

MOORE COUNTY BIDDING PROCEDURE

I. General

A. Purpose

The purpose of this policy is to provide Moore County Government employees bidding information and guidelines to insure compliance with the North Carolina General Statutes and the Moore County Purchasing Policy and Procedures Manual to establish a fair, open and equitable process to expend County funds.

B. Applicability

Moore County Bidding Procedures are governed by N.C.G.S. Chapter 143, N.C.G.S. Chapter 153A (Counties), N.C.G.S. Chapter 159 (Local Government Finance), cited authority, ordinances and/or resolutions approved by the Moore County Board of Commissioners and any other applicable local, state or federal law.

C. Definitions

- *Bid* - usually a document created to solicit pricing from vendors. It contains detailed data concerning the products or services being requested. It provides a structured format for a "bidder" (vendor) to respond with pricing.
- *Bidder* - a person, company, firm, or organization that offers or proposes to offer goods, supplies, materials, or services in a bid/request for proposal situation.
- *Construction Manager at Risk (CMAR)* - a construction project delivery method where the CMAR acts in the owner's interest and must manage and control construction costs within a Guaranteed Maximum Price, while overseeing the day-to-day operations of the project. The CMAR bids out all contracts in the same manner as would the owner, including all MWBE requirements. The contractual agreement is a cost-plus-fee contract with a guaranteed maximum price consisting of the CMAR fees, contingency, general conditions and all sub-contractor costs, referred to as trade contracts in this delivery process.
- *Vendor* - a person, company, firm, or organization that offers or provides the goods, supplies, materials, or services.
- *Informal Bidding - Statutorily Required* - required by N.C.G.S. 143-131 when the estimated expenditure of public money is \$30,000 or more, but less than \$500,000 for construction, renovation and repair contracts.
- *Informal Bidding - County Required* - required when the estimated expenditure of public money is \$5,000 or more, but less than \$90,000 for materials, supplies and equipment.
- *Formal Bidding* - required by N.C.G.S. 143-129 when the estimated expenditure of public money for materials, supplies and equipment is \$90,000 or more; and when the estimated expenditure for public money for construction, renovation and repairs contracts is \$500,000 or more.
- *Minority & Women Owned Business Enterprise (MWBE) or Historically Underutilized Businesses (HUB)* - a business in which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged individuals.

- *Services* - Service contracts are generally distinguished from purchase contracts in that they call for personal performance or work rather than delivery of a tangible item. Examples of service contracts: legal, banking, accounting, janitorial, recycling, and waste collection or disposal services.

II. Competitive Bidding

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, unless it can be justified otherwise by statute or policy. *It is not permissible to divide a proposal in order to avoid formal bidding requirements in favor of informal bids (G.S. 143-133).* 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.

A. Confidentiality

Pursuant to N.C.G.S. 133-33, Moore County requires:

- a. The cost estimate for any public contract prior to bidding to be confidential; and
- b. The identity of contractors who have obtained proposals for bid purposes for a public contract to be confidential; and
- c. Any employee or officer of the County of Moore who divulges such information to any unauthorized person shall be subject to disciplinary action.

B. Informal Bidding Procedure (N.C.G.S. 143-131)

The County Manager or designated Department Director 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. The informal bidding process requires that competitive pricing be obtained in writing. 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.

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) or designated Department Director 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.

The Purchasing Coordinator shall obtain bids after receipt of a properly executed purchase requisition. These requests are obtained by three (3) 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. The lowest responsible, responsive bidder is determined and the Purchasing Coordinator will generate the purchase order according to County Purchasing Policy and Procedures Manual.

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 costing less than \$1,000 unless otherwise directed. If a vendor does not accept the purchasing card, a purchase requisition must be submitted to the Purchasing Coordinator for a purchase order.

C. Formal Bidding Procedure (N.C.G.S. 143-129)

Formal bids are required 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.

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 and receipt of sealed bids.

If all bids exceed the funds available for purchases or construction or repair projects, 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. Where services are involved, negotiations are allowed.

Formal bid procedures may be used for purchases or construction or repair projects involving dollar amounts less than those prescribed for formal bids.

Legal Advertisements

The Moore County Board of Commissioners authorized use of advertisement by electronic means on June 7, 2010 pursuant to N.C.G.S. 143-129(b). 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.

Pursuant to **G.S. 143-128.2**, publicly bid State-funded building projects where the total value is estimated to cost \$100,000 or more, or \$300,000 or more for building projects where no State funds are involved **please refer to the statute and the Moore County Procurement Policy and Procedures Manual for detail regarding Minority/Historically Underutilized Business requirements.**

Exceptions - Formal Bidding Process

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. The County requires governing board approval for sole source purchases of \$30,000 and up. The County Manager or Assistant County Manager can approve sole source contracts from \$5,000 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 and prior ten (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 GS 143-128.1 applies 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 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
- 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)

III. Bid Selection Committees

A bid selection committee shall be established by the County Manager, Assistant County Manager or a designated Department Director or his/her designee, any time services, purchases or construction or repair projects are estimated to cost \$30,000 and over. If the cost is estimated to be \$30,000 up to \$90,000, the selection committee shall consist of an odd number of members with a minimum of three (3) members. If the cost is estimated at \$90,000 or more, the selection committee shall consist of an odd number of members with a minimum of five members. A member of the bid selection committee shall make a formal recommendation of award to the Board of County Commissioners for bids in the formal range. The County Manager will award bids in the informal range. (Please refer to the chart below for more details.) 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. All contracts \$50,000 or greater require approval by the Board of Commissioners.

IV. Receiving and Opening Bids; Number of Bids; Deposits

1. 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 permission of the bidder prior to the time set for opening constitutes a Class 1 misdemeanor (N.C.G.S. 143-129(b)).

Three (3) bids are required for formal construction or repair work (N.C.G.S. 143-132(a)). If at least three (3) bids are not received, a second advertisement must be made, after which bids may be opened and a contract awarded even if less than three (3) 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.

2. 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.

V. Withdrawal of Bid

1. 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 seventy-two (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.

VI. Bid Evaluation and Awarding

1. 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. Formal bids shall be subject to public inspection once opened. Informal bids are not be subject to public inspection until the award has been made. If a trade secret is involved, the portions of the bid(s) (both formal and informal) defined under G.S. 66-152(3) and G.S. 132-1.2(1) would not be subject to public inspection.

Determine the lowest bidder to ascertain the lowest responsible, responsive 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 the 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.

2. Bids are awarded as follows:

- 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 \$30,000 - Chief Financial Officer/Designees
- Informal Bids - \$0.00 up to \$5,000 - Department Directors

3. Performance and Payment Bonds

For construction or repair projects where the total amount of all the contracts exceed \$300,000, each contractor must provide performance and payment bonds for the full amount

of each contract that exceeds \$50,000 (N.C.G.S. 143-129(c)). The contractor may provide cash, certified checks or government securities instead of bonds.

VII. Rejection of Bids

Any and all offers of bid/proposals 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.

VIII. Information Technology and Bidding

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 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.

The County Manager has the authority to periodically revise this policy.

Executed this 9th day of MAY, 2012.


T. Cary McSwain
Moore County Manager