



**VILLAGE OF PINEHURST  
STANDARD PROCEDURE**

<b>SUBJECT: Purchasing Policy &amp; Procedures with Federal Funds</b>	Effective Date: 06/23/2020
Department: Financial Services	Policy No.: FIN-416.3
Prepared by: Financial Services Director, Dana Van Nostrand	Revised: 01/23/2024
Approved by: Village Council Resolution #24-06	# of Pages: 10

**I. PROCEDURE PURPOSE:**

The purpose of this policy is to establish guidelines that meet or exceed the procurement requirements for the purchase of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects **when federal funds are being used in whole or in part to pay for the cost of the contract.**

**II. POLICY:**

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

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

**B. Compliance with Federal Law.** All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 CFR §200.317 through §200.327 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. The Village of Pinehurst will follow all applicable local, state, and federal procurement requirements when expending federal funds. *Should the State of North Carolina or the Village of Pinehurst have more stringent requirements, the most restrictive requirement shall apply so long as it complies with federal law.* This includes the procurement method thresholds (Micro-purchase Threshold and Simplified Acquisition Threshold) noted below.

**C. Compliance with Conflict of Interest Policy: Use of Federal Funds.** All procurement activities must comply with the Village's Conflict of Interest Policy: Use of Federal Funds in accordance with 2 C.F.R §200.318(c)(1).

**D. Contract Award.** When bids are required by law, or otherwise solicited by the Village, all contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract. Consideration shall be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

**E. No Evasion.** No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this policy or state and federal law.

**F. Contract Requirements.** All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 CFR Section §200.327 and as provided for under 2 CFR Part 200, Appendix II.

**G. Contractor's Conflict of Interest.** Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be excluded from competing for such requirements.

**H. Approval and Modification.** The administrative procedures contained in the Policy are administrative and may be changed as necessary at the staff level to comply with state and federal law.

**I. Micro-purchase Threshold.** The Village will establish its micro-purchase threshold for purchases, service contracts (except architect/engineer professional services), and construction/repair contracts to be consistent with the threshold under which no competition is required in State of North Carolina G.S. 143-131. This is higher than the federal micro-purchase threshold as defined in 48 CFR Part 2, Subpart 2.1. The Village is allowed to set a higher micro-purchase threshold in accordance with 2 CFR §200.320(a)(1)(iv)(C). The Financial Services Director will document the annual self-certification of the Village's micro-purchase threshold as required by 2 CFR §200.320(a)(1)(iv) at the beginning of each fiscal year.

**J. Simplified Acquisition Threshold.** The Village will establish its simplified acquisition threshold for service contracts and construction/repair contracts to be consistent with the federal simplified acquisition threshold as defined in 48 CFR Part 2, Subpart 2.1. The simplified acquisition threshold for purchases will be consistent with the State of North Carolina threshold over which formal bidding is required per G.S. 143-129 since this threshold is lower than the federal simplified acquisition threshold.

### III. PROCEDURES:

**General:** The administrative procedures contained within this policy are administrative and may be changed as necessary at staff level to comply with the federal Procurement Standards within this Policy. However, any policy changes must be approved by the governing body prior to becoming effective.

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

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

**A. Necessity.** Purchases *must be necessary* to perform the scope of work and must avoid acquisition of unnecessary or duplicative items (no stockpiling). The Purchasing Department and/or the Requesting Department should check with the federal surplus property agency prior to buying *new* items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.

**B. Clear Specifications.** The Purchasing Department will ensure that all solicitations incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.

**C. Notice of Federal Funding.** All bid solicitations must acknowledge the use of federal funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.

**D. Compliance by Contractors.** All solicitations shall inform prospective contractors that they must comply with all applicable federal laws, regulations, executive orders, FEMA requirements, and terms and conditions of the funding award.

**E. Fixed Price.** Solicitations must state that the bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts are *prohibited*. Time and materials contracts are prohibited *in most circumstances*. Time and materials (Cost-Plus) contracts will not be used unless no other form of contract is suitable and the contract includes a "Not to Exceed" amount. A time and materials contract shall not be awarded without express written permission of the federal agency or state pass-through agency that awarded the funds.

**F. Use of Brand Names.** When possible, performance or functional specifications are preferred to allow for more competition, leaving the determination of how to reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s). When a brand name is listed, it is used as reference only and “or equal” must be included in the description.

**G. Lease versus Purchase.** Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach. Note: This comparison is necessary for most FEMA financial assistance programs following an emergency or major disaster declaration.

**H. Dividing Contract for M/WBE Participation.** If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.

**I. Documentation.** Documentation must be maintained by the Purchasing Department and/or the Requesting Department detailing the history of all procurements. The documentation should include (at a minimum): rationale for the procurement method used, selection of the contract type, basis for contractor selection or rejection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor’s responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and fully-executed contract. All documentation relating to the award of any contract must be made available to the granting agency upon request.

**J. Cost Estimate.** For all procurements in excess of the simplified acquisition threshold as defined in 48 CFR part 2, subpart 2.1, the Purchasing Department and/or Requesting Department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.

**K. Contract Requirements.** The Requesting Department must prepare a written contract incorporating the provisions referenced in Section II. C. “Contract Award” of this Policy.

**L. Debarment and Suspension.** No contract shall be awarded to a party included on the governmentwide exclusions list in the System for Award Management (SAM). Prior to preparing the contract, the Purchasing Department or the Requesting Department must verify that the party is not suspended or debarred in the SAM.

**M. Contractor Oversight.** The Requesting Department receiving the federal funding must maintain oversight of the contract to ensure that contractor is performing in accordance with the contract terms, conditions, and specifications.

**N. Open Competition.** Solicitations shall be prepared in a way to be fair and provide open competition. The Village shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding; specifying a brand name without allowing for “or equal” products, or other unnecessary requirement that have the effect of the restricting competition.

**O. Geographic Preference.** No contract shall be awarded based on geographic preference. Preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States is encouraged as appropriate and allowed by law.

**Matrix of Procurement Thresholds and Methods:**

<b>Contract Type</b>	<b>Up to Micro-purchase Threshold</b>	<b>Up to Simplified Acquisition Threshold</b>	<b>Over Simplified Acquisition Threshold</b>
Purchase	Less than \$30,000 No competition required	\$30,000 or more but less than \$90,000 Small purchase	\$90,000 or more Formal
Service (except Architect/Engineer)	Less than \$30,000 No competition required	\$30,000 or more but less than \$250,000 Small purchase	\$250,000 or more Formal
Construction/Repair	Less than \$30,000 No competition required	\$30,000 or more but less than \$250,000 Small purchase	\$250,000 or more Formal
Architect/Engineer Professional Service	Less than \$250,000 Mini-Brooks Act	Less than \$250,000 Mini-Brooks Act	\$250,000 or more Formal (Proposal)

*Note: The dollar thresholds in the matrix above are the thresholds in effect as of the date of adoption of this policy version. They are for illustrative purposes. Procurements subject to this policy must comply with the thresholds effective at the time of the procurement as defined in Section II of this policy.*

**Specific Procurement Procedures:**

Either the Purchasing Department or the Requesting Department shall solicit quotes or bids in accordance with the requirements under this section of the policy based on the procurement method required in the matrix above for the contract type and estimated cost.

## No Competition Required

Procedures are as follows:

- No competitive bidding or price quotations are required
- Price must be considered fair and reasonable
- To the extent practicable, purchases must be distributed equitably among qualified suppliers
- Contract must be in writing (this could be in the form of a purchase order)
- Purchases can be paid via purchasing card if they comply with the Village's purchasing card policy

## Small Purchase (2 CFR §200.320(a)(2))

**Procedures are as follows:**

- Cost or price analysis is not required prior to soliciting bids
- Obtain written price quotes from an adequate number of qualified suppliers or sources (which shall not be less than three (3) quotes to be consistent with the Village's Purchasing and Contracting Policy & Procedures)
- General contractor state licensure requirements apply
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 CFR §200.321
- Award contract on a fixed-price basis. A not-to-exceed basis is permissible for service contracts only where obtaining a fixed price is not feasible.
- Award to lowest responsive, responsible bidder
- Contract must be in writing (purchase contracts may be in the form of a purchase order; service contracts and construction or repair require use of contract template) with federal contract provisions included
- Check the grant agreement for additional requirements specific to the grant
- Governing board approval of the contract, if required based on the Village's delegation of authority
- **Cannot** use a cooperative purchasing program as an Exception to the Bidding

## Formal (2 CFR §200.320(b))

*Sealed Bid (2 CFR §200.320(b)(1)):*

**Procedures are as follows:**

- Cost or price analysis is required prior to soliciting bids (the cost estimate may be provided by the project designer)
- Complete specifications or purchase description must be available to all bidders

- Public advertisement:
  - The bid must be formally advertised in a newspaper of general circulation for at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board.
  - Legal notice must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for “sound *documented* reasons”.
- General contractor state licensure requirements apply
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 CFR §200.321
- Solicit from adequate number of known suppliers
- Open bids at the public bid opening on the date, time, and at the location noticed in the public advertisement
- All bids must be submitted sealed
- For construction/repair bids with an estimated cost of \$500,000 or more, bids must be submitted in paper format
- A minimum of two (2) sealed bids (three (3) sealed bids for construction contracts) must be received in order to open all bids
- For construction/repair bids, a 5% bid bond is required of all bidders. A bid that does not contain a bid bond is not responsive and cannot be counted toward the three (3) bid minimum.
- For construction/repair contracts, performance and payment bonds for 100% of the contract price are required of the winning bidder
- Bids may only be rejected for “sound *documented* reasons”
- Award contract as a fixed-price. A not-to-exceed basis is permissible for *service contracts only* where obtaining a fixed price is not feasible.
- Award to lowest responsive, responsible bidder
- Contract must be in writing (purchase contracts may be in the form of a purchase order; service contracts and construction/repair require use of contract template) with federal contract provisions included
- **Cannot** use a cooperative purchasing program as an Exception to the Bidding
- Governing board approval of the contract, if required based on the Village’s delegation of authority
- For construction/repair contracts costing \$500,000 or more, governing board approval is required and it cannot be delegated

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

- Formal HUB (historically underutilized business) participation required under G.S. 143-128.2, including local government outreach efforts and bidder good faith efforts, shall apply.

- Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143-128(a).
- The project shall be bid using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under G.S. 143-129(a1).

*Proposals (2 CFR §200.320(b)(2)) can **only** be used when conditions are not appropriate for the use of sealed bids, such as service contracts. This can be used for all types of contracts over the simplified acquisition threshold.*

**Procedures are as follows:**

- Publicly advertised. Formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an “adequate number” of qualified firms.
- Proposals must be solicited from an adequate number of qualified firms. Individual federal grantor agencies may have guidance interpreting “adequate number”.
- State licensure requirements apply for architects or engineers
- Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 CFR § 200.321
- Identify evaluation criteria and relative importance of each criteria (criteria weight) in the request for proposal (RFP)
- All responses must be considered to the maximum extent practical
- Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm
- Evaluate qualifications and competence of respondents based on the evaluation criteria and rank proposals
- Award the contract to the responsible firm with most advantageous proposal taking into account price and other factors identified in the RFP
- Governing board approval of the contract, if required based on the Village’s delegation of authority
- Award the contract on a fixed-price or cost-reimbursement basis
- Must have written contract with federal contract provisions included
- **Cannot** use a cooperative purchasing program as an Exception to the Bidding

Mini-Brooks Act/Qualifications-Based Selection (G.S. 143-64.31)

*This process cannot be used for general consulting services or other services not defined by state law or PDAT Supplement, Section V-15 even if those services can be performed by an architectural or engineering firm.*

**Procedures are as follows:**

- Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified



- firms
- Announce requirements for the service and make good faith efforts to notify minority firms. Newspaper advertisement is not required.
  - The RFQ can solicit information on the members and qualifications of the design team, general information about the firm, examples of prior work, discussions of concepts and approaches to the project, references, or unit price.
  - Price (other than unit cost), conceptual drawings, designs, or past project prices with comparison to current project price cannot be solicited in the RFQ.
  - State licensure requirements apply for architects or engineers based on the work type and thresholds in G.S. 133.1.1(a)
  - Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 CFR §200.321
  - Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department
  - Rank respondents based on competence and qualifications and select the best qualified firm
  - Price cannot be a factor in the evaluation
  - Preference may be given to in-state (but not local) firms
  - Negotiate a fair and reasonable fee with the best qualified firm. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
  - Award the contract to best qualified firm with whom a fair and reasonable fee has been successfully negotiated
  - Must be a fixed-price or not-to-exceed contract type for services
  - Governing board approval of the contract, if required based on the Village's delegation of authority
  - Must have written contract with federal contract provisions included

#### IV. EXCEPTIONS:

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

**A. Sole Source.** A contract may be awarded without competitive bidding when the item is available from only one source. The Purchasing Department and/or Requesting Department shall document the justification for and lack of available competition for the item. A sole source contract must be approved by the governing board.

**B. Public Exigency.** A contract may be awarded without competitive bidding when there is a public exigency or emergency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from competitive bidding.

**C. Inadequate Competition.** A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from the number of sources as required under this Policy does not result in a qualified winning bidder.

**D. Federal Contract.** A contract may be awarded without competitive bidding when the purchase is made from a federal contract available on the U.S. General Services Administration schedules of contracts.

**E. Awarding Agency Approval.** A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law.