

1C

TOWN OF SWANSBORO

PURCHASING POLICY AND PROCEDURES MANUAL

TABLE OF CONTENTS

SECTION	PAGE
I FORWARD	2
II PURPOSE	3
III GENERAL GUIDELINES	4-5
IV ETHICS	6
V MINORITY BUSINESS PARTICIPATION	7-11
VI PURCHASING PROCEDURES	11-13
VII FORMAL BIDS	14-18
VII INFORMAL BIDS	18
IX EXCEPTIONS	19-20 21
X REQUIRED LICENSED ARCHITECTURE OR ENGINEER	21
XI CONSTRUCTION CONTRACTS	21-22
XII DISPOSITION OF PROPERTY	23
XIII SALE OF SEIZED AND UNCLAIMED PROPERTY	23
XIV EXCHANGE, SALE, AND LEASE OF PROPERTY BETWEEN GOVERNMENTS	23

I. FORWARD

The purchasing policy of the Town of Swansboro is governed by the State of North Carolina General Statutes, policy and administrative procedures established by the Board of Commissioners, procedures established by the Town Manager, Finance Director, the Town Code, Federal requirements where applicable and procedures which are established as part of good business practices.

This purchasing policy is to be used as a guide to the Town of Swansboro's purchasing methods and practices. It is the policy of the Town to seek competitive prices for all goods and services. The primary purpose in seeking competitive bids is to insure that the taxpayer is receiving the best product or service for the tax dollar.

If the procedures and guidelines established in this manual are followed, each department can efficiently manage, control and plan its' available resources to meet present and future departmental needs and help the Town to meet these goals.

II. PURPOSE

The purpose of the purchasing policies and procedures stated in this manual is two-fold. First, Municipalities establish these policies and procedures to conform to the provisions of the General Statutes of the State of North Carolina that govern purchasing practices. Second, these policies and procedures assure that materials, supplies, services and equipment required for efficient and effective operation of departments are procured with regard to an analysis of price, quality, quantity, terms and delivery specifications. These policies and procedures pertain to all departments and employees.

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

III. GENERAL GUIDELINES

A. RESPONSIBILITIES

1. Finance Department

It is the Finance Department's responsibility to ensure that all purchases are made in accordance with the Standard Procedures of the Town of Swansboro. To process requisitions for the purpose of materials, supplies, equipment, services, construction, and professional services for the Town of Swansboro utilizing professional purchasing techniques in accordance with established rules and regulations.

The Finance Department's objective is to assist the employees of the Town in securing the goods and services needed to perform the daily tasks related to their jobs. Other duties include:

- a. To develop and administer purchasing objectives, policies, programs and procedures for the timely acquisition of goods and services and to act as the Town's representative in matters related to purchasing.
- b. To establish and maintain a close relationship with all departments in order to promote a cooperative effort in meeting their needs.
- c. Advise and assist all departments in the preparation of requisitions, specifications, budget amounts, information and other items related to purchasing.
- d. Work with Town departments to establish good working relations with Town vendors.
- e. Be receptive to constructive suggestions concerning the purchasing process and procedures.
- f. Consider at all times, the interest of the Town as a whole in each transaction.
- g. Administer purchasing procedures in accordance with North Carolina Laws and Town of Swansboro policies.
- h. Maintains adequate purchase records.
- i. Assists in the disposal of all obsolete, inactive and scrap material.
- j. To avoid unethical practices and the appearance of the same.

2. User Department

It is the user's department's main responsibility to acquire the most suitable materials, equipment and services at the most economical cost. Departments will also:

- a. Prepare acceptable technical specifications in order to secure the products or services needed in a timely manner in accordance with established purchasing practices.
- b. Determine the most economical source for obtaining the desired goods. Obtain the necessary quotes required utilizing the formal or informal bid process.
- c. Supply information required for entering a new vendor into the system. This includes name, address, federal information number, contact person's name and phone numbers.
- d. Work with the Finance Department to establish good will between the Town and its vendors.
- e. Work closely with the Finance Department to ensure that purchasing activities are coordinated with other financial activities such as proper financial records of cash flow.
- f. Inspect all items when received.
- g. Determine discrepancies in invoices vs. purchase order and advise Finance of such.
- h. Notify the Finance Department when goods are damaged upon receipt and are to be returned to the vendor.

3. Finance Director

It is the Finance Director's responsibility to pre-audit purchases to insure compliance with the budget, statutory requirements and administrative policies. Other duties:

- a. To conduct business with integrity, fairness and dignity so as to maintain public trust and reduce the government's exposure to criticism and legal action.
- b. To conserve public funds by obtaining the best products and services for the dollar spent.
- c. To provide all customers with quality service in a manner that is courteous, responsive, accessible, and seamless.
- d. To furnish timely information to management and appropriate departments covering market conditions and trends, and the probable effect on supply and price.

IV. ETHICS

“THE FINANCE DEPARTMENT OF THE TOWN OF SWANSBORO IS GOVERNED BY THE HIGHEST IDEALS OF HONOR AND INTEGRITY IN ALL PUBLIC AND PROFESSIONAL RELATIONSHIPS IN ORDER TO MERIT THE RESPECT AND INSPIRE THE CONFIDENCE OF THE TOWN OF SWANSBORO AND THE PUBLIC WE SERVE.”

A. Ethical Conduct

The policies of the Town of Swansboro require that all business shall be transacted in compliance with law and shall be conducted in conformance to the highest ethical standards. The proper operation of government requires that public employees be independent, impartial, and responsible to the citizens, and that the public positions not be used for personal gain.

B. Conflict of Interest

There is a general prohibition against any public official having a personal interest in any contract to which he is also a party in his public capacity. State laws prohibit public officers and employees from benefiting from contracts either directly or indirectly. N.C.G.S. 14-234 prohibits this.

C. Gifts and Favors

It is unlawful for vendors to make gifts or give favors to Finance Department representatives or any other Town of Swansboro representative. N.C.G.S. 133-32 prohibits this. Exempted from this includes: honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets, and customary gifts or favors between employees or officers and their friends and relatives.

D. Benefit from Confidential Information

It is unlawful for any officer or employee from acquiring a financial benefit using information he or she obtains by virtue of his or her position. N.C.G.S. 14-234.1 prohibits this and also prohibits such a person from using that information to help someone else gain a financial benefit.

V. MINORITY BUSINESS PARTICIPATION GOALS AND GUIDELINES

- A. The Town has adopted a verifiable ten percent (10%) goal for participation by minority businesses in the total value of work for each Town building project, including building projects done by a private entity on a facility to be leased or purchased by the Town. The Town shall make a good faith effort to recruit minority participation in accordance with this section or G.S. 143-131 (b), as applicable.
- B. The Town shall 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 for building projects. The Town shall make good faith efforts pursuant to subsection (5) 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.
- C. Each bidder, which shall mean first-tier subcontractor for construction manager at risk projects for purposes of this subsection, on a project bid under any of the methods authorized under G.S. 143-128(a1) shall identify on its bid the minority businesses that it will use on the project and an affidavit listing the good faith efforts it has made pursuant to subsection (5) of this section and the total dollar value of the bid that will be performed by the minority businesses. A contractor, including a first-tier subcontractor on a construction manager at risk project that performs all of the work under a contract with its own workforce may submit an affidavit to that effect in lieu of the affidavit otherwise required under this subsection. The apparent lowest responsible, responsive bidder shall also file the following:
 1. Within the time specified in the bid documents either:
 - a. An affidavit that includes a description of the portion of work to be executed minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal. An affidavit under this sub-subdivision shall give rise to a presumption that the bidder has made the required good faith effort: or
 - b. Documentation of its good faith effort to meet the goal. The documentation must include evidenced 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.
 2. Within 30 days after award of the contract, a list of all identified subcontractors that the contractor will use on the project. Failure to file a required affidavit or documentation that demonstrates that the contractor made the required good faith effort is grounds for rejection of the bid.

- D. No subcontractor who is identified and listed pursuant to subsection (c) of this section may be replaced with a different subcontractor except:
1. If the subcontractor's bid is later determined by the contractor or construction manager at risk to be non-responsible or non-responsive or the listed subcontractor refuses to enter into a contract for the complete performance of the bid work, or with the approval of the Town for good cause.
 2. Good faith efforts as set forth in G.S. 143-131 (b) shall apply to the selection of a substitute subcontractor. Prior to substituting a subcontractor, the contractor shall identify the substitute subcontractor and inform the public entity of its good faith efforts pursuant to G.S. 143-131 (b).
- E. Before awarding a contract, the Town shall do the following:
1. 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 non-minority businesses.
 2. Attend the scheduled pre-bid conference.
 3. At least 10 days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office of Historically Underutilized Businesses an interest in the type of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
 - a. A description of the work for which the bid is being solicited.
 - b. The date, time, and location where bids are to be submitted.
 - c. The name of the individual within the public entity who will be available to answer questions about the project.
 - d. Where bid documents may be reviewed.
 - e. Any special requirements that may exist.
 4. Utilize other media, as appropriate, likely to inform potential minority businesses of the bid being sought.
 5. A Town shall require bidders to undertake the following good faith efforts to the extent required by the Secretary on projects subject to this section. The Secretary shall adopt rules establishing points to be awarded for taking each effort and the minimum number of points required, depending on project size, cost, type, and other factors considered relevant by the Secretary. In establishing the point system, the Secretary may not require a contractor to earn more than fifty (50) points, and the Secretary must assign each of the efforts listed in subdivisions (1) through (10) of this subsection at least 10 points. The Town may require that additional good faith efforts be taken, as indicated in its bid specifications. Good faith efforts include:
 - a. 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.

- b. 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.
- c. Breaking down or combining elements of work into economically feasible units to facilitate minority participation.
- d. Working with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- e. Attending any pre-bid meetings scheduled by the public owner.
- f. Providing assistance in getting required bonding or insurance or providing alternatives to bonding or insurance for subcontractors.
- g. Negotiating in good faith with interested minority businesses and not rejecting them as unqualified without some sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- h. 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.
- i. Negotiating joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- j. Providing quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

F. As used in this section:

- 1. The term "minority business" means a business:
 - a. In which at least fifty-one percent (51%) is owned by one or more minority persons or socially and economically disadvantaged individuals, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons or socially and economically disadvantaged individuals; and
 - b. Of which the management and daily business operations are controlled by one or more of the minority persons or socially and economically disadvantaged individuals who own it.
- 2. The term "minority person" means a person who is a citizen or lawful permanent resident of the United States and who is:
 - a. Black, that is, a person having origins in any of the black racial groups in Africa;
 - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;

- c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Islands;
 - d. American Indian, that is, a person having origins in any of the original Indian peoples of North America; or
 - e. Female.
3. The term “socially and economically disadvantaged individual” means the same as defined in 15 U.S.C. 637. “Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area that are not socially disadvantaged”.
- a. The Town shall award public building contracts, including those awarded under G.S. 143-128.1, 143-129, and 143-131, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168A-3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontract to or make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who do not submit the lowest responsible, responsive bid or bids.
 - b. Notwithstanding G.S. 132-3 and G.S. 121-5, all public records created pursuant to this section shall be maintained by the public entity for a period of not less than three years from the date of the completion of the building project.
 - c. Except as provided in subsections A, F, 3a and 3b of this section, this section shall only apply to building projects costing three hundred thousand dollars (\$300,000) or more. This section shall not apply to the purchase and erection of prefabricated or re-locatable buildings or portions thereof, except that portion of the work which must be performed at the construction site.”

G. REPORTING

The Town shall report to the Department of Administration, Office of Historically Underutilized Business, the following with respect to each building project:

- 1. The verifiable percentage goal.

2. The type and total dollar value of the project, minority business utilization by minority business category, trade, total dollar value of contracts awarded to each minority group for each project, the applicable good faith effort guidelines or rules used to recruit minority business participation, and good faith documentation accepted by the Town from the successful bidder.
3. The utilization of minority businesses under the various construction methods.

VI. PURCHASING PROCEDURES

- A. Purchase of goods, services and equipment are subject to statutory requirements for pre-auditing of disbursements. Most purchases must be authorized in advance by issuance of purchase orders. This process ensures that pre-auditing requirements are met, creates an encumbrance to keep the budget up-to-date, and creates a contract that protects both the Town and the vendor.
- B. It is the Town's policy to use purchase orders for items costing five hundred (\$500) dollars or more. The deadline for purchase orders and purchasing is May 31st of each fiscal year. This allows for the invoicing process to be completed within that fiscal year. Emergency situations are an exception and are addressed below. Purchase orders will be encumbered to the line item so that proper accountability can be done to assure that the monies are available.

1. PURCHASE REQUISITION

The request to purchase initiates the cycle. The receipt of the request with the required information and appropriate signatures and account numbers gives the Finance Department the authority to proceed and issue a purchase order. A purchase order will not be issued unless authorized by a proper requisition.

The departments must attach all required documentation to each requisition to include but not limited to: additional quotes whether by telephone, fax or letters; catalogues, specifications, etc.

2. PURCHASE ORDER

To be valid, a Purchase Order must be completed and signed by the Finance Director, who states that "This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act." Once signed off by the Finance Director the purchase order form is used to place the actual order with a vendor.

Purchase Orders are contracts between the Town and a vendor and is not binding until the vendor accepts it. The Town will not recognize the issuance of a purchase order by unauthorized Town employees or officials and payment of these obligations will not be approved. Obtaining supplies, materials, equipment, or services without a purchase order is also an unauthorized purchase. (Emergency situations are exceptions and are outlined below).

3. DOCUMENT FLOW OF PURCHASE ORDER

- a. The Finance Department prepares the purchase order.
- b. Account balances are verified as to the availability of funds.
- c. The Purchase Order will make the encumbrance in the accounting system.
- d. The Finance Department will forward the completed purchase order to the Finance Director for his/her signature.
- e. The Purchase Order will be distributed as follows:
 - White – Vendor
 - Yellow – Department
 - Pink – Finance Director(for the permanent file)
 - Gold – Finance File (to be attached to invoice when received)
 - Blue – Receiving Copy (n/a, or can be used as 2nd invoice copy)
- f. Once the department receives his/her copy of the purchase order, the items or service can be processed.
- g. Once the invoice is received the purchase order will be attached and sent to the department to approve.
- h. The department head must justify all discrepancies in the purchase order and the invoice.
- i. The department head must sign off on the invoice and the purchase order will be entered into the accounting system and a check will be processed. For partial payments, copies of the purchase order must be made and marked clearly with the items received thus far.
- j. Purchase order process is 3 business days.

4. EMERGENCY PURCHASE PROCEDURE

In case of emergencies, the Department Head or his/her designee may purchase directly from any vendor. The meaning of emergency is an immediate and present condition, which involves the health and safety of the people or their property, machinery, and equipment.

Emergency purchases should not result from poor planning, overlooked requirements or inadequate forecasting. When emergency situations arise within a department, the following procedures should be followed:

- a. An employee should report the identified problem to the Department Head or the next responsible person.
- b. If the Department Head or next responsible person deems the situation to be an emergency, he or she should contact the Finance Director and provide as much information as possible, including the following: (1) explanation of the emergency, giving location, job, equipment or other, (2) the material and/or service needed, (3) cost either actual or estimated, (4) vendors name and address, (5) department and account number.
- c. The Finance Director will determine if the use of the emergency purchasing procedures is justified under applicable laws.
- d. If required, the Finance Department will authorize the department to handle.
- e. The department will immediately send a request for a purchase order to the Finance Department.
- f. As early as possible after the situation is resolved the rest of the purchase order procedures must be completed.
- g. After hour's emergency purchases whether made at night or on the weekends or holidays, the purchasing process will be completed as early as possible on the next regular working day.
- h. The purchase order will still be encumbered against the line item and the purchasing procedures will still be followed.
- i. Department Heads should use good judgment in defining an emergency as they will be responsible for items ordered.

5. CHANGES AND CANCELLATION OF PURCHASE ORDERS

Department Heads must initial all changes on invoices and purchases orders. When a department finds it necessary to make a change in a purchase order, the Finance Department will be notified as soon as possible.

If a purchase order must be cancelled the department shall notify the Finance Department as soon as possible, to insure the release of the encumbrance of funds.

VII. FORMAL BIDS

A. Contracts that require the use of the formal bid procedure are those for:

1. "Construction or repair work" requiring the estimated expenditure of \$300,000 or more. G.S. 143-129
2. The purchase or lease-purchase of "apparatus, supplies, materials, and equipment" requiring an estimated expenditure of \$90,000 or more. G.S. 143-129
3. Contracts must be awarded by the Governing Board, however, purchase contracts can be delegated to the Town Manager or Finance Director to award, reject bids, re-advertise to receive bids, or waive bid bonds, performance bonds, and payment bonds. Even after delegation the governing board must award contracts under the "sole source" or "piggybacking" exceptions.
4. Exceptions can be found in the N.C.G.S. as above.

B. PREPARING SPECIFICATIONS

1. If a building contract requiring the expenditure of \$300,000 or more is involved, G.S. 143-128 requires that separate specifications be prepared for at least the following branches of work:
 - a. Heating, ventilating, air conditioning and accessories....and/or refrigeration for cold storage (where the cooling load is 15 tons or more of refrigeration)
 - b. Plumbing and gas fittings and accessories.
 - c. Electrical wiring and installations.
 - d. General work not included in the above-listed three branches.
2. For contracts over \$500,000 separate bids must be received on each branch of work, and the contract for each branch must be awarded to contractors "regularly engaged in their respective lines of work."

C. ADVERTISING FOR BIDS

1. Purchases that are estimated to fall within the formal bid range must be advertised in the local newspaper having general circulation in the jurisdiction of the Town of Swansboro and/or advertised electronically. The ad must appear at least 7 days before the time specified for the opening of the bids. The advertisement must contain the following:
 - a. Description of work.
 - b. Date, time and location where bids are to be submitted.

- c. Time and place for the opening of bids.
 - d. Town's contact person who will be available for questions.
 - e. Where bid documents may be reviewed.
 - f. A statement that the Town reserves the right to reject any and all bids.
 - g. Any special requirements (Licenses, Bonding and/or Insurance).
2. Under existing law, bids that are subject to formal bidding must be submitted as sealed bids and must be opened at a public bid opening.

D. BID BONDS

1. Bid Bonds are not required on contracts for the purchase of apparatus, supplies, materials, or equipment unless the Town Manager or Finance Director deems that it is in the best interest of the Town.
2. Bid Bonds are required for construction or repair contracts estimated to cost \$300,000 or more.
3. The purpose of a Bid Bond is to ensure that the successful bidder will execute the contract and provide performance and payment bonds if required. The minimum amount required is 5% of the total bid. Bid bonds are returned to the bidder or released after the contract is signed or the purchase order is issued.
4. Failure of a bidder to submit a Bid Bond if required, at the time of the bid opening will render the bid invalid and the bid may not be considered.
5. Failure of the successful bidder to sign the contract will result in forfeiture of the bond.
6. The bidding statute allows the bid bond to be made in the following forms: cash, cashier's check, certified check, a bid bond by a surety licensed in North Carolina.

E. PERFORMANCE AND PAYMENT BONDS

1. Performance and payment bonds are not required for the purchase of apparatus, supplies, materials and equipment unless the Town Manager or Finance Director deems them to be necessary.
2. Performance and payment bonds are required for construction and repair work costing \$300,000 or more.

F. BID OPENINGS

1. All formal bids shall be opened at the time and place listed in the advertisement for receiving bids. It is the responsibility of the bidder to deliver the bid to the designated site and official. Late delivery of a bid for any reason will disqualify the bid and the bid will be returned to the bidder unopened with an explanation.
2. Bids are no longer required to be recorded in the minutes, but a permanent record of the action taken by the Board must be contained in the minutes. Where contracts are awarded under the delegated authority of the Town Manager or Finance Director, the bids should be reported to the governing board and recorded in the minutes of the meeting at which the board receives the report.
3. The opening of any bid or the disclosure or exhibition of the contents of any bid to anyone without permission of the bidder prior to the time set for the opening in the advertisement shall constitute a general misdemeanor.
G.S.143-129

G. BID AWARD

1. Award of all formal bids must be made by the Town Board and "shall be to the lowest responsible bidder, or bidders taking into consideration quality, performance, and the time specified in the proposals for the performance of the contract."
2. A responsible bid is one that substantially meets the specifications outlined in the solicitation. Responsibility relates to the issue of performance by the contractor in terms of the skill, experience, financial resources, and integrity necessary to complete the requirements of the contract.
3. Award may be made to a bidder other than the low bidder if it is clearly evident that it would be in the best interest of the Town to do so. Low bidder may be rejected for lack of skill, experience, financial resources or other qualifications necessary to perform the contract.
4. This does not prohibit the Town from considering other factors such as past performance, financial stability, availability of equipment and possibly other factors in the consideration of award.

H. BIDS RECEIVED IN EXCESS OF AVAILABLE FUNDS

1. When the lowest responsible bid is in excess of funds available for the contract, the Town may enter into negotiations with the lowest responsible bidder to reduce the cost within the budgeted amount. If this cannot be accomplished, the Town must revise the specifications in such a manner as to reduce the cost of the project and re-advertise the revised project. This procedure is available for purchase contracts as well as for construction or repair projects.

I. NUMBER OF BIDS REQUIRED

1. A construction project estimated to cost \$300,000 or more may not be opened after the initial advertisement unless three (3) competitive bids are received from qualified bidders. If fewer than three (3) are received after the initial advertisement, the project must be re-advertised. After this second advertisement, the award may be made even though only one bid has been received.
2. In the case of building contracts, subject to G.S.143-128, each single-prime bid and each full set of separate-prime bids count as a competitive bid in meeting this "three bid" requirement.
3. This requirement does not apply to purchases of apparatuses, supplies, materials, or equipment estimated to cost \$90,000 or more.

J. WITHDRAWAL OF BID

1. A bidder submitting a bid for construction or repair work or for the purchase of supplies, material, apparatus, or equipment may withdraw the bid consideration after the bid opening without forfeiture of the bid security if the price was based upon a mistake, which constituted a substantial error, provided the bid was submitted in good faith, and the bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment error, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, supplies, materials, apparatus, equipment or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn.
2. A request must be made before the contract is awarded and within 72 hours after the bids are opened.

K. CHANGE ORDERS

Change orders, without additional advertisement and bidding, may be issued for "construction or repair work undertaken during the progress of a construction or repair project" that was initially let according to the requirements of G.S. 143-129.

VIII. INFORMAL BIDS

- A. The informal bid procedure must be followed on contracts for the following:
 - 1. Construction and repair work \$30,000 to formal limit
 - 2. Purchases of apparatus, supplies, materials and equipment \$1,000 to formal limit
- B. Bid bonds are not required for purchase contracts, but are required for construction and repair contracts in the formal range.
- C. Performance and payment bonds are not required for purchase contracts, however for construction or repair contracts for projects over \$300,000 for each contract over \$50,000 G.S. 143-129(c); G.S. 44A-26
- D. All contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.
- E. It is the policy of the Town to seek informal bids for the purchase of apparatus, supplies, materials, and equipment estimated to cost \$1,000 to the formal limit of \$90,000; and construction and repair contracts estimated to cost \$30,000 up to the formal limit of \$300,000. The use of a registered architect or engineer is required for certain construction or repair projects in the informal range. G.S. 133-1.1(a). A minimum of three quotes must be sought unless directed by the Town Manager or Finance Director.
- F. All bids shall be the duty of the office that receives such bids and are not open to the public until the contract is awarded.
- G. The Town may solicit minority participation in contracts for the erection, construction, alteration or repair of any building awarded pursuant to this section. Building contracts costing \$30,000 to \$299,000 are subject to this provision. Records must be kept of the contractors solicited and efforts to recruit minority business participation must be documented. All data, including the type of project, total dollar value of the project, and documentation of efforts to recruit minority participation shall be reported to

the Department of Administration, Office for Historically Underutilized Business, upon completion of the project.

IX. EXCEPTIONS

A. SOLE SOURCE PURCHASES

1. In the event that there is only one vendor capable of providing a particular good or service, the competitive pricing procedures outlined in this manual may be waived by the Town Manager and/or the Finance Director. Whenever a Department Head determines to purchase goods or services from a "sole source", he/she shall document on the request why only one company or individual is capable of providing the goods or services required.
2. The 1997 legislative changes created an exemption from formal bidding for purchase contracts "when performance or price competition for a product are not available; when a needed product is available from only one source of supply; or when standardization or compatibility is the overriding consideration."
3. Contracts in excess \$300,000 made under the sole source exemption must be approved by the Governing Board (authority cannot be delegated). The Governing Board must keep a record of purchases.

B. PIGGYBACKING OF CONTRACTS

1. The 1997 legislature amended G.S. 143-29(g) to allow local governments to purchase without separate bid procedures from any contractor that within the past 12 months, contracted with another unit of local government, the State of North Carolina, or any other state, or the federal government or any federal agency.
2. Requires governing board approval and must be published no less than 10 days prior to the meeting. The notice must contain the item or items to be purchased, identify the contractor from whom the purchase will be made, identify the public agency that originally contracted with the contractor.

C. PURCHASES FROM OTHER UNITS OF GOVERNMENT

G.S. 143-129 (e) waives formal bidding for the purchase of apparatus, supplies, materials, or equipment from any federal agency or any other governmental unit within the United States.

D. USED EQUIPMENT

G.S. 143-129(e) (10) authorizes the purchase without bidding of used equipment. The exception does not include remanufactured items, re-fabricated materials, or demo equipment.

E. STATE CONTRACT PURCHASES

G.S. 143-129(e) (9) authorizes formal or informal bidding procedures are not required when purchasing from contracts "established by the State or any agency of the State." If a vendor is on state contract, you may purchase without obtaining additional quotes.

F. GASOLINE, FUEL AND OIL

Purchases of gasoline, diesel fuel, alcohol fuel, motor oil, or fuel oil does not require formal bidding.

G. REQUEST FOR PORPOSAL FOR INFORMATION TECHNOLOGY GOODS AND SERVICES

1. G.S. 143-129.8 authorizes local governments to use a RFP process to purchase information technology goods and services. Information technology is defined as "electronic data processing goods and telecommunications goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes."
2. Purchases must be advertised in the same manner as is required for formal bids. Contracts may be awarded to the submitter of the "best overall proposal", not the "lowest responsible bidder."
3. RFP provision permits negotiation after proposals are received. Negotiations must not change the contract beyond the scope of the original proposal in a manner that deprives the bidder of a fair opportunity to compete for the contract, and would have resulted in the award of the contract to a different bidder if the changes had been included in the original RFP.
4. RFP are not subject to public inspection until a contract is awarded or a purchase order is issued.

X. REQUIRING LICENSED ARCHITECT OR ENGINEER

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

- B. The “best qualified” selection procedure must be followed on all contracts unless exempted. Exemptions authorized are on projects where estimated fee is less than \$30,000 or other projects in sole discretion of unit.

XI. CONSTRUCTION CONTRACTS

A. BUILDING CONSTRUCTION OVER \$300,000

- 1. Building (construction – repair) projects requiring an expenditure of \$300,000 or more, State law G.S. 143-128.2 requires that the public government involved to adopt a goal for participation by minority businesses and to make good faith effort to achieve this goal, and to also require that any contractor receiving a building award to also do the same if sub-contract work is involved. All bidders are expected to understand the requirements of G.S. 143-128.2 and to comply with them.

- 2. The Town shall award contract to erect, construct, alter, or repair building pursuant to any of the following methods:
 - a. Separate prime-bidding
 - b. Single-prime bidding
 - c. Dual bidding
 - d. Construction management at risk
 - e. Alternative method authorized by the State Building Commission.

B. BUILDING CONSTRUCTION PROJECTS COSTING \$30,000 BUT LESS THAN \$300,000

- 1. Minority business participation efforts and reporting
 - a. The Town is required to solicit participation by minority business enterprises and to maintain a record of contractors solicited and efforts to recruit minority participation. Advertisement for bids is not required.
 - b. The Town must comply with reporting requirements established by the State Department of Administration and must document efforts made and minority participation obtained for each project.

C. DISPUTE RESOLUTIONS

Senate Bill 914 requires the Town to provide a dispute resolution process, which must include mediation. Local governments may adopt procedures established by the State Building Commission or may establish their own. Procedures must provide the option of using mediation and must be available for all parties involved in the project, including the architect, the contractors, and subcontractors at all levels.

D. CONTRACTOR LICENSING

Contractors on construction or repair projects must comply with state contract licensing requirements. The contract threshold for licensure of general contractors is \$30,000. Licenses are not required for work performed by the unit's own forces. Architects and engineers who prepare specifications for public projects are required to include information about licensure requirements in the invitation to bidders and the specifications.

E. USE OF FORCE ACCOUNT LABOR

Formal bidding for construction or repair work as required in G.S. 143-129 does not apply to work undertaken by the local government, when the work is performed by "force account qualified labor on the permanent payroll of the agency" and when "either the total cost of the project, including all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed \$125,000, or the total cost of labor on the project does not exceed \$50,000. Purchases of apparatus, supplies, materials, or equipment for use in force account work must comply with the normal bidding requirements.

F. CONSTRUCTION MANAGEMENT AT RISK CONTRACTS

1. Requirements for architectural, engineering, surveying, and construction management at risk services must be "announced," and providers must be selected based on "demonstrated competence and qualification...without regard to fee other than unit price services...." Good faith efforts must be used to notify minority firms of the opportunity to submit qualifications for consideration by the public entity.
2. Local governments may "in writing exempt particular projects" from the qualification – based selection requirement for proposed projects where the estimated professional fee is less than \$30,000; or other particular projects in the sole discretion of the unit of local government, stating the reasons therefore and the circumstances attendant thereto.

XII. DISPOSITION OF PROPERTY

- A. G.S. 160A, sets forth the requirements and procedures for disposal of property by municipalities. The Town Manager is authorized to dispose of property with the following conditions:
- B. The property must have a fair market value of less than \$5,000.
- C. Deemed as surplus property and no longer necessary for the function of the Town's business.
- D. This must be in writing for the Town Manager's approval with a copy to the Finance Director for recording of the disposal of the asset.

XIII. SALE OF SEIZED AND UNCLAIMED PROPERTY

Unclaimed property and bicycles must be sold at public auction after notice and a period during which owners may establish their claim for the property. After notice, bicycles remaining unclaimed may be donated to nonprofit organizations.

XIV. EXCHANGE, SALE, AND LEASE OF PROPERTY BETWEEN GOVERNMENTS

G.S. 160A-274 authorizes governmental units to provide for the joint use of property, to sell or lease property to each other, or to exchange it with each other on a negotiated basis. County governments have the right of first refusal when local boards of education dispose of real property.

Administrative Policy adopted: March 24, 2008

Signature: Tommy M. Combs
Tommy Combs, Interim Town Manager