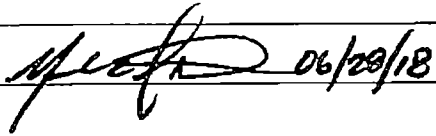


**CITY OF NEW BERN
ADMINISTRATIVE ORDERS
OF THE CITY MANAGER**

ADMISTRATIVE ORDER 1.6
PURCHASING POLICY
To: All City Employees
From: Mark Stephens, City Manager  06/29/18
Maintained By: Finance
Approved By: Board of Aldermen
Date: June 2018
Update to December 2017 Policy

Purpose

A local government's authority to make purchases and contracts is derived from the North Carolina Legislature and is subject to such limitations and restrictions as it may impose. One of the key principles of the legal requirements is to ensure accountability, fair competition and to achieve best price/value for the public finance. Legal requirements must be followed or a contract is deemed void and unenforceable. The provisions within this policy shall be in compliance with the North Carolina General Statutes (N.C.G.S.). In the event a conflict is identified, the General Statutes take precedent over this policy, and the provisions of the policy will be updated as required.

A considerable portion of the City of New Bern's (the "City") expenditures is for purchases of goods and services. These expenditures flow through the City's purchasing systems. This purchasing policy establishes rules and regulations to secure purchases and contracts to the lowest *responsive and responsible* bidder or supplier with the best overall value to the City. This policy is to be used in conjunction with the Purchasing Manual issued by the Department of Finance.

This policy is subject to modification at any time by the Board of Aldermen.

Purchasing Office

Purchasing goods and services for the operation of the city is a major responsibility. The Purchasing/Warehouse Division (the "Purchasing Office") is under the supervision of the Director of Finance. The Purchasing/Warehouse Manager (the "Purchasing Manager"), by way of delegation of the Director of Finance, has complete authority and responsibility for the control and supervision of the entire purchasing process. The term Purchasing Office includes the Purchasing Manager as well as all personnel within this division whose responsibilities involve activities associated with the purchasing process.

The responsibility for policy, oversight, and training is located in the purchasing office; however, it is not practical for the purchasing office to procure all goods and services needed. To this extent, departments are delegated authority to make purchases subject to limitations established in the Purchasing Manual. Accordingly, under the guidance of the purchasing office, it is the responsibility of ALL City Departments to achieve economical and effective procurement of goods and services needed in the right quality and quantity, on a timely basis, as efficiently as possible, and at the best overall value. To achieve this objective, the purchasing function seeks to foster as much competition as possible.

Procedures Manual

A separate document called the Purchasing Manual will:

- A. Include this policy and may be modified at any time as deemed necessary, provided that the procedures remain within the framework of this policy.
- B. Provide more procedural required and detailed instructions to City employees for use in executing the purchasing policy.
- C. Establish and implement a system of internal controls that provide reasonable assurance that the City is in compliance with North Carolina General Statutes (the "N.C.G.S") and this policy. All City personnel shall be subject to the provisions within the procedures manual.

It is the responsibility of the Purchasing Office to prepare and maintain the Purchasing Manual that details the purchasing process and any delegated duties. This Purchasing Manual shall include this policy and must be approved by the Director of Finance.

Duties of the Purchasing Office

The general duties of the Purchasing Office shall include the following:

- A. Provide proposed amendments to the purchasing policy following changes in the purchasing statutes or rules.
- B. Recommend periodic modifications for improvements that will enhance the efficiency and effectiveness of the purchasing function.
- C. Guide City departments in the procurement of goods and services in compliance with state and local laws.
- D. Prepare and maintain a procedures manual that will be used by all departments of the City.
- E. Supervise procurement transactions for all goods and services for the City.
- F. Provide adequate training necessary for department personnel to adhere to the provisions within this policy and the procedures manual.

- G. Seek competitive bids on goods and services in order to secure the most advantageous prices. Specifications shall not be written so as to limit competition or exclude any qualified vendors.
- H. Establish and maintain a current list of prequalified vendors.
- I. Supervise the City's procedures for the disposal of surplus property and surplus property records.
- J. Approve and issue all purchase orders and the encumbrance of purchase orders into the accounting system.
- K. Retain documentation of all purchasing records in accordance with the City's Public Records Policy (Administrative Order 1.2), which shall be subject to public inspection at any time.
- L. Report to the Director of Finance any actions by City personnel that are in violation of N.C.G.S., this policy, approved purchasing procedures, or any other serious actions that are not deemed to be in the best interest of the City.

Authorizations

For the purpose of this policy, contracts include signed agreements between the City and the supplier to buy/sell. However, not every arrangement that the city makes to buy goods or services is by a formal contract or agreement and are referred to as "non-traditional" (hereinafter purchase contracts) which include invoices, purchase orders, and procurement card purchases.

Approval of Purchase Contracts

The annual budget adopted by the Board of Alderman (the "Board") serves as **approval** for all purchases and contracts set forth in the budget. **However, competitive bidding may be required, depending on the dollar value of the contract or purchase contract.** See requirements further below.

The Board must approve any additional funds not budgeted through a budget amendment. The Director of Finance is responsible for presenting **ALL** budget amendments for Board consideration. Department Heads have the authority to delegate purchasing authority within their respective departments to the extent practicable in order to make purchases as quickly and cost-effectively as possible, considering the costs of administering purchasing activities as well as the purchase price, and in accordance with this policy.

Delegation is **always** in writing. Individuals to whom authority is delegated should be properly trained and fully cognizant of both city purchasing rules and the responsibilities that come with delegation.

Award of Competitively Bid Purchase and Contracts

GOVERNING STATUTES AND POLICIES

The awarding of Bids is primarily guided by Article 8 of Chapter 143 of the N.C.G.S. which details the procedures for the letting of public contracts for municipalities and other local governments.

Accordingly the City MUST comply with the applicable statutes and policies relating to competitive bids before awarding the types of purchases and contracts. Appendix A details specific General Statute references and requirements. The Purchasing Manager, subject to Director of Finance approval, is authorized to update Appendix A of this policy from time to time in accordance with changes to General Statutes without Board of Aldermen Approval.

Any procurement related to federal funding shall be procured in a manner that complies with all applicable Federal laws, policies, and standards, including those under the Uniform Guidance (2 C.F.R. Part 200), as well as State law, Local policies and granting agency requirements.

The following lines of authority to award bids for all purchases of apparatus, supplies, materials, technology goods or equipment:

- Regardless of amount - City Manager or Designee
(As long as part of approved budget)
- If not part of approved budget and amount exceeds \$90,000 - must be formally bid and requires Board approval

The following lines of authority shall be observed in the award of bids for all Construction/Building repair contracts:

Includes "Vertical" construction such as new buildings, renovations and "non-vertical" construction (utility lines, roads, etc.)

- Less than \$500,000 - City Manager or Designee
- \$500,000 and more - Board of Aldermen (legal requirement is \$500,000 and more)

Architect, Engineer, Surveyor, or Construction Manager at Risk services ("Mini-Brooks Act" services) contracts –

- Less than \$50,000 -City Manager or Designee
- \$50,000 or more. - Board of Aldermen (legal requirement)

Bank Financing Terms - Board of Aldermen (legal requirement)

Annual Audit Contract - Board of Aldermen (legal requirement)

Service and Lease Contracts (Excludes Construction Services)

Although the N.C.G.S. does not impose requirements upon service contracts, the City shall demonstrate equal opportunity for service and lease contracts by soliciting bids where there is a competitive market for the service or lease and when it is in the best interest of the City. The standard of award shall be made to the best overall proposal.

Contracts for services include janitorial, grounds maintenance, as well as contracts for professional services, such as attorneys and auditors.

The following lines of authority shall be observed in the award of bids for all service contracts:

- Less than \$500,000 - City Manager or Designee
- \$500,000 and more - Board of Aldermen (no legal requirement)

Small Dollar Purchases (Less than \$5,000)

Purchases amounting to less than \$5,000 may be made without seeking competition; however employees are encouraged to actively seek the most value for each purchase. The Purchasing Office may direct purchases to other sources if better value is available.

Multyear Contracts

Generally, state statutes allow the City to enter into contracts that extend beyond the current fiscal year. The statutes allow the City to enter into continuing contracts. Sufficient funds to meet the amounts to be paid during the fiscal years under continuing contracts previously entered into shall be appropriated unless the contract reserves the right for the Board to limit or not make such appropriation. When feasible, multiyear contracts shall contain a "non-appropriation" clause within the contract terms and conditions to reserve this right.

Evaluation of Bids

The focus of purchasing is on achieving the best overall value for the City's dollar (**not always low bidder**). Therefore, for most purchases it is essential to consider the *full* costs of acquiring and owning goods, and privately provided services, as opposed to just the cost of buying them. Bids are evaluated based on price, quality and service, and **not** strictly on price. The standard for awards is made to the *responsive and responsible* bidder whose price is the lowest and offers the best overall value.

Proposals are evaluated partly on price and partly on other factors. These factors can include the extent to which the proposal demonstrates that the offeror understands the City's needs, the experience of the offeror and its personnel in providing similar items or services, the total cost of ownership over the life of the item or service, and the quality of the approach the offeror presents for delivering the needed services. Award is made to the *responsive and responsible* offeror whose proposal is most advantageous to the City. In the interests of fairness, evaluation criteria are disclosed in the request for proposal (RFP).

A *responsive* bidder or offeror is one who responds to all of the significant requirements outlined in the solicitation. A *responsible* bidder or offeror is one who is deemed capable of supplying the goods or services requested in the solicitation.

Bid Protests

Bid protest procedures shall be included in the Purchasing Manual and must be included in bid packets during advertisement.

EXCEPTIONS AND WAIVERS FROM COMPETITION

Certain situations may allow or require different processes for acquisition. N.C.G.S. 143-129 defines a number of exemptions to the competitive bidding requirements. Refer to the City Purchasing Manual for detailed instructions on Waiver of Competitive Bidding.

The following categories of purchases are exempt from the competitive bidding requirements established in N.C.G.S. 143-129.

- 1) **Special Circumstances**
 - a. Sole Source Purchases
 - b. Emergency Purchases
 - c. Gasoline, fuel, or oil
 - d. Use of Unit's Own Forces (force account work)

- 2) **Existing Contracts**
 - a. State and Federal Contracts
 - b. Previously Bid or "Piggybacking" Contracts

- 3) **Direct Purchases**
 - a. Purchases from other Units of Government
 - b. Group or Cooperative Purchasing Programs
 - c. Purchase of Used Goods

The most common competitive bidding exemptions are more fully described below. Note that these exemptions apply only to the method of procurement and not to who can award the contract. Unless otherwise indicated, the contract award authority requirements still apply to purchases under these exemptions.

Sole Source: N.C.G.S. 142-129(e) (6)

The Statute requires approval by the Board and advertisement of intent to award.

This exemption to the bidding laws applies to the solicitations of goods both formal and informal (not construction) when:

- 1) Performance or price competition for a product is not available;
- 2) A needed product is available from only one source of supply; or
- 3) Standardization or compatibility is the overriding consideration.

Note: Only one *source of supply* (not only one manufacturer)

Emergency Purchases: N.C.G.S. 143-129(e) (2))

Applies to informal and formal purchases and construction/repair.

The Statute does not require Board approval

In case of emergencies, the City Manager and Department heads or his/her designee 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 safety of the people or their property.

- Applies to purchases and construction/repair.
- Emergency must be present, immediate and existing. Purchases may only be made to stop the immediate threat, thus allowing time to bid appropriately and adhere to normal purchasing requirements.
- ***FEMA procurement requirements will apply in presidentially declared disasters.*** Generally, FEMA requires a competitive process.

Fuel Purchases: N.C.G.S. 143-129(e)(5)

City must use informal bidding requirements even if purchase is in the formal cost range.

The Statute does not require Board approval

- Applies to purchases of:
 - Gasoline
 - Diesel fuel
 - Alcohol fuel
 - Motor Oil
 - Fuel Oil
 - Natural Gas

Use of Unit's Own Forces (force account work): N.C.G.S. 143-135

Applies to construction/repair (not purchases)

Statutes require Board approval

- Construction work performed by City's own officers or employees
- Total cost of project under \$125,000 or
- Total cost of labor under \$50,000
- Must file owner-builder affidavit
- Purchase of materials used on the project still subject to competitive bidding requirements.
- The City must keep accurate records of entire cost of project.

State and Federal Contracts: N.C.G.S. 143-129(e) (7), (e) (9), (e) (9a));

Note: State Contracts are established by the State Division of Purchase and Contract.

The Statute does not require Board approval

Objective is to obtain more favorable prices through volume purchasing, reduce lead time and administrative effort.

- Applies to formal and informal purchases (not construction).
- Purchasing **same item** from **same vendor**.
- Vendor must agree to sell at the **same or more favorable** prices, terms, and conditions.
- Includes State Purchase contracts, Information technology purchases through Information Technology Goods and Services awarded by the North Carolina Department of Information Technology, and Federal agency contracts.

Piggybacking: N.C.G.S. 143-129(g)

Applies to formal purchases only

The Statute requires approval by the Board

Public notice required at least 10 Days before Board meeting on item

The so-called "piggybacking" exception authorizes local governments to purchasing the **same item** from the **same vendor** without competitive bidding from a person or entity that has, within the **previous twelve (12) months**, contracted to furnish an item to any other state public agency, including subdivisions, anywhere in the country. Specifically, the previous contract must have been awarded by the federal government, any federal agency, any state government or state agency, or any local government - anywhere in the country.

Other requirements include:

1. Every effort must be made to determine that the price and terms offered by the supplier are as good as or better than those that could be obtained through competitive bidding.
2. The exception applies to the purchase of apparatus, supplies, materials or equipment within the formal bid requirements (\$90,000 or greater).
3. The exception does not apply to any construction or repair contracts in the formal or informal purchasing range.
4. The price and terms must be as good as or better than those that could be obtained through formal bidding, and the item specification must be the same.
5. Purchases may be made under the piggyback authority only when the Board determines it to be in the best interest of the City.
6. Public notice may be given by publication or electronic means.
7. Additional requirements apply as outlined in the City Purchasing Manual.

Purchases from other units of government: N.C.G.S. 143-129(e) (1)

Applies to formal and informal purchases and leases.

The statutes do not require Board approval.

- Purchases directly from federal, state, or local governments anywhere in the U.S.A. (NOT PURCHASING FROM A VENDOR).
- Includes bidding on surplus sales

Group or Cooperative Purchasing Programs: N.C.G.S. 143-129(e) (3)

Applies to formal and informal purchases.
The statutes do not require Board approval.

- Must be a formally organized program
- Purchases were obtained through a competitive bidding process
- Items must have been offered at discount prices to at least two (2) public agencies

Purchase of Used Goods: N.C.G.S. 143-129(e) (10)

Applies to formal and informal purchases.
The statutes do not require Board approval.

- Can purchase from public and private entities
- Does not include the following goods:
 - Remanufactured
 - Refabricated
 - Demo

Other Exceptions to Competitive Bidding Requirements:

Change Order N.C.G.S. 143-129 (e) (4)

Construction and Repair

Applies to Informal and formal construction/repair.
Statute does not require approval from the Board.

Construction/repair work undertaken during the progress of a competitively bid project that is within the scope of the original project.

Guaranteed Energy Savings Contract (GESC) N.C.G.S. 143-129 (e) (8)

Construction and Repair

Applies to informal and formal construction/repair and related purchases.
Statute requires Board approval if financing of project subject to LGC approval

GESC for improvements to existing facilities to achieve energy savings sufficient to pay for the costs of improvements over the term of the contract.

Note: Request for proposal process required under Article 3B of Chapter 143

Trade-In: N.C.G.S. 143-129.7

Applies to informal and formal purchases.

Statue does not require approval from the Board.

Purchases of Goods and Services from Nonprofit Work Centers for the blind and severely disabled: N.C.G.S. 148-48

Refers to purchases from a nonprofit work center for the blind and severely disabled.

Applies to informal and formal purchases

Statue does not require approval from the Board

Procurement of Architectural, Engineering, and Surveying Services

Pursuant to N.C.G.S. 143-64.32, the City is hereby allowed exemptions to be in writing per project from the provisions of Article 3D of the North Carolina General Statutes on particular projects where an estimated professional fee is an amount less than fifty thousand dollars (\$50,000). The City Manager or his/her designee is hereby authorized to negotiate and sign contracts for architectural, engineering and surveying services when the estimate amount of the contract is less than fifty thousand (\$50,000) and the funds to pay for the contracted services are properly appropriated.

Director of Finance Pre-Audit Certification

N.C.G.S. 159-28(a) requires that ALL written contracts, including but not limited to service contracts, authorizations to purchase, purchase orders or other documents requiring payment, MUST contain the "preaudit" certification by the Director of Finance or Deputy Finance Officer required by the Local Government Budget and Fiscal Control Act.

City Manager Authorization

As noted earlier in the policy, the City Manager is authorized by the Board to make certain purchasing awards and decisions. The following authorizations are established:

- 1) The City Manager or his/her designee may award/approve and execute/sign contracts that are not required to be bid or which G.S. 143-131 allows letting by informal bids so long as the budget or appropriate capital project ordinance or capital reserve fund contains sufficient appropriated but unencumbered funds for such purposes. *As indicated earlier a preaudit certification by the Director of Finance or his/her Deputy is required.*
- 2) On behalf of the City, the City Manager or his/her designee may enter into and execute change orders or amendments to construction contracts when the appropriate capital project fund contains sufficiently appropriated but unencumbered. funds allocated for such construction projects. *As indicated earlier a preaudit certification by the Director of Finance or his/her Deputy is required.*
- 3) The City Manager may exercise his/her authority to designate and authorize the Assistant City Manager and/or Department Heads to award (approve) and execute (sign) contracts. The designation must be by a written memorandum of delegation filed with the City Clerk, the City

Attorney, and the Director of Finance. Department Heads may NOT further delegate the awarding or execution of formal contracts. The City Manager/Assistant City Manager shall approve all formal contracts during a Department Head's absence.

- 4) The City Manager or his/her designee will present to the Board for approval any service or purchase contract required by a granting organization to meet Local, State or Federal grant program requirements.

Minority Business Enterprise Goal

Pursuant to N.C.G.S. 143-128.2 it is the policy of the City to provide minorities and women equal opportunity for participating in all aspects of the City's contracting and procurement programs, including but not limited to, construction projects, supplies and materials purchase, and professional and personal service contracts based on "good-faith efforts" as outlined and detailed as mandated in the above referenced state statute.

Local Preferences – Buy Local

Spend it here -- Keep it here?

The City, like all local governments in North Carolina, does not have specific authority to establish preferences in awarding contracts, such as preferences for local or minority contractors. A local preference would conflict with the legal requirement in both the formal and informal bidding range that contracts be evaluated strictly on value. As discussed earlier in this policy, bid awards are made to the *responsive and responsible* bidder whom provides the best value.

Although some may think it economically or politically desirable, it is not legal to assume that a local contractor is more responsible than others under this standard for awarding contracts. Preferences or targeted contracting efforts for the City may be permissible; however, this is not the case for contracts that are not subject to the competitive bidding requirements, such as service contracts, or contracts below the minimum bid threshold.

Appendix A: General Statute References

<p>Formal bidding (<i>estimated cost of contract</i>) Construction or repair contracts \$500,000 <i>and above</i> G.S. 143-129 Purchase of apparatus, supplies, materials, and equipment \$90,000 <i>and above</i> G.S. 143-129</p>
<p>Informal bidding (<i>actual cost of contract</i>) Construction or repair contracts \$30,000 to formal limit G.S. 143-131 Purchase of apparatus, supplies, materials, and equipment \$30,000 to formal limit G.S. 143-131</p>
<p>Construction methods authorized for building projects <i>Over \$300,000</i> G.S. 143-128(a1) Separate Prime (<i>estimated cost of project</i>) Single Prime Dual Bidding Construction Management at Risk (<i>G.S. 143-128.1</i>) Design-Build and Design-Build Bridging (<i>G.S. 143-128.1A; G.S. 143-128.1B</i>) Public Private Partnership (P3) (<i>G.S. 143-128.1C</i>)</p>
<p>Historically Underutilized Business (HUB) requirements Building construction or repair projects – Projects with state funding (<i>verifiable 10% goal required</i>) \$100,000 <i>or more</i> G.S. 143-128.2(a) – Locally funded projects (<i>formal HUB requirements</i>) \$300,000 <i>or more</i> G.S. 143-128.2(j) – Projects in informal bidding range (<i>informal HUB requirements</i>) \$30,000 to \$500,000* G.S. 143- 131(b) *Note: <i>Formal HUB requirements should be used for informally bid projects costing between \$300,000 and \$500,000</i></p>
<p>Limit on use of own forces (force account work) G.S. 143-135 Construction or repair projects (<i>not to exceed</i>) \$500,000 (<i>total project cost</i>) or \$200,000 (<i>labor only cost</i>)</p>
<p>Bid bond or deposit Construction or repair contracts (<i>at least 5% of bid amount</i>) Formal bids (<i>\$500,000 and above</i>) G.S.143-129(b) Purchase contracts Not required</p>
<p>Performance/Payment bonds Construction or repair contracts (<i>100% of contract amount</i>) Each contract <i>over \$50,000</i> of G.S. 143-129(c); project costing <i>over \$300,000</i> G.S. 44A-26 Purchase contracts Not required</p>
<p>General contractor's license required \$30,000 <i>and above</i> G.S. 87-1 Exemption Force account work (<i>see above</i>) Owner-builder affidavit required Force account work (<i>see above</i>) G.S. 87-14(a){1}</p>
<p>Use of licensed architect or engineer required Nonstructural work \$300,000 <i>and above</i> G.S. 133-1.1(a) Structural repair, additions, or new construction \$135,000 <i>and above</i> Repair work affecting life safety systems \$100,000 <i>and above</i></p>
<p>Dollar limits and statutory authority as of November 1, 2016</p>