasing Agent. Only requisitions meeting the requirements or having been significantly justified are processed for the pre-audit statement and approval. Once the purchase order is generated, then the user department is authorized to order the goods or services.

### **Purchases and/or Services that do not require a purchase order**

The following purchases do not require a purchase order due to the nature of the transaction; however, they do require that the departments (1) ensure that there is an appropriation authorizing the obligation and (2) ensure that an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction.

Annual dues	Postage permits and expenses
Board appropriations paid monthly and quarterly	Refunds
Claim payments	Rental of buildings
Courier service	Social Services Allocated Programs
Insurance premiums	Subscriptions
Medical examiner fees	Travel expenses
Land Purchases	Tuition fees for educational purposes
Petty cash – replenishment of funds	Utilities

### **Petty Cash**

***Purpose:*** To reimburse an employee for small incidental purchases.

***Appropriate use of Petty Cash:*** Petty cash funds may be used for small incidental nonrecurring cash purchases that do not exceed \$50. Cash purchases should be avoided, but in the event that it is not feasible to be billed for very small purchases, the employee may, with department head approval, buy the item and be reimbursed out of petty cash. The employee must submit an invoice or receipt for reimbursement. If petty cash is not available in the department, an invoice or receipt must be submitted to Finance with an explanation or purpose for the expenditure for reimbursement.

### **Request for Payment**

***Purpose:*** To request a check for payment when an invoice is not issued.

***Appropriate use of Request for Payment:*** Occasionally, a check is needed when there is no invoice. These incidents include, but are not limited to:

1. An employee's request for reimbursement for out of pocket expenses.
2. Vendors requiring payment in advance.
3. Mail in catalog orders requiring pre-payment.

When the Request for Payment form is used, a detailed receipt, a written quote, or a copy of the catalog order must be submitted as support documentation.

## **Procurement Card**

The procurement card program is available to all departments. This method of purchase is for obtaining low cost supply and service items. The department head must request and authorize an employee's participation. All procurement cards are issued in the participating employee's name. Procurement cards are only for official County business. Employees are responsible for the reconciliation of the monthly statement and submittal of detailed receipts. Please refer to the [Lee County Procurement Card Policy](#) for the full details of the program.

## **Purchase Orders**

**Purpose:** To provide a legal document that places an obligation on both the County and the vendor. When properly endorsed by the Finance Officer, the purchase order obligates the County to purchase the items listed at the prices stated. The vendor is obligated according to the terms and prices stated on the purchase order to deliver the goods or services. The purchase order provides specifications for goods and services ordered, shipping and billing information.

**Appropriate Use of the Purchase Order:** A purchase order must be used for purchasing any item or service in excess of \$500.

## **Open Purchase Orders**

Open purchase orders will be used for repetitive purchases from certain vendors. Rather than issuing a purchase order for each purchase, one purchase order with a dollar limit is issued for a period of time. Departments should follow standard purchase order procedures.

It is highly recommended that departments issue open purchase orders to vendors that they routinely make purchases from that fall below the purchase order threshold. This will help the department to ensure that there is an appropriation authorizing the obligation and to ensure that sufficient funds will remain in the appropriation to pay the amounts that are expected to come due in the fiscal year in which the obligation is incurred.

## ***Competitive Bids***

### **Standard of Award:**

Lee County follows statutory requirements for awarding contracts, as stated in NCGS 143-129 and identified as the "lowest responsive, responsible bidder; taking into consideration quality, performance and the time specified in the proposals for the performance of the contract."

A purchase order must be generated with all approvals prior to ordering or purchasing goods and services, or binding the County in anyway.

When grant funds, by either the State or Federal Government, are used for any project or purchase, the strictest requirement will be met when compared to the County requirement.

### **Purchases of Supplies, Materials and Equipment (Up to \$5,000):**

Competitive bids are not required for purchases less than \$5,000; however, departments are directed to get the most reasonable price.

### **Purchases of Supplies, Materials and Equipment – Informal Bids (\$5,000 - \$29,999.99):**

Competitive bids are required. The requesting department in conjunction with the purchasing agent must complete a standardized request for bid form (see Specifications) and include the bid cutoff date. The request for bid must be posted on the Lee County website. Informal requests for bids must be posted for a minimum of five (5) business days. All bids must be sealed and submitted to the Purchasing Agent who will open the bids in conjunction with the requesting department at the date and time so specified. Every effort to obtain three bids should be exercised. If at least three (3) bids are not received after the first posting, the bid must be reposted for at least five (5) business days. The County Manager may waive the repost requirement. If all the bids exceed the funds available, negotiations are allowed with the lowest responsible, responsive bidder, and reasonable changes can be made in the plans and specifications to bring the contract price within the funds available. Once the bid deemed in the best interest of the County is determined, the requesting department shall enter the purchase requisition in the County's financial package.

### **Purchases of Supplies, Materials and Equipment – Informal Bids (\$30,000.00 - \$89,999.99):**

Follow procedures for purchases of supplies, materials and equipment below \$30,000 except that once the bid deemed in the best interest of the County is determined, the requesting department shall take the request to the Board of Commissioners for approval. Once the Board of Commissioners approves the purchase, the requesting department shall enter the purchase requisition in the County's financial package.

### **Purchases of Supplies, Materials and Equipment – Formal Bids (\$90,000.00 and greater):**

See Formal Bid Procedures.

After receipt of a bid, the Purchasing Agent, with the department head or his/her designee, shall review all bid responses to determine the bid deemed in the best interest of the County. A record of all bids submitted must be maintained. All bids are subject to public inspection once opened, unless a trade secret is involved. The requesting department head or his/her designee shall make a formal

recommendation of award, with supporting documentation to the Board of Commissioners. Once the Board of Commissioners approves the bid award, the requesting department shall enter the purchase requisition in the County's financial package.

### **Construction and Repair Work (Below \$30,000):**

Follow procedures for purchases of supplies, materials and equipment below \$30,000.

### **Construction and Repair Work – Informal bids (\$30,000 - \$299,999.99)**

Follow procedures for purchase of supplies, materials and equipment \$30,000 – \$89,999.99. The County must also perform "good faith" efforts in reaching Historically Underutilized Businesses with bid opportunities. Refer to Exhibit D – Lee County's Minority Business/Historically Underutilized Business Participation Outreach Plan and Guidelines.

### **Construction and Repair Work – Formal Bids (\$300,000 and greater):**

See Formal Bid Procedures.

After the formal bidding process is completed, the department head or his/her designee shall recommend to the Board of County Commissioners the lowest responsible, responsive bidder deemed in the best interest of the County. Upon award by the Board of Commissioners and execution of the contract, the requesting department shall enter the purchase requisition in the County's financial package.

### **Formal Bid Procedures**

In accordance with NCGS 133-1.1(a), the use of a registered architect or engineer is required for the following work:

- Nonstructural Work - \$300,000 and above
- Structural repair or new construction - \$135,000 and above
- Repair work affecting life safety systems - \$100,000 and above

#### **Process:**

1. The requesting department shall contact the Purchasing Agent authorizing the purchase, construction or repair work.
2. The Purchasing Agent or a designated representative will review and modify (as needed) the specifications submitted by the requesting department to develop specifications.
3. Specifications for certain construction or repair projects shall be prepared by a licensed architect/engineer firm as defined in NCGS 133-1.1. If requested, the Purchasing Agent or a designated representative will assist with or provide the front-end documentation to the architect/engineer firm engaged to prepare such specifications.
4. The Purchasing Agent or a designated representative will review the specification documents prepared by the licensed architect/engineer firm to ensure all state and local requirements have been met.

5. The Purchasing Agent or a designated representative shall solicit bids utilizing one of the authorized competitive sealed bid methods which best fits the County's needs. The Purchasing Agent or a designated representative shall ensure that all state and local requirements are met, including advertising, bonding requirements, pre-bid conference, sealed bids, minimum number of bids (construction and repair), maintaining records, and public opening of bids.
6. For bids in the formal range, consideration will be given to conduct a pre-bid conference for potential bidders/vendors, to answer questions and to fulfill County Outreach efforts.
7. For construction projects estimated to cost \$300,000 or more the County may, but is not required, to pre-qualify its contractors. This is normally performed with the design architect or engineer for the project.
8. The bid shall be advertised in a newspaper of general circulation in Lee County at least seven (7) full days elapsing between the day the ad appears and the bid opening date. All County sealed bids are also posted to the Lee County website. In addition, the County may use the State's Interactive Purchasing System and the Dodge Room and other media outlets for contractors and minority vendors.
9. Sealed bids are received and opened in public at the time, place and date specified in the advertisement. Bids received after the advertised time and date shall not be considered.
  - a. Three bids are required for construction or repair contracts in the formal range. For construction or repair contracts, if three bids are not received, a second advertisement shall be made, after which a contract may be awarded even if fewer than three bids are received.
  - b. For purchase contracts in the formal range, Lee County seeks three bids. When three are not received, the sealed bid process may be repeated as a re-bid, or County officials may waive the County requirement.
10. The Purchasing Agent or a designated representative and the requesting department shall review all bids to ensure that the specifications have been met.
11. The Purchasing Agent or a designated representative shall recommend award of contracts to the lowest responsible, responsive bidder or bidders, taking into consideration quality, performance and the time specified in the proposal for the performance of the contract.
12. If all bids exceed the funds available, negotiations are allowed with the lowest responsible, responsive bidder, and reasonable changes can be made in the plans and specification to bring the contract price within the funds available.
13. The Purchasing Agent or a designated representative may make recommendation to the County to reject bids and re-advertise to receive bids.
14. Use of contracts is required for all projects. Contracts are prepared for review by all concerned (Department Head, County Attorney, and the Finance Director). Standard Form Contracts by an architect or engineer are not recommended but may be utilized only after review and approval by the County Attorney.
15. An agenda action form is prepared by the requesting department and submitted for the Board of Commissioners' consideration for all contracts greater than \$30,000. The Board of Commissioners shall approve or disapprove contracts as appropriate.

16. The County Manager is authorized through the budget ordinance to execute contracts up to \$30,000.

### **Bid Deposits**

For formal construction, renovation and repair contracts, the bid must contain a bid deposit equal to not less than five (5) percent of the bid amount. The deposit may be in the form of cash, cashier's check, certified check or bid bond executed by a surety licensed in North Carolina. No other forms are acceptable. Bid deposits may not be waived.

### **Withdrawal of Bid**

A bidder may request permission to withdraw their bid after the bids are opened, without forfeiting their bid deposit, if he/she can produce credible evidence that the bid was based on a mistake containing a substantial, unintentional arithmetic error or unintentional omission of work. Withdrawal is not allowed due to errors in judgement. The request to withdraw must be made not later than 72 hours after the bid opening. A bidder that requests that their bid be withdrawn cannot participate in the contract, even if the project is re-bid.

### **Performance and Payment Bonds**

For a construction or repair project where the total amount of all the contracts exceed \$300,000, each contractor must provide performance and payment bonds of the full amount of each contract that exceeds \$50,000 (NCGS 143-129(c)). The contractor may provide cash, certified checks or government securities instead of bonds.

### **Rejection of Bids**

In requesting bids/proposals, any and all offers received may be rejected in whole or in part. Basis for rejection shall include, but not be limited to:

1. The bid/proposal being deemed unsatisfactory as to quantity, quality, delivery, price or service offered.
2. The bid/proposal did not comply with conditions of the invitation or with the intent of the proposed contract.
3. Lack of competitiveness by reason of collusion or otherwise, or knowledge that reasonably available competition was not received.
4. Errors in specifications or indication that revisions would be to the County's advantage.
5. Cancellation of or changes in the intended project or determination that the proposed requirement is no longer needed.
6. Limitation or lack of available funds.
7. Circumstances which prevent determination of the lowest responsible, responsive.
8. A determination that rejection would be in the best interest of the County.

### **Dispute Resolution**

Pursuant to NCGS 143-128(f1), all disputes involving contractors on a building construction or repair project with Lee County shall be resolved pursuant to County of Lee Rules for Implementing Mediated Settlement Conferences in the Building Projects (Exhibit E).

## Contractor Licensure

Prior to contract execution for any project owned by Lee County, a bidding contractor must furnish Lee County with appropriate documentation that indicates that the contractor is currently duly licensed to participate in construction of a project of the same value.

## Request for Proposal (RFP)

The County uses RFPs as a competitive process or as an alternative to the standard bidding process. Typically RFPs are used in situations where (1) detailed specifications cannot be or are difficult to develop; (2) when obtaining a goal or providing a solution to a problem/issue is the main objective; (3) when obtaining professional or other services except for all professions that fall under the Mini Brooks requirement to announce and (4) purchase of information technology goods and services.

1. Notice of the request for proposal shall be given in accordance with NCGS 143-129(a).
2. The County shall advertise the RFP opportunity in a newspaper of general circulation in Lee County, with at least seven (7) full days elapsing between the day the ad appears and the proposal due date. All County bids and opportunities are also posted to the Lee County website. In addition, the County may use the State's Interactive Purchasing System and other media outlets.
3. The proposals are received and recorded; however, there is no public bid opening. Proposals submitted under this section shall not be subject to public inspection until the contract is awarded pursuant to NCGS 143-129.8.
4. Contracts shall be awarded to the person who or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals. The "best value" process as stipulated in NCGS 143-135.9 may be used to award the contract. The term "best value procurement" means the selection of the contractor based on a determination of which proposal offers the best trade-off between price and performance where quality is considered an integral performance factor.
5. County staff may negotiate with any proposer in order to obtain a final contract that best meets the needs of the County. Negotiations allowed under this section shall not alter the contract beyond the scope of the original request for proposals in a manner that:
  - a) Deprives the proposer or potential proposers of a fair opportunity to compete for the contract; and
  - b) Would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.

Proposals submitted under this section shall not be subject to public inspection until the contract is awarded pursuant to NCGS 143-129.8.

## RFP Evaluation

1. *Selection committee.* The County Manager or a designated representative will work with the department head that has primary responsibility for the items/services being procured and will determine the selection committee chairperson and members. The size of the selection committee is dependent on the nature and scope of the project.

2. *Evaluation criteria.* Evaluation criteria are the factors used to determine which proposal best meets the requirements identified in the RFP. In establishing effective evaluation criteria, a department must clearly identify the factors relevant to its selection of a vendor for the specific service or need sought. Evaluation criteria should reflect the department's minimum needs and should not be so restrictive as to limit competition. Evaluation criteria often encompass such factors as price or cost, technical excellence, management capability, personnel qualifications, experience and past performance. While price or cost must be included and will be a factor, price or cost need not be the deciding factor in all acquisitions.
3. *Evaluation of responses.* Responses should be evaluated based on predefined criteria. In most cases, the evaluation criteria are to be published in the RFP document with response information to include enough details to evaluate the criteria.
4. *Evaluation document.* The evaluation tool is an unbiased evaluation of all responses weighted against the criteria identified.
  - a. The review committee considers all the criteria sought, determines an importance to the project, and assigns the ranking points.
  - b. Each individual RFP is then graded against the stated criteria with a value of 1 through 3:
    - i. Does not meet criteria point = 1 point
    - ii. Meets criteria point = 2 points
    - iii. Exceeds criteria point = 3 points
  - c. Scoring is calculated by multiplying the criteria point value with individual criteria grade, then totaling each RFP score. If a tie occurs, the County will offer interviews with the firms scoring the highest.
  - d. Oral presentations or demonstrations may be needed in certain cases for clarifications or if additional information is needed. These session will be conducted using the following guidelines:
    - i. All members of the evaluation committee should be present during oral presentations and interview. Time limits for oral presentations will be equal in length.
    - ii. Interviews are to be conducted and controlled by the County Manager or a designated representative.

### **Request for Qualifications – RFQ or QBS**

NCGS 143-64.31 requires local governments to announce all requirements for architectural, engineering surveying, construction management at risk services, design build, public-private partnerships and other alternative construction delivery methods.

The County must 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 at this stage, and thereafter to negotiate a contract for those services at a fair and reasonable fee with the best qualified firm. The method is known as Qualified Base Selection (QBS) and usually announced through Request for Qualifications.

For all announced QBS projects, the County must perform good faith efforts of outreach to encourage minority participation. The guidelines for "good faith" in the County Outreach plan may be used. (Exhibit D).

Pursuant to NCGS 143-64.32, the County may in writing exempt particular projects from NCGS 143-64.31. The proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars (\$50,000) may be considered for this exemption.

The Lee County Board of Commissioners' exempted by a Resolution on March 16, 2020 all projects involving architectural, engineering, surveying and construction manager-at-risk services, design-build services and public-private partnership construction services where the estimated professional fee is less than \$50,000. All exceptions must be approved by the County Manager or designee. (Exhibit F).

### **Exceptions to the Formal Bidding Process**

If deemed to be in the public interest, competitive bidding may be waived as provided by North Carolina General Statutes. Certain exceptions allow for waiver of the bidding requirements. Some apply only to purchase contracts and others apply to both purchase contracts and construction or repair contracts. Circumstances permitting waiver and direct negotiations include, but are not limited to:

#### **Exceptions that apply to purchase contracts only:**

1. Purchases from other governmental agencies (NCGS 143-129(e)(1)).
2. Competitive group purchasing (NCGS 143-129(e)(3)).
3. Gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil or natural gas (NCGS 143-129(e)(5)). [Informal quotes are required.]
4. Sole sources (NCGS 143-129(e)(6)). Requires governing board approval and specific criteria must be met. (Exhibit G).
5. Information technology goods and services purchased through the State Office of Information Technology (NCGS 143-129(e)(7)) or using request for proposal. (Procedures authorized by NCGS 143-129.8).
6. Purchase from state contracts (NCGS 143-129(e)(9)).
7. Used apparatus, supplies, materials or equipment (NCGS 143-129(e)(10)). Does not apply to remanufactured, prefabricated, or demo items.
8. Piggy backing previously bid contracts. Requires governing board approval and prior 10-day notice (NCGS 143-129(g)).
9. Purchases from nonprofit work center for the blind and severely disabled (NCGS 143-129.5).

#### **Exceptions that apply to construction or repair contracts only:**

1. Change order work. (NCGS 143-129(e)(4)).
2. Construction management at risk projects (NCGS 1473-129(e)(11)). Requirements of NCGS 143-128.1 apply to these projects.
3. Force account work. (NCGS 143-135). Work must be performed by labor on the permanent payroll, and does not exceed \$500,000 for the total project cost including all direct and indirect costs of labor, materials, supplies, equipment, or the labor on the project does not exceed \$200,000.
4. Projects using unemployment-relief labor paid for in whole or part with state or federal funds. (NCGS 143-129(d)).
5. Contracts with NC Department of Transportation for street construction and repair. (NCGS 136-41.3).

#### **Exceptions that apply to both purchase and construction contracts:**

1. Special emergency involving the health and safety of the people or their property. (NCGS 143-129(e)(2))
2. Guaranteed energy savings contracts. (NCGS 143-129(e)(8)) Requirements of NCGS 143-64.17B apply to these contracts.
3. Solid waste management facilities (NCGS 143-129.2).

## *Specifications*

When goods and/or services are procured under the informal or formal bidding process, specifications must be prepared. All specifications should do at least four things:

1. Identify minimum requirements
2. Encourage competitive bids
3. Be capable of objective review
4. Provide for an equitable award at the lowest possible cost

Specifications shall be as simple as possible while maintaining the degree of exactness required to prevent bidders from avoiding supplying the goods and/or services required or otherwise taking advantage of their competitors.

All specifications utilizing a name brand must include the term "or approved equal" to avoid being restrictive and eliminating fair competition from the bidding process.

Different methods of structuring specifications include:

1. Qualified products on acceptable vendor list
2. Specification by blueprint or dimension sheet
3. Specification by chemical analysis or physical properties
4. Specification by performance, purpose or use
5. Specification by identification with industry standards
6. Specification by samples

## *Special Procurement*

### **Electronic Equipment**

The IT (Information Technology) Department will purchase or authorize the purchase of all computers, peripherals, printers, and all other electronics governed by the technology policy. The IT Department will then be responsible for entering the Purchase Requisition or instructing the department to enter the information. The IT Department will setup and install equipment in the appropriate departments.

Information technology is defined in NCGS 147-33.81(2) as follows: "Electronic data processing goods and services, telecommunications goods and services, security goods and services, microprocessors, software, information processing, office systems, any service related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes."

NCGS 143-129.8 offers flexibility in purchasing information technology due to "the complex and innovative nature of information technology goods and services, and the desirability of a single point of responsibility for contracts that include combinations of purchase of goods, design, installation, training, operation, maintenance, and related services..."

The County may contract for information technology using the procedure set forth in NCGS 143-129.8 as an alternative to NCGS 143-129 (formal bidding) or NCGS 143-131 (informal bidding), but only when a mixture of services and purchases are involved. However, the following requirements must be satisfied:

1. Notice of the request for proposal (RFP) shall be given in accordance with NCGS 143-129 – the formal bidding statute.
2. Contracts are awarded to the best overall proposal considering factors identified in the RFP.

The County is not obligated to use either the competitive bidding or the request for proposal procedures for a contract that consist **only** for **services**. Proposals submitted are not subject to public inspection until a contract is awarded. However, every effort to obtain three (3) bids or proposals should be made. Negotiating is allowed.

Formal or informal bidding statutes apply when the contract consists of purchases involving hardware and/or software. Negotiations are not allowed unless all bids come in over budget. If this is the case, negotiations are allowed with lowest responsible, responsive bidder.

### **Emergency Purchases**

Occasionally purchases need to be made on an emergency basis. An emergency is defined as a situation that occurs and if not immediately corrected would jeopardize the health, safety, and/or property of citizens, the health and safety of County employees, and/or the property of the County. If emergency purchases are needed during business hours, begin Purchase Order procedures immediately and contact the County Manager or his designee for PO approval then notify the purchasing agent. When emergency purchases occur during non-business hours, contact the County Manager or his designee then notify the Purchasing Agent immediately the next business day.

Emergency purchases, although sometimes necessary, are costly in both time and money. The use of emergency procedures should be limited and will be monitored for abuse.

## **Sole Source of Supply**

NCGS 143-129(e)(6) and the County require governing board approval for sole source contracts equal to or in excess of \$30,000. The County Manager may approve sole source contracts (purchases and services) ranging from \$5,000 up to \$30,000. (See Exhibit G - Sole Source Justification Form).

## **Professional Services**

Normal competitive procedures cannot be utilized in securing professional services such as attorneys, planners, financial consultants/brokers, auditing, banking, consulting firms, insurance firms and other professionals who, in keeping with the standards of their discipline, will not enter into a competitive bidding process. Where appropriate, the County staff will use a request for qualifications (RFQ) process, a qualifications-based selection process that assesses companies' abilities to perform services being sought. The County will award these contracts to the most qualified bidder taking into consideration experience and knowledge of the project. Where all criteria are equal, the County will review fees in the evaluation process. When an agreement between a professional service company and the County is established, a contract with a not-to-exceed amount may be issued to satisfy accounting and statutory requirements. As with all contracts, they must be reviewed and approved by the County Attorney, the County Manager and the Finance Director. Once a contract is signed, a purchase requisition should be entered for the not to exceed amount.

## **Vehicles**

Vehicles purchases through state contract for less than \$30,000 can be approved by the County Manger through a purchase requisition being entered in the County's financial package. Vehicle purchases through state contract that are \$30,000 or more must be approved by the Board of Commissioners. Once the Board of Commissioners approves the purchase a purchase requisition may be entered into the County's financial package.

All vehicles purchased through competitive bidding must go to the Board of Commissioners for approval. Once approved by the Board of Commissioners, a purchase requisition may be entered in the County's financial package.

## **Maintenance and Repairs**

### **Buildings/Equipment Repair**

If repair is needed due to an accident, the department is responsible for following the County's Accident and Reporting procedures. All County and statutory requirements must be followed when repairs are needed.

### **Buildings**

The General Services division should be contacted for building repairs. General Services will access the need or problem and recommend the best course of action to correct the problem(s).

Repair services for County buildings or equipment that are not covered by maintenance agreements shall be obtained by the following procedures:

1. An estimate of the repair work shall be necessary before proceeding with the repairs.
2. If emergency repairs are needed, Emergency Purchases procedures should be followed.

## **Maintenance Agreements**

Departments should follow these guidelines for all maintenance agreements:

1. The legal department must review all maintenance agreements.
2. All maintenance agreements must include the pre-audit statement signed by the Finance Officer.
3. Maintenance agreements shall be considered for any equipment that requires frequent adjustment or repairs.
4. Maintenance agreements are a form of contract. Department Heads, with the exception of the Health Director and the Director of Social Services, are not authorized to sign.
5. Copies of all maintenance agreements will be filed with the Purchasing Agent.
6. Purchase order procedures should be followed.
7. The IT department will evaluate all maintenance agreements for technology equipment.

## **Electronic Equipment**

When a leased copier or printer requires maintenance, the department should use the contact information located on the copier.

When maintenance or repair is needed for all other electronic equipment, including but not limited to computers, printers, and telephones, the IT department should be contacted. The IT department will either repair, service or arrange for outsourcing the repair.

## ***Written Contracts***

Contracts range from written contracts described in this section to purchase orders incorporating specifications, which are also contracts. The following purchases will require contracts:

1. Supplies, equipment, apparatus, and material requiring an expenditure of \$90,000 and more. Supplies, equipment, apparatus, materials, maintenance, and services requiring an expenditure of less than \$90,000 do not require a written contract. However, a written contract may be used whenever it is deemed necessary and advisable.
2. All maintenance agreements.
3. All leases.
4. Construction and repair (including demolition and renovation) projects.
5. If the entire cost of the project will exceed \$500,000, separate written contracts are required for any of the following four items that are included:
  - a. Heating, ventilating, air conditioning, and accessories and/or refrigeration for cold storage (when the cooling load is 15 tons or more of refrigeration);
  - b. Plumbing and gas fittings and accessories;
  - c. Electrical wiring and installations; and
  - d. General work not included in the above.
6. Change Orders: Contracts for construction or repair projects can have change orders during the project prior to completion, without going through a new bid process, providing the bidding laws are not evaded. Cumulative change orders up to \$30,000 per contract can be approved by the County Manager. Change orders of \$30,000 or more require approval by the Board of Commissioners.

While NC law and County policy mandate when written contracts are required, this does not preclude the use of written contracts at any time. It should also be remembered that the need for a contract might vary according to circumstances.

Contracts must be executed by a person who has legal authority to bind the County. The following people in the County have authority to execute contracts:

1. Chairperson – No monetary limit, but requires Board approval
2. County Manager/designee(s) – up to \$30,000
3. Health Director – up to \$30,000; Health Department contracts only

All written contracts must be reviewed by the County's legal department.

**DOLLAR THRESHOLDS IN NORTH CAROLINA and LEE COUNTY**

**Public Contracting Statutes**

Dollar Limits and statutory current as of July 1, 2017

<b>Requirement</b>	<b>Statue Threshold</b>	<b>County Threshold</b>	<b>Statute</b>
<b>Formal bids</b>			
Construction or repair contracts	\$500,000 and above (estimated cost of contract)	\$300,000 and above (estimated cost of contract)	NCGS 143-129
Purchase of apparatus, supplies, materials, and equipment	\$90,000 and above (estimated cost of contract)	Same as State	NCGS 143-129
<b>Informal bids</b>			
Construction or repair contracts	\$30,000 to formal limit	Three quotes beginning at \$5,000 PO required at \$500	NCGS 143-131
Purchase of apparatus, supplies, materials, and equipment	\$30,000 to formal limit	Three quotes beginning at \$5,000	NCGS 143-131
<b>Construction Methods Authorized for Building Projects</b>			
Separate Prime Single Prime Dual Bidding Construction Management at Risk	Over \$300,000 (estimated cost of contract)	\$300,000 and above	NCGS 143-128(a1)
Design Build (specific procedures)			NCGS 143-128.1A
Design Build Bridging (specific procedures)			NCGS 143-128.1B
Public Private Partnership (specific procedures)			NCGS 143-128.1C
<b>Minority-business enterprise requirements</b>			
<u>Building Projects</u> Projects with State funding	\$100,000 and more	Same as State	NCGS 143-128.2(a)
Locally funded projects	Over \$300,000	Same as State	NCGS 143-128.2(a)
Projects in the informal range (County outreach)	\$30,000 to \$300,000	Same as State	NCGS 143-131 (b)
Outreach, Good Faith, Participation Goals	\$300,000 and over	Same as State	NCGS 143-128.2(a)
<b>Limit on use of own forces</b>			
Construction or repair contracts	Not to exceed \$500,000 (total project cost) or \$200,000 (labor only cost)	Same as State	NCGS 143-135
<b>Bid bond or deposit</b>			
Building construction and repair \$500,000 >	Formal bids (see above) 5% of bid due with sealed bid	\$300,000 and above	NCGS 143-129(b)
Purchase contracts	Not required	County option	
<b>Performance/payment bonds</b>			
Construction or repair contracts	Project over \$300,000 Each contract >\$50,000	Same as State	NCGS 143-129(c); NCGS 44A-26
Purchase contracts	Not required	County option	
<b>General contractor's license</b>			
	\$30,000 and above	Same as State	NCGS 87-1
<b>Use of registered architect, engineer required</b>			
Nonstructural work	\$300,000 and above	All same as State	NCGS 133-1.1(a)
Structural repair on new construction	\$135,000 and above		
Affecting Life and Safety Systems	\$100,000 or more		
<b>Selection of architect engineer, or surveyor</b>			
"Best qualified" selection procedure	All contracts unless exempted		NCGS 143-64.31
Exemption authorized	Only projects where estimated fee is less than \$50,000		NCGS 143-64.32

## **I. Purpose**

The purpose of this section is to establish guidelines that meet or exceed the procurement requirements for purchases of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when federal funds are being used in whole or in part to pay for the cost of the contract. To the extent that other sections of procurement policies and procedures adopted by the Lee County are more restrictive than those contained in this policy, local policies and procedures should be followed.

## **II. Policy**

- A. Application of Policy.** This policy applies to contracts for purchases, services, and construction or repair work funded with federal financial assistance (direct or reimbursed). The requirements of this Policy also apply to any sub recipient of funds.

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

- B. Compliance with Federal Law.** All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. § 200.317 through § 200-326 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. Lee County will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should Lee County have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law.
- C. Contract Award.** All contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract.
- D. No Evasion.** No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this Policy or state and federal law.
- E. Contract Requirements.** All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R. § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.
- F. Contractors' Conflict of Interest.** Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be excluded from competing for such requirements.
- G. Approval and Modification.** The administrative procedures contained in this Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

### **III. General Procurement Standards and Procedures:**

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

- A. Necessity.** Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items. The Purchasing Agent and/or the Requesting Department should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.
- B. Clear Specifications.** All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.
- C. Notice of Federal Funding.** All bid solicitations must acknowledge the use of federal funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.
- D. Compliance by Contractors.** All solicitations shall inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, and terms and conditions of the funding award.
- E. Fixed Price.** Solicitations must state that bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts are prohibited. Time and materials contracts are prohibited in most circumstances. Time and materials contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A time and materials contract shall not be awarded without express written permission of the federal agency or state pass-through agency that awarded the funds.
- F. Use of Brand Names.** When possible, performance or functional specifications are preferred to allow for more competition leaving the determination of how to reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and "or equal" must be included in the description.
- G. Lease versus Purchase.** Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach.
- H. Dividing Contract for M/WBE Participation.** If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.

- I. **Documentation.** Documentation must be maintained by the Purchasing Department and/or the Requesting Department detailing the history of all procurements. The documentation should include the procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor’s responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request.
- J. **Cost Estimate.** For all procurements costing \$150,000 or more, the Purchasing Agent and/or Requesting Department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.
- K. **Contract Requirements.** The Requesting Department must provide proposed contracts or request for a written contract to the County Attorney advising the County Attorney that federal funds are implicated so that the provisions referenced in Section II.C of this Policy can be incorporated.
- L. **Debarment.** No contract shall be awarded to a contractor included on the federally debarred bidder’s list.
- M. **Contractor Oversight.** The Requesting Department receiving the federal funding must maintain oversight of the contract to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.
- N. **Open Competition.** Solicitations shall be prepared in a way to be fair and provide open competition. The procurement process shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding, specifying a brand name without allowing for “or equal” products, or other unnecessary requirements that have the effect of restricting competition.
- O. **Geographic Preference.** No contract shall be awarded on the basis of a geographic preference.

#### **IV. Specific Procurement Procedures**

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

- A. **Service Contracts** (except for A/E professional services) and **Purchase Contracts costing less than \$10,000** shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:
  - 1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
  - 2. To the extent practicable, purchases must be distributed among qualified suppliers.

- B. Service Contracts** (except for A/E professional services) and **Purchase Contracts costing \$10,000 up to \$90,000** shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. § 200.320(b)) as follows:
1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency might issue guidance interpreting “adequate number,” so the Requesting Department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
  2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
  3. Cost or price analysis is not required prior to soliciting bids.
  4. Award the contract on a fixed-price basis (a not-to-exceed basis is permissible for service contracts where obtaining a fixed price is not feasible).
  5. Award the contract to the lowest responsive, responsible bidder.
- C. Service Contracts** (except for A/E professional services) and **Purchase Contracts costing \$90,000 and above** shall be procured using a combination of the most restrictive requirements of the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:
1. Cost or price analysis is required prior to soliciting bids.
  2. Complete specifications or purchase description must be made available to all bidders.
  3. The bid must be formally advertised in a newspaper of general circulation for at least seven (7) full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for “sound documented reasons.”
  4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
  5. Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
  6. Award the contract to the lowest responsive, responsible bidder on a fixed-price basis. Governing board approval is required for purchase contracts unless the governing board has delegated award authority to an individual official or employee. Any and all bids may be rejected only for “sound documented reasons.”
  7. Contract must be in writing and include Uniform Guidance provisions. Contract must be approved by County Attorney prior to execution by County.
- D. Service Contracts** (except for A/E professional services) **costing \$250,000 and above** may be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(d)) **use only when the “sealed bid” procedure is not appropriate** for the particular type of service being sought. The procedures are as follows:
1. A Request for Proposals (RFP) must be publicly advertised. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an “adequate number” of qualified firms.
  2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.

3. Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
  4. Consider all responses to the publicized RFP to the maximum extent practical.
  5. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
  6. Award the contract to the responsible firm with most advantageous proposal taking into account price and other factors identified in the RFP.
  7. Award the contract on a fixed-price or cost-reimbursement basis.
  8. Contract must be in writing and include Uniform Guidance provisions. Contract must be approved by County Attorney prior to execution by County.
- E. Construction and repair contracts costing less than \$10,000** shall be procured using the Uniform Guidance “micro-purchase” procedure (2 C.F.R. § 200.320(a)) as follows:
1. The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
  2. To the extent practicable, contracts must be distributed among qualified suppliers.
- F. Construction and repair contracts costing \$10,000 up to \$250,000** shall be procured using the Uniform Guidance “small purchase” procedure (2 C.F.R. § 200.320(b)) as follows:
1. Obtain price or rate quotes from an “adequate number” of qualified sources (a federal grantor agency might issue guidance interpreting “adequate number,” so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued).
  2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321.
  3. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
  4. Award the contract on a fixed-price or not-to-exceed basis.
  5. Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required.
  6. Contract must be in writing and include all applicable Uniform Guidance contract provisions. Contract must be approved by County Attorney prior to execution by County.
- G. Construction and repair contracts costing \$250,000 up to \$500,000** shall be procured using the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) as follows:
1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
  2. Complete specifications must be made available to all bidders.
  3. Publically advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids (formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
  4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
  5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed. A minimum of 2 bids must be received in order to open all bids.
  6. A 5% bid bond is required of all bidders. Performance and payment bonds of 100% of the contract price is required of the winning bidder.

7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Any and all bids may be rejected only for “sound documented reasons.”
9. Contract must be in writing and include all applicable Uniform Guidance contract provisions. Contract must be approved by County Attorney prior to execution by County.
10. Document procurement procedures.

**H. Construction and repair contracts costing \$500,000 and above** shall be procured using a combination of the most restrictive requirements of the Uniform Guidance “sealed bid” procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:

1. Cost or price analysis is required prior to soliciting bids (this cost estimate should be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. Formally advertise the bid in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board. The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for “sound documented reasons.”
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
5. Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement. All bids must be submitted sealed and in paper form. A minimum of 3 bids must be received in order to open all bids.
6. A 5% bid bond is required of all bidders (a bid that does not include a bid bond cannot be counted toward the 3-bid minimum requirement). Performance and payment bonds of 100% of the contract price is required of the winning bidder.
7. Award the contract on a firm fixed-price basis.
8. Award the contract to the lowest responsive, responsible bidder. Governing board approval is required and cannot be delegated. The governing board may reject and all bids only for “sound documented reasons.”
9. Contract must be in writing and include all applicable Uniform Guidance contract provisions. Contract must be approved by County Attorney prior to execution by County.
10. Document procurement procedures.

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

1. Formal HUB (historically underutilized business) participation required under G.S. 143-128.2, including local government outreach efforts and bidder good faith efforts, shall apply.
2. Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143-128(a).
3. The project shall be bid using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under G.S. 143-129(a1).
4. Contract must be in writing and include all applicable Uniform Guidance contract provisions. Contract must be approved by County Attorney prior to execution by County.

5. Document procurement procedures.
- J. Contracts for Architectural and Engineering Services costing under \$250,000** shall be procured using the state “Mini-Brooks Act” requirements (G.S. 143-64.31) as follows:
1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
  2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. § 200.321.
  3. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Deputy Purchasing Agent and/or Requesting Department.
  4. Rank respondents based on qualifications and select the best qualified firm. Price cannot be a factor in the evaluation. Preference may be given to in-state (but not local) firms.
  5. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
  6. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.
  7. Contract must be in writing and include all applicable Uniform Guidance contract provisions. Contract must be approved by County Attorney prior to execution by County.
  8. NOTE: The authority to exempt contracts costing less than \$50,000 under N.C. Gen. Stat. §143-64.32 is not allowed under the Uniform Guidance.
- K. Contracts for Architectural and Engineering Services costing \$250,000 or more** shall be procured using the Uniform Guidance “competitive proposal” procedure (2 C.F.R. § 200.320(d)(5)) as follows:
1. Publically advertise a Request for Qualifications (RFQ) to solicit qualifications from qualified firms (formal advertisement in a newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
  2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321.
  3. Identify the evaluation criteria and relative importance of each criteria (the criteria weight) in the RFQ.
  4. Proposals must be solicited from an “adequate number of qualified sources” (an individual federal grantor agency may issue guidance interpreting “adequate number”).
  5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
  6. Consider all responses to the publicized RFQ to the maximum extent practical.
  7. Evaluate qualifications of respondents to rank respondents and select the most qualified firm. Preference may be given to in-state (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
  8. Price cannot be a factor in the initial selection of the most qualified firm.
  9. Once the most qualified firm is selected, negotiate fair and reasonable compensation. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
  10. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.

11. Contract must be in writing and include all applicable Uniform Guidance contract provisions. Contract must be approved by County Attorney prior to execution by County.
12. State licensure requirements apply.

## **V. Exceptions**

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

- A. Sole Source.** A contract may be awarded without competitive bidding when the item is available from only one source. The Deputy Purchasing Agent and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the governing board.
- B. Public Exigency.** A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from a competitive bidding.
- C. Inadequate Competition.** A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.
- D. Federal Contract.** A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.
- E. Awarding Agency Approval.** A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law.

## **I. Purpose**

The purpose of this policy is to establish conflicts of interest guidelines that meet or exceed the requirements under state law and local policy when procuring goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects paid for in part or whole by federal funds and required under 2 C.F.R. § 200.318(c)(1).

## **II. Policy**

This policy applies when procuring goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects funded in part or whole with federal financial assistance (direct or reimbursed). This policy also applies to any sub-recipient of the funds.

The employee responsible for managing the federal financial assistance award shall review the notice of award to identify any additional conflicts of interest prohibitions or requirements associated with the award, and shall notify all employees, officers, and agents, including sub-recipients, of the requirements of this policy and any additional prohibitions or requirements.

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

1. the employee, officer, or agent involved in the selection, award, or administration of a contract;
2. any member of his or her immediate family;
3. his or her partner; or
4. an organization which employs or is about to employ any of these parties.

Any officer, employee, or agent with an actual, apparent, or potential conflict of interest as defined in this policy shall report the conflict to his or her immediate supervisor. Any such conflict shall be disclosed in writing to the federal award agency or pass-through entity in accordance with applicable Federal awarding agency policy.

**B. Gifts.** In addition to the prohibition against accepting gifts and favors from vendors and contractors under N.C. Gen. Stat. §133-32, officers, employees, and agents of the County are prohibited from accepting or soliciting gifts, gratuities, favors, or anything of monetary value from contractors, suppliers, or parties to subcontracts. Items of nominal value valued at less than \$25 which fall into one of the following categories may be accepted:

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

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

**III. Violation**

Employees violating this policy will be subject to discipline up to and including termination. Contractors violating this policy will result in termination of the contract and may not be eligible for future contract awards.

## Policy Outlining Procedures for Pre-Auditing Obligations That Will Be Incurred by Electronic Payments and for Disbursing Funds by Electronic Transaction

The Board of Commissioners has authorized Lee County to engage in electronic payments as defined by G.S. 159-28 by adoption of a Resolution. As required by NC Administrative Code 20 NCAC 03 .0409 and .0410, this policy outlines procedures for pre-auditing obligations that will be incurred by electronic payments and procedures for disbursing public funds by electronic transaction.

### **Procedures for Pre-Auditing Obligations That Will Be incurred by Electronic Payments**

1. Procurement Cards (PCard)
  - a. Department Heads specify the desired levels of single transaction, daily, and monthly spending limits to be placed on an individual cardholder. Requested card limits are based on normal operational spending needs. These controls on spending limits are recorded in the PCard system, which will prevent transactions that exceed these limits.
  - b. Departments need to request a purchase order monthly for charges to PCards that fall below the \$500 purchase order threshold using the department's most commonly used expenditure account(s).
  - c. When actual PCard transactions are entered into the County's financial system, equivalent amounts are liquidated from that month's Pcard encumbrances. After all actual PCard transactions for the month have been entered into the County's financial system; any remaining PCard encumbrances for the month are liquidated.
  - d. When a cardholder needs to make a purchase in excess of the \$500 purchase order threshold, the department submits a purchase requisition to the County's PCard vendor in the County's financial system.

2. Fuel Cards

The County uses the Lee County General Services Fuel System as the primary location for fueling vehicles. The system supports both gasoline and diesel fuel. The administrative staff of General Services issues keys for the County vehicles.

The County also maintains gas cards through ComData Network, Inc. for an alternate method of purchasing fuel for County vehicles. The cards do not allow non-fuel purchases and personal purchases should never be made.

- a. The Purchasing Agent records a quarterly encumbrance through a purchase order in the County's financial system. These encumbrances are charged to the budgets for the departments' fuel accounts and are based on estimated fuel card expenditures for the quarter. Employees authorized to purchase fuel for their departments essentially have blanket discretionary authority to spend up to the quarterly encumbered amount and the process of encumbering these funds pre-audits those transactions by checking for budgetary authority to spend up to that quarterly encumbrance.
- b. When actual fuel card transactions are recorded in the County's financial system, equivalent amounts are liquidated from the fuel card encumbrance. The encumbrance will be audited quarterly; any remaining fuel card encumbrance for the quarter will be liquidated.

3. Electronic Funds Transfers

The County does not generally engage in purchasing or incurring obligations by electronic funds transfers, whether these are in the form of debit cards, e-checks, ACH payments or wire payments. However, the County does make ACH payments or wire transfers to pay certain vendors, payment to its PCard vendor, sales tax remittances, and debt service payments for debt that was not subject to approval by the Local Government Commission. These transactions must be pre-audited and the pre-audit language required in G.S. 159-28(a1) affixed to the documentation.

**Procedures for Disbursing Public Funds by Electronic Payments**

The County does currently pay some invoices that are processed through its accounts payable system by creating an ACH file for transmittal. These payments will have already been pre-audited with the pre-audit language required by G.S. 159-28(d1) affixed to the documentation.

**LEE COUNTY'S MINORITY BUSINESS/HISTORICALLY  
UNDERUTILIZED BUSINESS  
PARTICIPATION OUTREACH PLAN AND GUIDELINES**

- SECTION A. INTENT
- SECTION B. DEFINITIONS
- SECTION C. MINORITY OUTREACH PLAN AND GUIDELINES
- SECTION D. MINIMUM COMPLIANCE REQUIREMENTS
- SECTION E. DISPUTE RESOLUTION PROCEDURES
- SECTION F. BID PACKET PROVISIONS
- SECTION G. INFORMAL BIDDING STATUTE
- SECTION H. AFFIDAVITS FOR BIDDERS
- SECTION I. BID PACKET COVERSHEET

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

N.C.G.S. 143-128.2 requires that a local government unit or other public or private entity that receives State appropriations for a building project or other State grant funds for a building project, including a building project done by a private entity on a facility to be leased or purchased by the local government unit, where the project cost is one hundred thousand dollars (\$100,000) or more, shall have a verifiable ten percent (10%) goal for participation by minority businesses in the total value of the work. A verifiable goal is also required for building projects costing three hundred thousand dollars (\$300,000) or more when no state funds are involved. The outreach plan shall also be applicable to the selection process of architectural, engineering, and Construction Manager-at-Risk services, unless otherwise exempted.

Lee County has a current verifiable goal of 10% percent for minority participation for building construction or repair projects. The goal will be reviewed annually or as soon as relevant data is available.

**SECTION A: INTENT**

It is the intent of these guidelines that Lee County, 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. Lee County wants to provide historically underutilized businesses opportunities to participate in bidding opportunities.

**SECTION 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
  - f. Disabled, that is, a person with a disability as defined in N.C.G.S. 168-1 or N.C.G.S. 168A-3
  - g. Disadvantaged, that is, a person who is socially and economically disadvantaged as defined in 15 U.S.C. Section 637
  
2. Minority Business (MBE) – According to N.C.G.S. 143-128.4, minority business or historically underutilized business is a business that meets the following conditions:
  - a. In which at least fifty-one percent (51%) is owned by one or more persons who are members of at least one of the groups set above, 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.

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.

4. Economically disadvantaged individuals -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.

5. Disability- according to N.C.G.S. 168A-3 is a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment. As used, the term:

- a. Physical or mental impairment means (i) any physiological disorder or abnormal condition, cosmetic disfigurement, or anatomical loss, caused by bodily injury, birth defect or illness, affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic; and lymphatic; skin; and endocrine; or (ii) any mental disorder, such as mental retardation, organic brain syndrome, mental illness, specific learning disabilities, and other developmental disabilities, but (iii) excludes (A) sexual preferences; (B) active alcoholism or drug addiction or abuse; and (C) any disorder, condition or disfigurement which is temporary in nature leaving no residual impairment.
- b. Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working
- c. Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits major life activities
- d. Is regarded as having an impairment means (i) has a physical or mental impairment that does not substantially limit major life activities but that is treated as constituting such a limitation, (ii) has a physical or mental impairment that substantially limits major life activities because of the attitudes of others, or (iii) has none of the impairments defined above, but is treated as having an impairment.

4. Owner – Lee County.

5. Designer – Any person, firm, partnership, or corporation which has contracted with Lee County 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 Lee County 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.

## **SECTION C: MINORITY OUTREACH PLAN AND GUIDELINES**

### **Owner**

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

1. 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.
2. Provide detailed information to majority contractors concerning the bidding and good faith efforts requirements by holding meetings with the contractors.
3. 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.
4. 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.
5. Participate in educational opportunities throughout the community as they become available and offer training sessions to share Lee County's outreach plan with interested businesses and organizations
6. Enhance Lee County'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.
7. Maintain or continue to maintain a database specifically for MBE firms and majority contractors to ensure those firms wishing to do business with Lee County have access to up-to-date information.
8. Advertise upcoming bid opportunities on the State HUB website.
9. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.

### **Designer**

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") for compliance with minority business utilization commitments. Submit this form with monthly pay applications to the Owner.

### **Prime Contractor(s), CM at Risk, and Its First-Tier Subcontractors**

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 Lee County, 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" 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.

### **Minority Business Responsibilities**

#### Certification

Lee County does not certify minority businesses. Lee County requires certification for minority, disadvantaged or women-owned businesses. Any business that desires to participate as an MBE will be required to complete and submit for certification, documents required by any of the agencies listed below. Only those firms holding current certification through at least one of the following agencies will be considered eligible for inclusion in meeting the MBE participation percentage goals:

North Carolina Department of Administration Historically Underutilized Business (HUB) certification  
North Carolina Department of Transportation Disadvantaged Business Enterprise (DBE)  
North Carolina Department of Transportation Minority Business Enterprise (MBE)  
North Carolina Department of Transportation Women Business Enterprise (WBE) Business Certification  
Small Business Administration 8(a) certification  
Other governmental agencies on a case-by-case basis

Other Responsibilities

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

**SECTION D: MINIMUM COMPLIANCE REQUIREMENTS**

All written statements or affidavits made by the bidder shall become a part of the agreement between the Contractor and Lee County 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 Lee County 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 Lee County whether to terminate the contract for breach.

In determining whether a contractor has made good faith efforts, Lee County 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)

#### **SECTION E: DISPUTE RESOLUTION PROCEDURES**

Pursuant to G.S. 143-128 (f1), all disputes involving contractors on a building construction or repair project with Lee County shall be resolved pursuant to Lee County's Dispute Resolution Policy (Exhibit E).

**SECTION F:** In addition to these guidelines, there will be issued with each construction bid package provisions for providing minority business participation in the Lee County projects.

#### **SECTION G: INFORMAL BIDDING STATUTE**

All public entities shall solicit minority participation in contracts for the erection, construction, alteration or repair of any building awarded pursuant to this section. The public entity shall maintain a record of contractors solicited and shall document efforts to recruit minority business participation in these contracts. Nothing in this section shall be construed to require formal advertisement of bids. All data, including the type of project, total dollar value of the project, dollar value of minority business participation on each project, and documentation of efforts to recruit minority participation shall be reported to the Department of Administration, Office of Historically Underutilized Business, upon the completion of the project. Department Heads must work with the Development Services Director who will report the MWBE information to the Office of Historically Underutilized Business.



## County of Lee - AFFIDAVIT A - Listing of Good Faith Efforts

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

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.

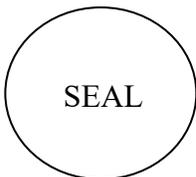
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure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

The undersigned hereby certifies that he or 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 \_\_\_\_\_

**County of Lee -AFFIDAVIT B- Intent to Perform Contract  
With Own Workforce.**

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 Bidder agrees to make a Good Faith Effort to utilize minority suppliers where possible.

The undersigned hereby certifies that he or 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 \_\_\_\_\_

## County of Lee - AFFIDAVIT C - Portion of the Work to be Performed by HUB Certified/Minority Businesses

**(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 HUB certified/minority businesses as defined in GS143-128.2(g) and 128.4(a),(b),(e) 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	**HUB Certified Y/N	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**)

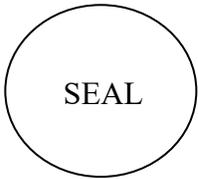
**\*\* HUB Certification with the state HUB Office required to be counted toward state participation goals.**

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 or 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 \_\_\_\_\_

## County of Lee - AFFIDAVIT D – Good Faith Efforts

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

If the goal of 10% participation by HUB Certified/ 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)

Project ID# \_\_\_\_\_ (Project Name) Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with HUB certified/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	**HUB Certified Y/N	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**)

**\*\* HUB Certification with the state HUB Office required to be counted toward state participation goals.**

**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**.

*Exhibit D – Minority Business/Historically Underutilized Business Participation  
Outreach Plan and Guidelines*

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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 or 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 \_\_\_\_\_

**SECTION I**

**MINORITY BUSINESS CONSTRUCTION CONTRACT PROVISIONS INSTRUCTIONS FOR  
BIDDING PACKETS**

**APPLICATION:**

The Outreach Plan and Guidelines for Recruitment and Selection of Minority Owned Businesses for Participation in Lee County contracts are hereby made a part of these contract documents.

**MINORITY BUSINESS SUBCONTRACT GOALS:**

The goal for participation by minority firms as subcontractors on this project has been set at 10%.

The bidder must identify on its bid the minority businesses that will be utilized on the project with corresponding total dollar value of the bid and affidavit (Affidavit A) listing good faith efforts or affidavit (Affidavit B) of self-performance of work, if the bidder will perform work under contract by its own workforce, as required by N.C.G.S. 143-128.2(c) and 143-128.2(f).

In addition, the lowest responsible, responsive bidder must do one of the following:

1) Provide Affidavit C 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 portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, is less than the applicable goal, provide Affidavit D as well as documentation of good faith efforts.

OR

3) Provide Affidavit B, which includes sufficient information for the Owner to determine that the bidder does not customarily subcontract work on this project.

**The above information must be provided as required. Failure to submit these documents is grounds for rejection of the bid.**

**COUNTY OF LEE  
RULES FOR IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES  
IN NORTH CAROLINA PUBLIC BUILDING CONTRACTS**

**Table of Rules**

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  - B. Initiating the dispute resolution process
  
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## **RULE 1. INITIATING MEDIATED SETTLEMENT CONFERENCES**

**A. Purpose of Mandatory Settlement Conferences.** Pursuant to N.C.G.S. 143-128(f1) and (g), 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 to or during commencement of the dispute resolution process.

### **B. Initiating the Dispute Resolution Process**

1. The County reserves the right to require mediation as a precondition to litigation. The County also encourages all disputes to be resolved through good faith efforts of discussion by submitting a dispute to the Project Designer or Prime Contractor and working with the County before a party requests mediation.
2. Any party to a public building contract governed by Article 8, Chapter 143 of the NC General Statutes and identified in N.C.G.S. 143-128(f1) and (g) and who is a party to a dispute arising out of the building process in which the amount in controversy is at least \$15,000 may submit a written request to the County of Lee owner, notice to the Lee County Manager, for mediation of the dispute.
3. Prior to submission of a written request for mediation to the County of Lee owner, 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 is eligible for mediation in the Formal Dispute Resolution Process and the party may submit their written request for mediation to Lee 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 is eligible for mediation in the Formal Dispute Resolution Process, and the party may submit its written request for mediation to the County of Lee.
  - c. If the party requesting mediation is the Project Designer, then it must first submit its claim to the County of Lee to resolve. If the dispute is not resolved with the County of Lee's involvement, then the Project Designers' dispute is eligible for mediation in the Formal Dispute Resolution Process, and the Project Designer may submit its written request to the County of Lee for mediation.

## **RULE 2. 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 the County of Lee 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 selected mediator, 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 the County of Lee 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 the County of Lee, 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 Lee 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.

Lee 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 Lee County.** If the parties cannot agree upon the selection of a mediator, the party or party's attorney shall notify Lee County and request, on behalf of the parties, that Lee 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, Lee County shall appoint a certified attorney mediator. If no preference is expressed, Lee County may appoint a certified attorney 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.

**E. Disqualification of Mediator.** Any party may request replacement of the mediator by Lee County for good cause. Nothing in this provision shall preclude mediators from disqualifying themselves.

### **RULE 3. 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 Lee 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 or 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 nor more than 60 days after naming the mediator.

**C. Request to Extend Deadline for Completion.** A party, or the mediator, may request Lee County to 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 communication its objection to Lee County.

Lee 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 building project which is the focus of the dispute.**

#### **RULE 4. DUTIES OF PARTIES AND OTHER PARTICIPANTS IN FORMAL DISPUTE RESOLUTION PROCESS**

##### **A. Attendance.**

1. 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 may result in Lee County's withholding of monthly payment to that party until such party attends the mediation.
2. 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.
3. Attorneys on behalf of parties may attend the mediation but are not required to do so.
4. Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid 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 decided amongst the parties at the time mediation is requested.

**D. Failure to Compensate Mediator.** Any party's failure to compensate the mediators in accordance with N.C.G.S. 143-128(f1) and (g) may subject that party to a withholding of said amount of money from the party's monthly payment by Lee County.

#### **RULE 5. AUTHORITY AND DUTIES OF MEDIATORS**

##### **A. Authority of Mediator.**

1. Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.
2. 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.

3. 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.**

1. 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 circumstances 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;
  - h. The duties and responsibilities of the mediator and the participants; and
  - i. That any agreement reached will be reached by mutual consent.
2. Disclosure. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.
3. Declaring Impasse. It is the duty of the mediator to timely determine that an impasse exists and that the conference should end.
4. Reporting Results of Conference. The mediator shall report to Lee County within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state the nature of the agreement. The mediator's report shall inform Lee County of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. Lee County may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
5. 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. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order from Lee County.

**RULE 6. COMPENSATION OF THE MEDIATOR**

**A. By Agreement.** When the mediator is stipulated by the parties, compensation shall be as agreed upon by the parties and the mediator provided that the provisions of N.C.G.S. 7A-38.1(k) are observed.

**B. By Appointment.** When the mediator is appointed by Lee 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.

**RULE 7. 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 Lee 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.

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 Lee County to mediate any dispute in accordance with these Rules.

**RULE 8. RULE MAKING**

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

**RULE 9. 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

**Exemption from Architectural, Engineering and Surveying  
Qualifications-Based Selection Process for Fees Less than \$50,000**

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

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

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

Amount: \_\_\_\_\_

N.C.G.S. 143-64.31 requires the initial selection and evaluation of firms to perform architectural, engineering, surveying, construction management-at-risk services and design-build services (collectively "design services") to be based on qualifications and without regard to fee, the qualification selection process must be announced and good faith efforts must be made to notify minority firms.

AND

N.C.G.S. 143-64.32 authorizes units of local government to exempt contracts for services from the qualifications based selection ("QBS") requirements of G.S. 143-64.31 if the estimated fee is less than \$50,000 and the estimated professional fee for services for the above-described project is less than \$50,000.

Lee County proposes to enter into a contract for services for work on the above described project.

The above described project is hereby made exempt from the provisions of N.C.G.S. 143-64.31.

On March 16, 2020, the Lee County Board of Commissioners adopted a resolution exempting the government from requiring QBS procedures for eligible projects under G.S. 143-64.31 and authorized the County Manager to approve each project on a case-by-case basis and by signing below, has approved such exemption.

\_\_\_\_\_  
County Manager

\_\_\_\_\_  
Date



**SOLE SOURCE JUSTIFICATION FORM  
(for items costing \$5,000.00 or more)**

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

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

Estimated expenditure for the above item: \$ \_\_\_\_\_

INITIAL ALL ENTRIES BELOW THAT APPLY TO THE PROPOSED PURCHASE ATTACH A MEMO CONTAINING JUSTIFICATION AND SUPPORT DOCUMENTATION.

1. \_\_\_\_\_ Sole source is for the original manufacturer or provider. There are no area distributors.
2. \_\_\_\_\_ The parts/equipment are not interchangeable with similar parts of another manufacturer.
3. \_\_\_\_\_ This is the only known item or service that will meet the specialized needs of this department or perform the intended function.
4. \_\_\_\_\_ The parts/equipment are required from this source to permit standardization.
5. \_\_\_\_\_ None of the above apply. A detailed explanation and justification for this sole source is contained in the attached memo.

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.

\_\_\_\_\_  
County Manager (\$5,000 up to \$30,000)  
Board of Commissioners (\$30,000 and up)

\_\_\_\_\_  
Department

\_\_\_\_\_  
Date