

MOORE COUNTY'S PURCHASING POLICY AND PROCEDURES MANUAL

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County of Moore, North Carolina
Purchasing Policy and Procedures Manual

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I. INTRODUCTION AND PURPOSE

This Purchasing Policy and Procedures Manual (hereinafter referred to as "Policy") is intended for use as a guide to the County of Moore's purchasing methods and practices. In the event of conflicts between any part of this Policy and the North Carolina General Statutes, the statutes shall prevail.

Moore County's procurement practices are based on the principle of fair and open competition. In public purchasing and contracting, utmost fairness is required in expending public funds. The practice of favoritism, whether to the user, department, or to a vendor, is not permissible. All persons involved in the procurement process must work to promote and protect the basic fundamentals of the program. We are entrusted by the taxpayers to expend money in an efficient and effective manner. In doing this, the integrity of the procurement program must be maintained. Moore County's procurement operations are governed by North Carolina General Statutes, (primarily Chapter 143). Moore County establishes many different commodity contracts utilizing the competitive bid process. As allowed by NCGS 143-129(e)(9), Moore County may participate in contracts established by the "State or any agency of the State" that were competitively bid. In these cases, the bidding process must have already been followed and, thus, the County may purchase from these contracts without further bidding requirements. This may prevent undue delay in obtaining items that would otherwise be applicable to the bidding statutes. Items required by County departments are substituted for "acceptable" equivalents that are on these contracts. Where items cannot be substituted, they are obtained through standard bidding procedures.

It is recommended that all employees involved in the procurement process should become thoroughly familiar with the procedures outlined in this Policy. Comments concerning this Policy or clarification of its contents should be directed to the Chief Financial Officer, County Attorney or County Manager. Any request to deviate from the provisions of this Policy must be submitted in writing to the Chief Financial Officer. The Chief Financial Officer must review the request to deviate and submit his/her written recommendation to the County Attorney and County Manager for approval. When applicable, final approval will be made by the Board of Commissioners.

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

1. To comply with the legal and ethical requirements of public purchasing and procurement.
2. To assure vendors that impartial and equal treatment is afforded to all who wish to do business with the County.
3. To receive maximum value for each dollar spent by awarding purchase orders to the lowest responsible, 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 and services at the time and place needed.
5. To professionally administer the search for sources of supplies, the development of new sources, the selection of suppliers, negotiations, commitment, follow-up and adjustments.
6. To promote positive and effective vendor relations, cultivated by informed and fair buying practices and strict maintenance of ethical standards.
7. To effectively promote standardization of products used within and among departments in order to obtain better prices.

II. PROCUREMENT DOCUMENTS/TYPES

The County enters into a variety of purchase, service and construction contracts including, but not limited to, the following types: purchase of goods and services; property acquisition; construction, renovation, repair and maintenance of facilities; leasing of equipment and real property; and various agreements with other units of government.

III. GENERAL GUIDELINES FOR PURCHASING SUPPLIES AND MATERIALS

A. Local Buying:

The County wants to insure 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.

B. Planning:

Planning for purchases should be done on both 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.

C. 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.

IV. PURCHASING PROCEDURES

This section outlines the County's purchasing procedures. The procedures outlined are designed to take full advantage of a centralized purchasing system.

A. Request to Purchase:

The Purchase Requisition form initiates the procurement cycle. The receipt of the Purchase Requisition form with the required information and appropriate approvals gives the Purchasing Coordinator the authority to proceed with competitive pricing and to issue a purchase order to the lowest responsible, responsive bidder. The Department Director/designee(s) must approve all requests within the department. Exhibit B is a sample of a Purchase Requisition form.

A completed requisition with appropriate approvals is required for all purchases other than those identified in Exhibit A.

B. Completing the Purchase Requisition Form:

The Purchase Requisition form, once completed, is forwarded to Financial Services. If the Purchasing Coordinator has questions concerning the request, it may be returned to the Department Director/designee(s) with a Purchase Requisition Return form. Exhibit C is a sample of a Purchase Requisition Return form.

V. PURCHASE ORDERS

To be valid, a County Purchase Order must be completed and signed by the Financial Director/designee(s). **Purchase orders will not be issued without a properly executed requisition.**

A. The Purchase Order Process:

A purchase order is a contract between the County and a vendor and is not binding until it is fully executed by the Chief Financial Officer and Purchasing Coordinator. The issuance of purchase orders by unauthorized County employees or officials will not be recognized by the County and payment of these obligations will not be approved. Obtaining apparatus, supplies, materials, equipment or services without a purchase order is also an unauthorized purchase. (Except in emergency situations as outlined in Section VIII. B.) **Unauthorized purchases are classified as a personal expense and will be paid for by the employee.**

The purchase order is a numbered three part form with copies to be distributed as follows:

White - (Vendor Copy) Mailed or Faxed to vendor by using department
Green - (Department Copy) Filed with a copy of the Purchase Requisition form in departmental files
Yellow - (Purchasing Copy) Filed with purchase requisition sequentially by department

In order to properly process the vendor's invoice(s) for payment, the invoice must indicate the purchase order number and the appropriate budget code, be signed and dated, and forwarded to Accounts Payable with the signed green copy of the purchase order. This must be done immediately after the item(s) have been received, inspected and accepted by the using department.

B. Change Orders:

In order to change, modify, or cancel an existing purchase order, the using department must initiate a Purchase Order Change Form with the Department Director's/designee(s) approval. All pertinent information needed to make changes should be completed. The change order shall be forwarded to the Purchasing Coordinator for review and approval. The Purchasing Coordinator will be responsible for the distribution of the change order to the requesting department. The Chief Financial Officer must approve change orders (in excess of the contingency amounts) for purchases and/or contracts for which it originally awarded. Exhibit D is a sample of a Purchase Order Change Order form.

Change orders will not be allowed:

1. That would alter the procurement procedures that were used in the original process. (i.e., from informal to formal)
2. After the scope of services have been rendered or materials have been received
3. That would increase an open purchase order
4. That would add additional items to the purchase order

VI. AVAILABILITY AND TRANSFER OF BUDGETARY FUNDS

A. Policy:

It is the policy of the County of Moore to require a Departmental Funds Transfer form for any purchase or commitment of County funds for which there are insufficient funds available in the budgetary account against which a purchase or commitment is to be applied. Transfer of Funds is not allowed for the purpose of making it possible to spend all appropriations. Exhibit E is a sample of the Departmental Funds Transfer form.

B. Authority:

The County Manager is authorized to make certain changes among operating expenditure line items, (i.e. non-capital and/or non-personnel related items), in the budget of a

department, (department as defined in the annual budget ordinance adopted by the Board of Commissioners).

C. Responsibility:

Transfer of Funds must be requested by the Department Director/designee(s) and forwarded to the County Manager before any commitments are approved against an expenditure line item which would exceed the amount budgeted for that particular line item.

Requests should be stated in even dollar increments.

The County Manager is expected and authorized to inquire about the appropriateness of any and all Department Transfer of Funds. After review and approval of the request, the County Manager shall attach a copy of the form to the corresponding Purchase Requisition form and forward the Request for Departmental Funds Transfer form to the Chief Financial Officer.

VII. SPECIAL PROCUREMENT PROCEDURES

A. Open Purchase Orders:

The Purchasing Coordinator will issue Open Purchase Orders to selected vendors for the procurement of large volume items that are needed on a continuing basis such as landscaping supplies, janitorial supplies, tires, water treatment chemicals, etc. Open purchase orders should not be used for items that can/should be purchased with the purchasing card.

Requests for Open Purchase Orders must, in addition to the required information, indicate the following: items covered by the Open Purchase Order, a Not to Exceed (NTE) amount in the appropriate column, and an attached listing of all personnel approved to purchase from the Open Purchase Order. The issued purchase order will instruct the vendor that unauthorized purchases will not be allowed. It is the responsibility of the individual authorized to purchase under an Open Purchase Order to insure that an unspent balance remains to cover the purchase to be made. **Any purchase that exceeds the funds available under an Open Purchase Order will be classified as an unauthorized purchase.**

Any purchases made by personnel not authorized by the open purchase order request will be classified as a personal expense and will be paid by the employee.

The vendor's invoice must be signed by an authorized County employee and the purchase order number must be indicated. If the purchase is to be charged to an account other than indicated by the purchase order, the account number to be charged for the expenditure must be indicated. Departments will forward these delivery tickets immediately to Accounts Payable for payment.

B. Emergency Purchases:

In cases of emergencies, the Department Director/designee(s) may purchase directly from any vendor, supplies or services whose immediate procurement is essential to prevent delays in work which may affect the life, health, or either safety or convenience of the County of Moore employees or citizens.

The using department shall exercise good judgment and use established vendors when making emergency purchases. Always obtain the best possible price and limit purchases to those items emergency related. **Not anticipating needs does not constitute an emergency situation.** First, determine if a true emergency does exist. Second, anticipate needs and avoid emergency situations whenever possible. Emergency orders are always costly. Vendors usually charge top prices if supplies or services must be obtained on an emergency basis.

During working hours, the following procedure should be used for emergency purchases: Contact the Purchasing Coordinator and give all pertinent information to obtain a purchase order. The information needed will include vendor name, item(s) to be purchased, expenditure account to which the item(s) will be charged and the reason for the emergency. After verifying available funds, a purchase order number will be issued for the expenditure and a purchase requisition should be forwarded to the Purchasing Coordinator immediately so a confirming purchase order can be issued. The using department should forward the confirming purchase order to the vendor. Should the purchase over encumber the account balance, a Request for Transfer of Funds form will need to be completed as soon as possible.

After working hours, the following procedure should be used for emergency purchases: On the next business day following the emergency, the using department should complete a purchase requisition with a brief explanation of the reason for the emergency and forward to the Purchasing Coordinator so a confirming purchase order can be issued. The using department should forward the confirming purchase order to the vendor. Should the purchase over encumber the account balance, a Request for Transfer of Funds form will need to be completed as soon as possible.

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

C. Call-In Request for Purchase Orders:

Call-in requests for purchase orders will be used for emergency situations only. When an emergency purchase order is given the same procedures as VIII.B would apply.

D. Purchase Order Cut-Off Date:

Purchase request (not included in open purchase orders or service contracts) for the

ending current fiscal year must be received by the Purchasing Coordinator no later than April 1st. Purchase requests of a routine nature that could have been scheduled prior to April 1st, and are not critical, will be returned to the department for disposition in the new fiscal year. This procedure affords Purchasing and Accounts Payable the opportunity to complete fiscal year end activities in a timely and proper manner.

E. Professional Services:

Normal competitive procedures cannot be utilized in securing professional services such as attorneys, planners, and other professional people who, in keeping with the standards of their discipline, will not enter into a competitive bidding process. When an agreement between a professional service company and the County is established, a contract with a not-to-exceed amount shall 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 Chief Financial Officer.

F. Purchasing Calendar: Capital and Non-Capital Equipment:

To coordinate and schedule capital purchases during the fiscal year, the Chief Financial Officer will request information from departments concerning approved capital budgets and procurement schedules each year.

The Purchasing Coordinator will receive an annual spreadsheet of information requirements entitled "County of Moore, Capital Budget." The Chief Financial Officer and the County Manager will review the capital budget information to coordinate and schedule similar purchases to lower prices, reduce multiple purchase order processing for similar items, and more appropriately plan the procurement and remittance functions of the County. In securing financing and maintaining the capital asset records for the fiscal year, all capital purchases MUST be completed no later than January 15th with delivery scheduled no later than May 15th, if at all possible.

G. Petty Cash Expenditures:

A petty cash fund has been established for the purchase of expendable items costing less than \$50.00. Employees wishing to purchase items, and be reimbursed with petty cash, should obtain a petty cash form, provide a receipt for the purchase and return the cash form to the petty cash administrator for your department.

H. Purchasing Cards:

The use of purchasing cards has been proven to be a cost effective method of obtaining low cost supply items for the County. The purpose of this purchasing procedure is to provide for the use of purchasing cards for SMALL value or emergency purchases. For detailed information on the use of credit cards by County employees, please refer to the Procurement Card Procedures manual. Exhibit H is a copy of the manual.

VIII. BASIC CONTRACT LEGAL REQUIREMENTS

North Carolina local government contracts must satisfy additional requirements as well as common law requirements.

- A.** Before the County can enter into a contract, competitive bidding statutes (when legally required) and/or County Policy must be followed.
- B.** Contracts must be for a legally authorized public purpose. For a use to be public its benefits must be in common and not for particular persons, interests or estates, and the ultimate net gain or advantage must be to the public and not an individual or private entity.
- C.** The contract must be entered into by a person or board with authority.
- D.** Every contract must have budgetary authorization.
- E.** 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. Chairman – No monetary limit, but requires Board approval
 - 2. County Manager/designee(s) – up to \$50,000
 - 3. Health Director – up to \$50,000; Health Department contracts only
 - 4. Chief Financial Officer/designee(s) – up to \$90,000 - PURCHASE ORDERS ONLY
 - 5. Department Directors – up to \$5,000; for respective departments only

F. County Seal on Contracts

Only use the County seal for real property conveyances as required by law. Placing a seal on a contract extends the period of time within which legal challenges involving the contract must be brought. Attesting, witnessing or notarizing a signature provides proof of its authenticity which is acceptable but not required.

IX. BUDGETARY REQUIREMENTS

Pursuant to the Local Government Budget and Fiscal Control Act, all contractual obligations must be supported by an appropriation that authorizes the expenditure.

Moreover, at the time the obligation is incurred, there must be an unencumbered balance remaining in the appropriation sufficient to pay the obligation owed in the current fiscal year.

North Carolina law requires the finance officer to certify that these two requirements have been met and that the finance officer signs a pre-audit certificate which must be in every contract before it is issued.

A contract is considered void and unenforceable if it lacks the proper appropriation

and/or pre-audit certificate.

A person who incurs an obligation or pays any funds in violation of the statute is personally liable for any funds committed or disbursed.

X. COMPETITIVE BIDDING

A. Purpose

Public bidding promotes competition, reduces the risks of fraud, promotes fair play and lowers costs; therefore competition should be attempted and obtained for any contract where competition is available. It is better to actively seek competitive offers than risk a challenge to the legality of the contract or to the integrity of the process. The following State of North Carolina bidding statutes applies: G.S. 143-131 (informal bidding) and G.S. 143-129 (formal bidding).

B. INFORMAL BIDDING – G.S. 143-131

G.S. 143-131 requires informal bids when the estimated expenditure of public money is \$30,000 or more, but less than \$500,000 for construction or repair work; and \$30,000 or more, but less than \$90,000 for purchase of apparatus, supplies, materials, or equipment. The County Manager/designee(s) selects the lowest responsible, responsive bidder for all informal bids ranging from \$30,000 up to \$90,000 for purchases, and \$30,000 up to \$500,000 for construction or repair projects. 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 and then award to that bidder if the bidder is agreeable.

However, when the estimated cost is \$5,000 up to \$30,000 for the purchase of apparatus, supplies, materials, or equipment and for construction or repair work, the County will require informal bids unless a valid, real situation exists that requires an immediate solution where the solicitation of competition would impact the county's ability to provide a service to the public or staff, or there exists a justification for not seeking competition. The Chief Financial Officer (CFO)/ designee(s) selects the lowest responsible, responsive bidder for all informal bids ranging from \$5,000 up to \$30,000. Here, negotiating is allowed. The bid award standard will be the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract

Per County Policy and G.S. 143-131, quotes, bids or proposals should be received from vendors qualified to provide that product or service. Every reasonable effort should be made to receive at least three quotes, bids or proposals. If more than one quote, bid, or proposal is not received, documentation must support the efforts to obtain competitive offers. For the purpose of this Section on informal bidding, the word bid will be used to denote bids, quotes or proposals.

After receiving a properly executed Purchase Requisition form, the Purchasing

Coordinator shall obtain bids. The informal bidding process requires that competitive pricing be obtained in writing. These requests are obtained by three or more sources who can supply the product(s) needed. If desired, the using department may obtain the bids and attach them to the Purchase Requisition form. Once received, and the lowest responsible, responsive bidder is determined, the Purchasing Coordinator shall generate the purchase order following the procedures set out in VI.A. Exhibit I is a sample of the Informal Bid Document form. A record must be kept of bids submitted. Records are not subject to public inspection until the contract has been awarded.

Departments are authorized to use purchase orders and invoices for purchases, construction and repair projects and services costing up to \$5,000 (unless otherwise directed). Competitive bids are not required for construction or repair work, services or purchases less than \$5,000.

Departments are authorized to use a purchasing card for items (unless otherwise directed), costing less than \$1,000. If the vendor does not accept the purchasing card, a Purchase Requisition form needs to be submitted to the Purchasing Coordinator for a purchase order.

Sole Source - G.S. 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, Assistant County Manager or a designee of the same may approve sole source contracts (purchases and services) ranging from \$5,000 up to \$30,000.

Moore County Transportation System (MCTS) ONLY

The most current, applicable Federal clauses must be attached to all MCTS solicitations over \$3,000 for local purchases that were funded in part with Federal funds.

C. FORMAL BIDDING

G.S. §143-129 requires formal bids for construction or repair work when the estimated expenditure of public money is equal to or greater than \$500,000; or purchase of apparatus, materials, supplies, or equipment when the estimated expenditure of public money is equal to or greater than \$90,000. Formal bids require solicitation of sealed bids and legal advertisements. For construction or repair contracts, there are special requirements as to the number of bids received, which is discussed later. The Moore County Board of Commissioners awards all formal bids.

The Purchasing Coordinator and Department Director are responsible for specification development. The Purchasing Coordinator, under the direction of the Chief Financial Officer and County Attorney, shall be responsible for ensuring that all North Carolina General Statutes are satisfied, including, but not limited to, proper advertisement (discussed later) and receipt of sealed bids.

A bid selection committee shall be used any time services, purchases or construction or repair projects is estimated to cost \$90,000 and over. Follow the County's internal bid

selection committee processes and procedures. The bid award standard is the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. A record of all bids submitted must be maintained, and such record shall not be subject to public inspection until the contract has been awarded. All bids are subject to public inspection once opened, unless a trade secret is involved.

A member of the bid selection committee shall make a formal recommendation of award to the Board of County Commissioners. Once the contract is awarded and fully executed, the Department Director shall initiate a Purchase Requisition form so that a purchase order can be generated to encumber the expenditure account following the procedures set out in VI.A.

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 and then award to that bidder if the bidder is agreeable.

All formal bids are awarded by the Moore County Board of Commissioners. Contracts cannot be divided to evade the rules.

In addition, all contracts \$50,000.00 or greater require the Board of County Commissioners' approval.

Exhibit I is a copy of the Statutory Thresholds in North Carolina Public Contracting Statutes.

**D. EXCEPTIONS TO THE FORMAL BIDDING PROCESS –
G.S. 143-129**

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:

- a. Purchases from other governmental agencies (G.S. 143-129(e)(1))
- b. Competitive group purchasing (G.S. 143-129(e)(3))
- c. Gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil or natural gas (G.S. 143-129(e)(6)) [Informal bids are required]
- d. Sole sources (G.S. 143-129(e)(6)). Requires governing board approval and specific criteria must be met.
 - i. Sole Source - G.S. 143-129(e)(6) and the County require governing board approval or sole source contracts equal to or in excess of \$30,000. The County Manager,

Assistant County Manager or a designee of the same may approve sole source contracts (purchases and services) ranging from \$5,000 up to \$30,000.

e. Information technology goods and services purchased through the State Office of Information Technology (G.S. 143-129 (e)(7)) or using request for proposals (Procedures authorized by G.S. 143-129.8))

f. Purchase from state contracts

g. Used apparatus, supplies, materials or equipment (G.S. 143-129(e)(10)). Does not apply to remanufactured, prefabricated, or demo items.

h. Piggybacking previously bid contracts. Requires governing board approval & prior 10-day notice (G.S. 143-129(g))

i. Purchases from nonprofit work centers for the blind and severely disabled (GS 143-129.5)

Exceptions that apply to construction or repair contracts only:

a. Change order work. (G.S. 143-129(e)(4))

b. Construction management at risk projects (G.S. 143-129(e)(11)). Requirements of G.S. 143-128.1 apply to these projects.

c. Force account work. (G.S. 143-135) Work must be performed by labor on the permanent payroll, and does not exceed \$125,000.00 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 \$50,000.00.

d. Projects using unemployment-relief labor paid for in whole or part with state or federal funds. (G.S. 143-129(d))

e. Contracts with NC Department of Transportation for street construction and repair. (G.S. 136-41.3)

Exceptions that apply to both purchase and construction contracts:

a. Special emergency involving the health and safety of the people or their property. (G.S. 143-129(e)(2))

b. Guaranteed energy savings contracts. (G.S. 143-129(e)(8)) Requirements of G.S. 143-64.17 through 143-64.17G applies to these contracts.

c. Solid waste management facilities (G.S. 143-129.2).

E. LEGAL ADVERTISEMENTS – FORMAL BIDDING

Pursuant to G.S. 143-129(b), a local governing board may at a regular meeting authorize use of advertisement by electronic means instead of published notice. On June 7, 2010 the Moore County Board of Commissioners authorized use of advertisement by electronic means. Electronic advertisements must be placed on the County's website. Otherwise, the formal bidding process requires advertising in a newspaper of general circulation. The advertisement must appear at least one time, with at least seven full days elapsing between the day the ad appears and the bid opening date. The advertisement must state the time and place where plans and specifications may be obtained, the time and place for opening of the proposals/bids, and reserve to the governing body the right to reject any or all proposals/bids. Additional notice may be given (G.S. 143-129(b)).

Minority Business/Historically Underutilized Business Participation

Notice: Building projects costing \$300,000 or more

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; provided, however, a local government unit may apply a different verifiable goal that was adopted prior to December 1, 2001, if the local government unit had and continues to have a sufficiently strong basis in evidence to justify the use of that goal. A verifiable percentage goal is also required for building projects costing \$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.

Moore County has a current verifiable goal of ten percent (10%) for minority participation for public building projects. The overall goal will be reviewed annually or as soon as relevant data is available. (*Reference Minority Business/Historically Underutilized Business Participation Outreach Plan and Guidelines below.*)

F. RECEIVING AND OPENING BIDS; NUMBER OF BIDS

All formal bids must be opened in public. Bids must be sealed and opening a bid or package with knowledge that it contained a bid or disclosing the contents without the permission of the bidder prior to the time set for opening constitutes a Class 1 misdemeanor (G.S. 143- 129(b)).

Three (3) bids are required for formal construction or repair work (G.S. 143-132(a)). If at least three bids are not received, a second advertisement must be made, after which bids may be opened and a contracts awarded even if less than three bids are received. There is no minimum number of bids required for purchase contract bids. However, every reasonable effort should be made to obtain at least three (3) bids.

G. 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.

H. 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 judgment. 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.

I. BID EVALUATION AND AWARDING

Award to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. A record of all bids submitted must be maintained, and such record shall not be subject to public inspection until the contract has been awarded. All bids are subject to public inspection once opened, unless a trade secret is involved.

To ascertain the lowest responsible, responsive bidder, first, determine the lowest bidder. Then, determine the lowest responsive bidder. Bids are responsive when they substantially meet the applicable specifications and laws. The County may waive minor, but not material deviations. A material deviation, if waived, would give the bidder an advantage or benefit over other bidders. After determining the lowest responsive bidder, determine the most responsible bidder. To determine responsibility, take into account the skill, judgment and integrity necessary to the faithful performance of the contract, as well as sufficient financial resources and ability.

For statutorily required bidding only, 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 specifications to bring the contract price within the funds available and then award to that bidder if the bidder is agreeable.

Who can award bids?

- Formal Bids.....Board of Commissioners
- Informal Bids - \$30,000 up to \$90,000 for purchases and \$30,000 up to \$500,000 for construction or repair projects.....County Manager/designees
- Informal Bids - \$5,000 up to \$30,000Chief Financial Officer/designees
- Informal Bids - \$0.00 up to \$5,000.....Department Directors

J. PERFORMANCE AND PAYMENT BONDS

For construction or repair projects where the total amount of all the contracts exceed \$300,000.00, each contractor must provide performance and payment bonds for the full amount of each contract that exceeds \$50,000.00 (GS 143-129(c)). The contractor may provide cash, certified checks or government securities instead of bonds.

K. 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 the 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.

L. CONTRACTOR LICENSURE

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

M. MOORE COUNTY'S MINORITY BUSINESS/HISTORICALLY UNDERUTILIZED BUSINESS PARTICIPATION OUTREACH PLAN AND GUIDELINES

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OUTREACH PLAN AND GUIDELINES FOR RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN MOORE COUNTY BUILDING CONTRACTS

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; provided, however, a local government unit may apply

a different verifiable goal that was adopted prior to December 1, 2001, if the local government unit had and continues to have a sufficiently strong basis in evidence to justify the use of that goal. A verifiable percentage goal is also required for building projects costing \$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.

Moore County has a current verifiable goal of ten percent (10%) for minority participation for public building projects. The overall goal will be reviewed annually or as soon as relevant data is available.

SECTION A. INTENT

The intent of these guidelines is that Moore County, as awarding authority for building projects, and the contractors and subcontractors performing the building contracts awarded shall cooperate and in good faith do all things, legal, proper and reasonable to achieve the statutory goal of ten percent (10%) for participation by minority businesses in each building project as mandated by G.S.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.

SECTION B. DEFINITIONS

1. Minority Business Participation/Historically Underutilized Business - G.S.

143-128.4. Historically underutilized business defined; statewide uniform certification.

(a) As used in this Chapter, the term "historically underutilized business" means a business that meets all of the following conditions:

- (1) At least fifty-one percent (51%) of the business is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section, or in the case of a corporation, at least fifty-one percent (51%) of the stock is owned by one or more persons who are members of at least one of the groups set forth in subsection (b) of this section.
- (2) The management and daily business operations are controlled by one or more owners of the business who are members of at least one of the groups set forth in subsection (b) of this section.

(a1) As used in this Chapter, the term "minority business" means a historically underutilized business.

(b) To qualify as a historically underutilized business under this section, a business must be owned and controlled as set forth in subsection (a) of this section by one or more citizens or lawful permanent residents of the United States who are members of one or more of the following groups:

- (1) Black. – A person having origins in any of the black racial groups of Africa.
- (2) Hispanic. – A person of Spanish or Portuguese culture having origins in Mexico, South or Central America, or the Caribbean islands, regardless of race.
- (3) Asian American. – A person having origins in any of the original peoples of the Far East, Southeast Asia, Asia, Indian continent, or Pacific islands.

- (4) American Indian. – A person having origins in any of the original Indian peoples of North America.
- (5) Female.
- (6) Disabled. – A person with a disability as defined in G.S. 168-1 or G.S. 168A-3.
- (7) Disadvantaged. – A person who is socially and economically disadvantaged as defined in 15 U.S.C. § 637.

(c) In addition to the powers and duties provided in G.S. 143-49, the Secretary of Administration shall have the power, authority, and duty to:

- (1) Develop and administer a statewide uniform program for: (i) the certification of a historically underutilized business, as defined in this section, for use by State departments, agencies, and institutions, and political subdivisions of the State; and (ii) the creation and maintenance of a database of the businesses certified as historically underutilized businesses.
- (2) Adopt rules and procedures for the statewide uniform certification of historically underutilized businesses.
- (3) Provide for the certification of all businesses designated as historically underutilized businesses to be used by State departments, agencies, and institutions, and political subdivisions of the State.

(d) The Secretary of Administration shall seek input from State departments, agencies, and institutions, political subdivisions of the State, and any other entity deemed appropriate to determine the qualifications and criteria for statewide uniform certification of historically underutilized businesses.

(e) Only businesses certified in accordance with this section shall be considered by State departments, agencies, and institutions, and political subdivisions of the State as historically underutilized businesses for minority business participation purposes under this Chapter. (2005-270, s. 3; 2007-392, s. 4; 2009-243, s. 3.)

2. **Disability** - defined in G.S. 168A-3 (G.S. 168-1 doesn't have its own definition—it refers back to the definition in G.S. 168A-3) is: “any person who (i) has a physical or mental impairment which substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. As used in this subdivision, 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 in paragraph a. of this subdivision but is treated as having such an impairment.

3. **Socially disadvantaged individual** - defined in 15 U.S.C. § 637 is someone who has "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 individual** - defined in 15 U.S.C. § 637 is a socially disadvantaged person (see above) "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. **Public Entity** - State and all public subdivisions and local government units.

6. **Owner** - Moore County.

7. **Designer** - Any person, firm, partnership, or corporation, which has contracted with Moore County to perform architectural or engineering work.

8. **Bidder** - Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.

9. **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.

10. **Contractor** - Any person, firm, partnership, corporation, association, or joint venture which has contracted with Moore County to perform construction work or repair.

11. **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 the subcontract.

SECTION C. MINORITY OUTREACH PLAN AND GUIDELINES

Owner

Moore County will employ the following strategies to encourage participation from HUBs.

1. Work with minority-focused and small business groups that support HUB inclusion in the solicitation of bids. These groups include the Sandhills Community College Small Business Center and Sandhills SCORE.

2. Place emphasis on the importance of soliciting certified HUB 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 HUB firms.
3. Provide detailed information to majority contractors concerning the bidding and good faith efforts requirements by holding meetings with the contractors.
4. Assess the effectiveness of the HUB Program, and identify opportunities to enhance it, by evaluating HUB participation and compliance and reviewing the good faith efforts provided in bid packages.
5. Identify subcontracting opportunities unique to each construction contract and project and concentrate heavily on targeting certified HUB firms and small businesses that have expressed an interest in Moore County projects. Identify these opportunities and contact interested businesses no later than ten (10) days prior to the bid opening and provide a list of prime contractors who plan to participate in the project.
6. Build new business relationships through networking. Continue communicating with other North Carolina public agencies to find out how their HUB outreach programs is working and to share “best practices” and ideas to improve programs.
7. Participate in educational opportunities throughout the community as they become available and offer training sessions to share Moore County’s outreach plan with interested businesses and organizations.
8. Be visible through participation in trade shows and business organizations of interest to HUB firms, majority contractors and small businesses, and provide information to the general public about the HUB program and continue outreach efforts to the business community.
9. Enhance the County’s web page by including Moore County’s Minority Business Participation Outreach Plan and Guidelines, listing good faith efforts, and creating links to HUB resources and creating awareness of specific subcontracting opportunities.
10. Make available to minority-focused agencies, a list of subcontracting opportunities when they are identified, no later than ten (10) days prior to the bid opening and a list of prime bidders that subcontractors may wish to contact for subcontracting consideration.
11. Maintain or continue to maintain a database specifically for HUB firms and majority contractors to ensure those firms wishing to do business with Moore County have access to up-to-date information.
12. Advertise upcoming bid opportunities in minority-focused media.

13. Work with architects and engineers to make subcontracting opportunities more noticeable and more easily understood by potential contractors and subcontractors.

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 conversations 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’ proposal for identification of the minority businesses that will be utilized with corresponding 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 an award.
5. During the construction phase of the project, review documentation for contract payment to HUBs (e.g. state form “Appendix E: HUB Documentation for Contract Payment”) for compliance with minority business utilization commitments. Submit this form with monthly pay applications to the Owner.

Prime Contractor(s) Construction Manager 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) or Intent to Perform Contract With Own Workforce affidavit.
5. Make documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First Tier Subcontractor responsibilities available for review by Moore County upon request.
6. Provide one of the following upon being named the apparent low bidder: (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. This affidavit shall give rise to a presumption that the bidder has made the required good faith effort; 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. Identify the name(s) of minority business subcontractor(s) and corresponding dollar amount of work on the schedule of values.
 8. Submit with each monthly pay requests(s) and final payment(s), “HUB Documentation for Contract Payment” for designer’s review.
 9. If at any time during the construction of a project, 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. Make a good faith effort to solicit sub-bids from minority businesses during the construction of a project if additional subcontracting opportunities become available.

Minority Business Responsibilities

Moore County does not certify minority businesses. Moore County requires certification for minority businesses. Pursuant to G.S.143-128.4 (e) only businesses certified in accordance with this section shall be considered by State departments, agencies, and institutions and political subdivisions of the State as historically underutilized businesses for minority business participation purposes under this Chapter. Any business which desires to participate as an HUB will be required to complete and submit for certification, documents required by 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 HUB participation percentage goals:

North Carolina Administration Department 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.

A copy of these guidelines will be issued with each bid package for Moore County building construction projects. These guidelines shall apply to all contractors regardless of ownership.

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, affidavits or intentions made by the Bidder shall become a part of the agreement between the Contractor and Moore County for the 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 Moore 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 Moore County whether to terminate the contract for breach.

In determining whether a contractor has made good faith efforts, Moore 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. 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 in 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 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 building 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 Moore County shall be resolved pursuant to the County of Moore Rules for Implementing Mediated Settlement Conferences in the Building Projects (*attached hereto as if fully set forth and is hereby incorporated by reference and labeled as Exhibit A*).

SECTION F.

In addition to these guidelines, there will be issued with each building bid package provisions for providing minority business participation in the Moore 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 those 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 for Historically Underutilized Business, upon the completion of the project.

APPROVED AND EFFECTIVE, this the 20 day of September, 2011.



Nick J. Picerno, Chairman
Moore County Board of Commissioners

EXHIBIT A

**COUNTY OF MOORE
RULES FOR IMPLEMENTING MEDIATED SETTLEMENT CONFERENCES IN
NORTH CAROLINA PUBLIC BUILDING PROJECTS**

Table of Rules

1. Initiating Mediated Settlement Conferences
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 - B. Initiating the Dispute Resolution Process
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 - A. Selection of Certified Mediator by Agreement of the Parties
 - B. Nomination and Court Approval of a Non-Certified Mediator

- C. Appointment of Mediator by the County of Moore
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 - E. Disqualification of Mediator
3. The Mediated Settlement Conference
 - A. Where Conference is to be Held
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 - A. Authority of Mediator.
 - B. Duties of Mediator
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 - A. By Agreement.
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 8. Rule Amendments
 9. Time Limits

RULE 1. INITIATING MEDIATED SETTLEMENT CONFERENCES

- A. **Purpose of Mandatory Settlement Conferences.** Pursuant to N.C.G.S. 143-128(g) and 143-135.26(11), these Rules are promulgated to implement a system of settlement events, which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.
- B. **Initiating the Dispute Resolution Process**
 1. Any party to a public building contract governed by Article 8, Ch. 143 of the General Statutes and identified in G.S. 143-128(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 Moore owner for mediation of the dispute.

2. Prior to submission of a written request for mediation to the County of Moore 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 the County of Moore.
 - 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 Moore.
 - c. If the party requesting mediation is the Project Designer, then it must first submit its claim to the County of Moore to resolve. If the dispute is not resolved with the County of Moore'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 Moore 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 Moore a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.
- B. Nomination and the County of Moore 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 Moore, 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 the COUNTY OF MOORE 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.

The County of Moore 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 the COUNTY OF MOORE.** If the parties cannot agree upon the selection of a mediator, the party or party's attorney shall notify the County of Moore and request, on behalf of the parties, that the County of Moore 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, the County of Moore shall appoint a certified attorney mediator. If no preference is expressed, the County of Moore may appoint a certified attorney mediator or a certified non-attorney mediator.
- D. **Mediator Information Directory.** To assist the parties in the selection of a mediator by agreement, the parties are free to utilize the list of certified mediators maintained in any county participating in the Superior Court Mediation Settlement Conference Program .
- E. **Disqualification of Mediator.** Any party may request replacement of the mediator by the County of Moore 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 the County of Moore. The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.
- B. **When Conference is to be Held.** The deadline for completion of the mediation shall be not less than 30 days nor more than 60 days after the naming of the mediator.
- C. **Request to Extend Deadline for Completion.** A party, or the mediator, may request the County of Moore 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 communicate its objection to the County of Moore.

The County of Moore 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 will result in the County of Moore'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 any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.

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

C. Mediation Fee. The mediation fee shall be paid in accordance with N.C.G.S. 143-128.1(g).

D. Failure to compensate mediator. Any party's failure to compensate the mediators in accordance with N.C.G.S. 143-128.1(g) shall subject that party to a withholding of said amount of money from the party's monthly payment by the County of Moore.

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 conditions communications with the mediator will be held in confidence during the conference;
 - g. The inadmissibility of conduct and statements as provided by N.C.G.S. 7A-38.1;
 - 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 the County of Moore 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 said agreement. The mediator's report shall inform the County of Moore of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. The County of Moore 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 the County of Moore.

RULE 6. COMPENSATION OF THE MEDIATOR

- A. **By Agreement.** When the mediator is stipulated by the parties, compensation shall be as agreed upon between the parties and the mediator provided that the provision of N.C.G.S. 7A-38.1(k) are observed.
- B. **By Appointment.** When the mediator is appointed by the County of Moore, 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 the County of Moore 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 the County of Moore to mediate any dispute in accordance with these Rules.

RULE 8. RULE MAKING.

These Rules are subject to amendment by the County of Moore 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 decide all waivers or extensions of time for good cause shown.

N. RESOLUTION PRECENTAGE GOAL OF 10% FOR PARTICIPATION BY MINORITY BUSINESSES

RESOLUTION FOR THE COUNTY OF MOORE TO ADOPT AN OUTREACH PLAN AND TO ESTABLISH A VERIFIABLE PERCENTAGE GOAL FOR PARTICIPATION BY MINORITY BUSINESSES/HISTORICALLY UNDERUTILIZED BUSINESSES IN THE AWARDING OF BUILDING CONTRACTS PURSUANT TO N.C.G.S. 143-128.2

WHEREAS, the North Carolina General Assembly enacted Session Law 2001-496, Senate Bill 914 to enhance and improve the good faith efforts to recruit and select minority businesses for participation in public building projects by adding N.C.G.S. 143-128.2 and Session Law 2007-392, Senate Bill 320 to develop and administer a statewide uniform certification program for historically underutilized businesses doing business with State departments, agencies, and institutions, and political subdivisions of the State; and

WHEREAS, N.C.G.S. 143-128.2 requires 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; provided, however, a local government unit may apply a different verifiable goal that was adopted prior to December 1, 2001, if the local government unit had and continues to have a sufficiently strong basis in evidence to justify the use of that goal. A verifiable percentage goal is also required for building projects costing \$300,000 or more where no state funds are involved; and

WHEREAS, N.C.G.S. 143-128.2(b) requires in part for a public entity to establish prior to solicitation of bids the good faith efforts that it will take to make it feasible for minority businesses to submit successful bids or proposals for the contracts of building projects. Public entities shall make good faith efforts as set forth in 143-128.2(e). Public entities shall require contractors to make good faith efforts pursuant to subsection (f) of this section. Each first-tier subcontractor on a construction management at risk project shall comply with the requirements applicable to contractors under this subsection; and

WHEREAS, N.C.G.S. 143-128.2(e)(1) requires a public entity, before awarding a contract to develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects to include education, recruitment, and interaction between minority businesses and nonminority businesses; and

WHEREAS, notice of the public hearing was duly published in The Pilot Newspaper on September 9, 2011 and the required public hearing was held on September 20, 2011.

NOW THEREFORE, BE IT RESOLVED BY the Moore County Board of Commissioners

1. That the County of Moore shall have a ten percent (10%) verifiable percentage goal for participation by minority business in the total value of work for building projects awarded by the County of Moore pursuant to N.C.G.S. 143-128.2 .
2. That the County of Moore shall follow Moore County's Minority Business/Historically Underutilized Business Participation Outreach Plan and Guidelines.
3. That this resolution shall become effective upon its adoption.

ADOPTED, this 20 day of September, 2011.



Nick J. Picerno, Chairman
Moore County Board of Commissioners

XI. INFORMATION TECHNOLOGY AND BIDDING

Information technology is defined in G.S. 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.”

G.S. 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...”

Local governments may contract for information technology using the procedure set forth in G.S. 143-129.8 as an alternative to G.S. 143-129 (formal bidding) or G.S. 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 the G.S. 143-129 – the formal bidding statute.
2. Contracts are awarded to the best overall proposal considering factors identified in the RFP.

Negotiations are allowed, but should not alter the contract beyond the scope of the original RFP in a manner that:

1. Deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and
2. Would have resulted in the award of the contract to someone else if the alteration had been included in the RFP.

Local governments are not obligated to use either the competitive bidding or the request for proposals procedures for contracts 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, quotes or proposals should be made. Here, negotiating is allowed.

Formal or informal bidding statutes apply when the contract consists of purchases involving hardware and/or software. (You determine which statute to follow based upon monetary thresholds.) Negotiations are not allowed unless all bids come in over budget. If this is the case, negotiations are allowed with the lowest responsible, responsive bidder.

XII. REQUEST FOR QUALIFICATIONS (RFQ)

The Request for Qualifications (RFQ) is a qualifications-based selection process that applies to the following services:

1. Architectural
2. Engineering
3. Surveying
4. Construction manager-at-risk

Procedure:

1. Announce all requirements by follow the formal bidding advertisement requirements.
2. Select the most qualified firm on the basis of demonstrated competence and qualification for the type of professional services required, without regard to fee other than unit price information. Follow the selection committee internal policy processes and procedures. The selection committee will determine the best qualified firm.
3. Negotiate with the best qualified firm.
4. Can move to the next best qualified firm if an agreement cannot be reached with the most qualified firm.

Exemptions to RFQ:

Pursuant to G.S. 143-64.32, a local government may exempt particular projects in writing (by Resolution) where:

1. Estimated professional fee is less than \$30,000 for proposed projects; or
2. Other particular projects exempted in the sole discretion of the local government, stating the reasons and circumstances for the exemption.

The Moore County Board of Commissioners' exempted by a Resolution on June 7, 2010 all projects involving architectural, engineering, surveying and construction manager-at-risk services where the estimated professional fee is less than \$30,000.

XIII. SERVICE CONTRACTS

Service contracts are generally distinguished from purchase contracts in that they call for personal performance or work rather than delivery of a tangible item. Contracts are required when paying for services. North Carolina law does not require bidding. However, every effort should be made to obtain three informal quotes when the estimated

cost of the service is \$5,000 up to \$90,000. Use formal bidding standards when the estimated cost of the service is \$90,000 or greater. Contract negotiations are allowed. Award contracts to the lowest responsible, responsive bidder.

The fully executed contract must be forwarded to the Purchasing Coordinator along with the Purchase Requisition form.

Examples of service contracts:

- Legal services
- Banking services
- Accounting services
- Janitorial services
- Recycling services
- Waste collection or disposal services

XIV. 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:

- a. Identify minimum requirements
- b. Encourage competitive bids
- c. Be capable of objective review
- d. 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. A digital pdf of the specifications required will assist the Purchasing Section in procuring the desired item(s).

Different methods of structuring specifications include:

- a. Qualified products on acceptable vendor list
- b. Specification by blueprint or dimension sheet
- c. Specification by chemical analysis or physical properties
- d. Specification by performance, purpose or use
- e. Specification by identification with industry standards
- f. Specification by samples

XVI. DELIVERY AND PERFORMANCE

A completed and accepted purchase order by the parties concerned must produce the

intended results or objectives before it can be considered a successful or completed purchase. The terms and conditions must clearly define the delivery and performance requirements.

The importance of the delivery schedule will be emphasized to the vendor. Delivery requirements will be clearly written and fully understood by all vendors. If several items are required by the purchase order, there may be a different delivery schedule for each item. It is necessary to clearly indicate the delivery location on the Purchase Requisition form.

A. Partial Deliveries:

Some purchase orders may list several items and the vendor may fulfill the purchase order by multiple deliveries, which are referred to as "partial deliveries". Upon receipt of a partial delivery, photocopy the purchase order, reference the purchase order number on the receipt/invoice, obtain authorized signature by a County employee, record the date and the appropriate budget code and forward to Accounts Payable.

B. Non-performance:

If a vendor fails to meet any requirement(s) of the specifications or terms and conditions of the contract or purchase order, the vendor can be cited for non-performance. The seriousness of non-performance will be evaluated based upon the circumstances of each violation.

XVII. INSPECTION AND TESTING

Life and safety as well as successful operation of expensive equipment and supplies may depend upon how well a purchased item meets the design and performance specifications.

Goods and materials should be checked at the time of receipt for damage or defects. The inspection shall include assuring goods comply with the specifications. If damage is found or the goods fail to comply with the specifications, the item(s) shall be rejected as outlined below.

A. Rejection:

In order to protect the County's rights in the event of rejection, for whatever reason, the vendor shall be informed immediately. Reasons for the rejection must be documented in memo form and the using department shall notify the vendor of the reason(s) for the rejection.

B. Damaged Goods:

One of the major reasons for immediately inspecting the goods upon receipt is to detect

any visible damage. When it is apparent that the extent of the damage causes the goods to be worthless, they will not be accepted. It is necessary that all damage including evidence of concealed damage shall be documented by memo and the using department shall notify the vendor of the damages.

C. Latent Defects:

Latent defects may be the result of damage in transit or failure of the manufacturer to conform to specifications. Consequently, it is often difficult to fix responsibility for the defective material. If specific liability for the defect cannot be determined between the carrier, the vendor, or the manufacturer, the County may file a claim against all parties. A memo attached to a photocopy of the purchase order must be forwarded to the Purchasing Coordinator so all parties involved can be properly informed.

XVIII. VENDOR RELATIONS

Good vendor relations are valuable business assets established through mutual confidence and satisfactory business relationships between buyer and seller. An important contribution toward promoting and preserving these relations is a clear understanding of the method of contract between buyer and seller.

The Purchasing Coordinator maintains a vendor file for recording the performance of vendors the County engages in business. Should a department experience difficulties with or have a complaint with a particular vendor, document your concerns in a memo, attach a photocopy of the purchase order, and forward to the Purchasing Coordinator. Be as specific as possible, detailing the circumstances, dates, personnel involved (including titles) and phone numbers. This information will be helpful in determining if the vendor shall remain on the vendor list.

Vendor should be commended for its efforts, document the circumstances and forward a memo to the Purchasing Coordinator.

Departments do not have the authorization to commit in writing, or verbally, future County business to vendors. If a department wishes to add a specific vendor or contractor to the bid list, the Purchasing Coordinator shall be contacted.

XIX. AFTER THE ORDER

The procurement function is not accomplished by simply placing an order with a supplier. Satisfactory delivery must also be made. To insure delivery will be made when required, follow-up is necessary.

Follow-up or expediting delivery of an order is part of the procurement process and should be handled by the using department.

The Purchasing Coordinator shall on a regular basis review outstanding purchase orders to determine if vendors are delinquent in shipping the items requested. The Purchasing Coordinator shall contact the using department with concerns regarding delinquent deliveries.

The using department shall contact vendors concerning invoice discrepancies and shall have any discrepancies resolved before submitting to Accounts Payable for payment. The Chief Financial Officer shall approve or disapprove invoice amounts.

XX. WAREHOUSING

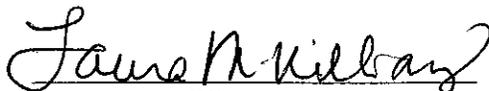
A warehouse is maintained by the Purchasing Coordinator for various types and sizes of copy paper and is located in the Property Management facility. An effort is made to keep in stock the most requested paper sizes needed for all departments. You may contact the Purchasing Coordinator for a list of stocked paper along with the prices. When a department requires these items, a representative from the department must complete a Central Store Requisition form and must obtain an authorized signature. Exhibit J is a sample of a Central Store Requisition Form.

Upon completion of a Central Store Requisition, the requester shall forward it to the Property Management department for delivery. The Central Store Requisition is a 3-part form which is white, yellow and pink. The requesting department should keep the pink copy and submit the white and yellow to Property Management for delivery. Once the item(s) are delivered and signed for by the using department, the yellow copy is given to the department for their records and the white copy is given to the Purchasing Coordinator for inventory tracking purposes. To obtain Central Store Requisition forms, please send your request by phone or email to the Purchasing Coordinator.

Revised and Adopted this 20 day of September, 2011 by the Moore County Board of Commissioners. This Policy takes effect upon adoption.



Nick J. Picerno, Chairman
Moore County Board of Commissioners



Laura M. Williams
Clerk to the Board

XXI. EXHIBITS

- Exhibit A. Examples of Purchases Not Requiring a Completed Purchase Requisition Form
- Exhibit B. Purchase Requisition Form
- Exhibit C. Purchase Requisition Return Form
- Exhibit D. Purchase Order Change Form
- Exhibit E. Departmental Funds Transfer Form
- Exhibit F. Contract Control Form
- Exhibit G. Sole Source Justification Form
- Exhibit H. Procurement Card Procedures Manual
- Exhibit I. Dollar Thresholds in North Carolina Public Contracting Statutes
- Exhibit J. Central Store Requisition Form

EXHIBIT A

PURCHASES AND/OR SERVICES THAT DO NOT REQUIRE A PURCHASE REQUISITION FORM

This list is not all inclusive and could require a Request for Check form to be completed.

Advertising (legal ads, radio announcements, etc.)
Annual dues
Claim payments
Courier Service
Insurance premiums
Medical examinations
Memberships
Land purchases
Petty cash - replenishment of funds
Postage permits and expenses
Refunds
Rental of buildings
Subscriptions
Tuition fees for educational purposes
Utilities