



MECKLENBURG COUNTY, NORTH CAROLINA

PROCUREMENT POLICY

1. POLICY STATEMENT

The policy of Mecklenburg County (the “County”) is to maintain a responsible procurement process that obtains the best apparatus, supplies, materials or equipment (hereafter referred to as “goods”), services, technology and construction at the best price and in compliance with applicable law.

2. POLICY PURPOSE

The purpose of this policy is to establish guidelines and accountability for the expenditure of funds used to procure goods and services used by County departments. This primary purpose is met by establishing and implementing a system of internal controls that provide reasonable assurance that the County is in compliance with North Carolina General Statutes Chapter 143, Article 8 Public Contracts as it may be amended from time to time. Each County department shall be responsible for ensuring that all procurements undertaken within departments comply with (a) all applicable State and federal laws¹; (b) local ordinances or directives established by the Mecklenburg County Board of County Commissioners (“BOCC”) from time to time; (c) this Policy; and (d) all other approved policies and procedures.

3. POLICY GOVERNANCE

This policy is intended to govern the purchase of goods, apparatus, supplies, materials, equipment, professional and non-professional services, technology and construction.

4. PROCUREMENT PHILOSOPHY

In all matters related to procurement, County employees should ensure diligence related to the application of statutory requirements and regulations and with generally accepted professional standards in such a manner so as to ensure the maximum efficiency of governmental operations. To the extent that all statutory requirements are met, County employees are empowered with the necessary authority and flexibility to ensure the appropriate, cost effective, efficient, and timely procurement of necessary goods and

¹ For guidance in interpreting State law, a great resource is “A Legal Guide to Purchasing and Contracting in North Carolina for North Carolina Local Governments” written by Frayda S. Bluestein and published by the UNC School of Government. For additional assistance in interpreting State law, contact the County Attorney’s Office.

services. This in turn enables all County departments to achieve the mission of effectively delivering services to the residents of Mecklenburg County.

5. PROCUREMENT ORGANIZATION

The procurement process within the County is primarily decentralized. Decentralization allows for localized procurement responsibility within County departments and great flexibility for County employees to take responsibility for the timely and accurate procurement of goods, services, technology and construction. As an added support for County departments, access to a centralized support system in the form of the consolidated City-County Procurement Services Division (“PSD”) has been established. The centralized support is designed to give County employees access to procurement consulting expertise to ensure proper application of legal procedures, as well as staff support capable of managing formal, larger scale, or more technically difficult procurements. Additionally, PSD is able to work on the County’s behalf to provide opportunities to realize the impact of consolidated, discount and volume purchases, as well as the opportunity to maximize savings in the form of taxpayer dollars while minimizing administrative burden.

6. GENERAL POLICY RESPONSIBILITIES

The County Finance Department in coordination with PSD shall have the responsibility for maintaining and administering this policy. The County Finance Department, at the discretion of the County Manager’s Office, shall be responsible for implementing this policy and delegating any necessary duties required to perform procurements. Compliance and monitoring of this policy shall be managed as directed by the County Manager’s Office. All County departments and employees are subject to and responsible for the provisions of this Procurement Policy. This Procurement Policy, and any amendments, must be approved by the County Manager.

No County employee shall purchase or contract for any goods, services, technology or construction except as provided in this policy and all applicable statutes. Any purchase or contract made contrary to the provisions of this policy may be voidable at the option of the County.

7. GOVERNING STATUTES AND POLICIES

This policy is primarily guided by Article 8 of Chapter 143 of the North Carolina General Statute which details the procedures for the letting of public contracts for the State of North Carolina, any institution of the State of North Carolina, and any political subdivision of the state, including counties, local school units and municipalities (See Exhibit B). In those instances where a purchase involves the expenditure of state or federal assistance or contract funds, the purchase shall be conducted in accordance with any mandatory state or federal laws or regulations that may apply. County departments must comply with Article 8 of Chapter 143, including the following applicable statutes and policies:

<u>Reference</u>	<u>Subject</u>
G.S. 143-129 & SL 1997-184 ²	Formal bids: apparatus, supplies, materials or equipment over \$100,000; and construction or repair contracts \$500,000 and above.
G.S. 143-131	Informal Bids: apparatus, supplies, materials or equipment greater than \$30,000 and less than \$100,000; and construction or repair greater than \$30,000 but less than \$500,000.
G.S. 143-128	Specifications and contracting methods for construction projects over \$300,000
G.S. 143-128.2 & .3	Minority business enterprise requirements for building construction
G.S. 143-64.31 - .34	Selection of Architect, Engineer, Surveyor, or construction manager at risk.
G.S. 143-64.17 - .17K	Guaranteed Energy Savings Contracts
2004 BOCC Resolution on Environmental Leadership Policy	Environmental Leadership Action Plan indicating <u>Purchasing Goals, Purchasing Guide</u> and the <u>Charlotte-Mecklenburg Certified Site Inspector (CMCSI) Program</u>
MWSBE Policy	Minority, Women and Small Business Enterprise Procurement Policy and Procedures.
Buy American Policy	Preference for products manufactured in the United States of America

8. CONTRACT EXECUTION AND APPROVAL

County departments, employees and/or governing bodies are authorized to approve purchases within certain categories and thresholds. The following authorities to award contracts have been established:

SUBJECT TRANSACTION	APPROVAL AUTHORITY
Facility rentals for special events or training	County Manager or Designee.
Contracts with schools, universities or other agencies for student interns	County Manager or Designee.
Goods, apparatus, supplies, materials and equipment less than \$100,000	County Manager or Designee
Goods, apparatus, supplies, materials and equipment \$100,000 and above.	BOCC
Equipment purchases less than \$100,000 if trade-in is involved	County Manager or Designee
Contract Amendments for Goods	County Manager or Designee (as long as the amendment is less than \$100,000)

² SL 1997-184 increased the statutory requirement for formal bids for apparatus, supplies, materials and equipment for Mecklenburg County from \$90,000 to \$100,000.

Technology goods less than \$100,000	County Manager or Designee
Technology goods \$100,000 or more	BOCC (except if purchased from a state or federal contract)
Contracts for services	County Manager or Designee
Contract Amendments for Services	County Manager or Designee
Construction contracts less than \$500,000	County Manager or Designee
Construction contracts \$500,000 or greater	BOCC
Leases, rentals and maintenance contracts	County Manager for contracts less than one year. BOCC for agreements greater than one year, or if the term crosses fiscal years and does not include a non-appropriations clause.
Architect, Engineer, Surveyor, or Construction Manager at Risk Contracts – less than \$30,000	County Manager or Designee
Architect, Engineer, Surveyor, or Construction Manager at Risk Contracts –\$30,000 or more	BOCC
Energy Service Companies (ESCO's) for Guaranteed Energy Savings Contracts	BOCC

For additional information regarding Architectural, and Engineering and Surveying Contracts, please see exhibits C and D.

8.1 County Manager Authorization

Annually, the County Manager is authorized by the BOCC to make certain procurement awards and decisions. Pursuant to the Mecklenburg County Budget Ordinance, the following authorizations are established:

- 1) The County Manager or his designee may award and execute 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.
- 2) On behalf of the County, the County Manager or his designee, may enter into and execute change orders or amendments to construction contracts when the appropriate capital project or capital reserve fund contains sufficient appropriated but unencumbered funds allocated for such construction projects.
- 3) On behalf of the County, the County Manager or his designee, may execute contracts with outside agencies to properly document budgeted appropriations to such agencies where G.S. 153A-248(b), 259, 449 or any similar statutes require such contracts.
- 4) The County Manager or his designee may execute contracts on behalf of the County, to render services, at not less than full cost, with the State, other political subdivisions of the State and outside agencies.

5) The County Manager or his designee may execute contracts or other agreements with the State of North Carolina required by the State in connection with the receipt of revenues that are included in the estimate of revenues.

6) The County Manager shall exercise his authority to designate individuals who are authorized to award and execute contracts only by a written memorandum of delegation filed with the Clerk to the Board, the Mecklenburg County Attorney, and the Director of Finance, except that the County Manager may designate the General Managers without filing a written memorandum of delegation. Provided, however, annual machine maintenance agreements, equipment leases for fewer than 30 days, and purchase orders may be processed without the signature of the County Manager or his designee if processed in accordance with policies of the Finance Department.

Failing to take into account all costs associated with a purchase or contract or dividing a purchase or contract for the purpose of circumventing the requirements set forth in this section constitutes a violation of this Policy and may also constitute a violation of state law. Violations of the requirements set forth in this section will be reported to the County Manager's Office and the County Finance Department with a referral to Internal Audit for review.

9. APPROPRIATIONS AND ENCUMBRANCES

Under the Local Government Budget and Fiscal Control Act, all expenditures must be supported by an appropriation. In G.S. 159-28 (b), bills, invoices, or other claims against a local government or public authority may be approved if 1) the amount is determined to be payable and 2) the budget or project ordinance includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed. Contracts, including purchase orders, must include a pre-audit certificate signed by a Finance Officer. When there is no commitment or obligation to utilize a particular contract, thus no encumbrance, the County Finance Department may take exception to the pre-audit certificate requirement and may not sign the contract.

In the event that the BOCC does not appropriate the funding needed by the County to make payments under any given contract which has a non-appropriation clause for any given fiscal year, the County will not be obligated to pay amounts due beyond the end of the last fiscal year for which funds were appropriated. In such event, the affected contract may be terminated at the discretion of the County and generally either at the end of the fiscal year for which the funds were appropriated or upon thirty (30) days written notice.

All appropriations for goods and services which have not yet been received or provided must be encumbered in one of the following methods:

1) For the purchase of commodities \$30,000 and greater, a purchase order is required. Entered into the financial system as a requisition, these are routed to PSD for formal or informal bids. PSD converts the requisition into a purchase order. A written contract is also required for the purchase of commodities over \$100,000.

- 2) For the purchase of commodities between \$1,500 and \$29,999 a departmental purchase order is required.
- 3) A General Accounting Encumbrance (GAE) is required to encumber funds for professional or non-professional services without a written contract.
- 4) A Service Contract Formal (SCF) is required to encumber funds for professional or non-professional services where a written contract has been executed.

Point of Sale Purchasing Encumbrance Exceptions

For purchases that are not witnessed by a purchase order or contract but are paid for at the point of sale with cash, or by credit or procurement card, no encumbrance is required. The expenditure however must be accounted for and recorded after the fact. In a similar instance when goods or services are purchased without a purchase order or contract and are paid for after the fact, no encumbrance is needed, although the liability must be recorded. Purchase orders and contracts will not be processed after a purchase has been made or after the goods or services have been received. The procedures for approval and processing of these reimbursements are included in the Mecklenburg County Financial Policies and Procedures Manual under “Accounts Payable, Section K”.

Procurement Cards (P-Cards)

P-Cards may be used for incidental purchases of goods or services at limits approved by a Department Director or his designee pursuant to the Mecklenburg County Procurement Card Policies and Procedures Manual. Employees using P-Cards must comply with the requirements and procedures set forth in the manual which is maintained by the County Finance Department.

P-Cards are considered an alternative payment tool and not a procurement method. Use of a P-Card does not exempt any County employee from following the requirements and procedures set forth in this Policy or the County Procurement Process and Procedure Manual for that type of purchase, nor does it exempt compliance with applicable statutes, regulations, governing board directives, policies, procedures and best practices. The County recommends to the extent possible, that Departments use informal methods of procurement such as cost comparisons and quotations when considering the use of a P-Card. Employees who have been issued a P-Card may initiate transactions in-person, by telephone, or internet, within the limits set forth in the Procurement Card Policies and Procedures Manual.

Additional information about the County’s P-Card program may be found at the following link:

<http://newmeckweb/sites/FIN/pcard/default.aspx>

PROCUREMENT THRESHOLDS AND MINIMUM REQUIREMENTS

The following thresholds and minimum requirements are established for the procurement of goods, apparatus, supplies, materials, and equipment. In all instances County Departments are responsible for adhering to thresholds and minimum requirements established in the County's MWSBE policy.

Dollar Threshold for Goods	Minimum Requirements	Responsible Party
\$0 - \$1,499	Multiple quotes not required P-Card or GAX Department purchase order optional	Authorized Department Staff
\$1,500 - \$29,999	Multiple quotes not required PD (Dept Purchase Order) Depts. may use a lower threshold.	Authorized Department Staff
\$30,000 - \$99,999	Informal bid process RQS (Requisition) Purchase Order	Authorized Department Staff PSD
\$100,000 or greater	Formal bid process BOCC Approval Contract	Department; <u>or</u> PSD (requires PSD Request Form) Department and/or PSD Authorized Department Staff in conjunction with County Legal <u>or</u> PSD (if PSD conducts solicitation process)

The following thresholds and minimum requirements are established for the procurement of construction and for architecture, engineering, and surveying services:

Dollar Threshold for Construction	Minimum Requirements	Responsible Party
\$0 - \$29,999	Best business practice based on the needs of the department	Authorized Department Staff
\$30,000 - \$499,999	Informal bid process	Authorized Department Staff
\$500,000 or greater	Formal bid process BOCC Approval Contract	Authorized Department Staff

Selection of Architect, engineer, surveyor, or construction manager at risk	Minimum Requirements	Responsible Party
Less than \$30,000	County Manager Approval Contract	Authorized Department Staff
More than \$30,000	Best Qualified Section Procedure See Exhibits F & G ³ BOCC Approval Contract	Authorized Department Staff

The following thresholds and minimum requirements are established for the procurement of non-professional and professional services including technology services:

Dollar Threshold for Services	Minimum Requirements	Responsible Party
\$0 - \$99,999	Best business practice based on the needs of the department.	Department <u>or</u> PSD (requires PSD Request Form)
\$100,000 or greater	Formal Request for Proposals (RFP)	Department <u>or</u> PSD (requires PSD Request Form)

The following thresholds and minimum requirements are established for the procurement of technology goods:

Dollar Threshold for Technology	Minimum Requirements	Responsible Party
\$0 - \$29,999	Request for technology purchase to IST.	Authorized Department Staff, IST, and/or PSD
\$30,000 - \$99,999	Request for technology purchase to IST. Informal Request for Proposals	Authorized Department Staff, IST, and/or PSD
\$100,000 or greater	Request for technology purchase to IST. Formal Request for Proposals BOCC Approval Contract	Authorized Department Staff, IST, and/or PSD Department and/or PSD

³ G.S. 143-64.32 (b) authorizes the BOCC to exempt any particular project from following this selection procedure in the discretion of the BOCC by “stating the reasons therefor and the circumstances attendant thereto.”

**Exception to bid statutes
Purchases made from North Carolina State Office of Information Technology Services State Contract are exempt from formal and informal bidding requirements and do not require approval by the BOCC. All such technology purchased from state contracts shall be at the discretion of the Authorized Department in collaboration with IST.

Selection of ESCO For Guaranteed Energy Savings Contract	Minimum Requirements	Responsible Party
Every dollar amount (these are always very large dollar contracts)	Best Qualified Section Procedure See Exhibit J BOCC Approval Contract	Real Estate Services Department

10. METHODS OF PROCUREMENT

County departments will primarily utilize two (2) methods of competitive procurement as follows:

11.1 Formal Bid Process

A formal bid process is required under the two (2) following conditions:

- 1) The purchase or lease purchase of goods, apparatus, materials, supplies and equipment requiring an estimated expenditure of \$100,000 or more; and
- 2) The purchase of construction and repair projects of \$500,000 or more.

These two categories of purchases must be procured through a **competitive bid process** in compliance with N.C. General Statute 143-129. Requirements for a Formal Solicitation are detailed in the Mecklenburg County Procurement Process and Procedure Manual.

According to G.S. 143-129 all formal bidding procedures must:

- 1) Be advertised in a newspaper having a general circulation in Mecklenburg County or by electronic means (if Board approved) or both at least seven (7) days prior to the bid opening. Advertisements must contain: a) the time and place specifications will be available; b) the time and place bids/proposals will be opened; and c) a statement reserving the right to reject any or all bids;

- 2) Bids must be submitted in a sealed opaque envelope or package to ensure that prices and terms will not be disclosed prior to the bid opening;
- 3) All bids must be opened in public and the pricing read aloud and recorded;
- 4) Proper storage and maintenance of the formal procurement documentation must be accomplished in compliance with the North Carolina Public Records Law and Retention Schedule;
- 5) Consideration of the need for bid deposits and/or performance and payment bonds must be included in the process;
- 6) Award must be made to the lowest responsible bidder taking into consideration quality, performance, and the time specified in the bids for the performance of the contract; and
- 7) The BOCC must approve all formal contracts at a duly called public meeting.

When purchasing commodities that include the trade-in of used equipment (including technology), if the trade-in value and the amount to be paid for the new equipment exceed \$100,000 combined, the formal bid process must be followed.

11.2 Informal Bid Process

An informal bid process will be used in the following conditions:

- 1) The purchase or lease purchase of goods, apparatus, materials, supplies and equipment requiring an estimated expenditure of \$30,000 to \$99,999; and
- 2) The purchase of Construction and Repair Projects costing from \$30,000 to \$499,999.

Although G.S. 143-131 does not specify any particular method for securing informal purchases, it does require that purchases or contracts 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.

While informal methods are acceptable, County departments may also choose to utilize a more formal process. If the estimated total dollar amount of an informal purchase is over \$90,000, it is recommended to proceed with a formal bid process to avoid re-bidding should all quotes received total over \$100,000.

Informal purchasing methods include the following conditions:

- Requests for quotations, with submission via fax, e-mail, telephone, and/or mail is acceptable;

- All informal quotations should be on an official quote form, a standard template, or a vendor developed form or letterhead and shall include the date of submission and a vendor signature;
- Informal purchases do not require advertisement for requests for quotes;
- Proper documentation, storage and maintenance of the informal solicitation documents in compliance with the North Carolina Public Records Law and Retention Schedule;
- Informal purchases do not require approval by the BOCC.

11.3 Request for Proposals (RFP)

G.S. 143-129.8 contains an alternative provision which gives local governments more flexibility in purchasing a combination of information technology, goods and services. The statute authorizes local governments to use a Request for Proposals (RFP) process rather than an Invitation to Bid (ITB). An RFP process may be used to purchase services as well as any combination of goods or services, particularly when the services component of the purchase is greater than the goods component.⁴ Technology and services contracts, and other contracts that include a combination of goods and services, are not necessarily well-suited or best handled using the traditional bid processes called for in G.S. 143-129, and therefore a more flexible approach by County departments is desirable. The RFP process allows the County to employ a more flexible standard of award that allows for decisions to be made based on need and/or best value, not just low bid. Section 13 of this Policy details the procedures for utilizing an RFP process.

12. CONTRACTS AND AMENDMENTS

In determining the amount of a contract for purposes of award authority or selection of a procurement process, the amount of the contract is the total of all expenditures the Department estimates it will spend over the term of the contract and any extensions that the vendor or the County has a right to exercise or anticipates entering into. Expenditures include all costs the County expects to incur for equipment, licensing fees, service fees, maintenance and support and other associated fees. For Formal Solicitations, the Request for Board Action (RFBA) must include all goods that the Department anticipates procuring over the life of the contract or any contract extension.

12.1 Contract Amendments to Add Goods

⁴ See exhibit F on the predominant aspect rule where there is a combination of goods and services that are not information technology goods and services that need to be obtained.

If the Department decides subsequent to contract award to procure additional goods that were not anticipated at the time of contract award, the amendment to add the additional goods or services will be treated as a separate contract for purposes of determining contract award authority. Notwithstanding this, if the amendment will make total expenditures under the contract exceed \$100,000, then the issue of whether to seek BOCC approval will be decided by the County Manager's Office. If the amendment in and of itself will add \$100,000 or more to the contract, the Department will need to obtain BOCC approval regardless of whether the Department anticipated making the expenditure at the time of contract award. This does not apply to construction contracts.

All amendments must be subsequently reviewed and approved by the original signing authority. At the discretion of the County Manager's Office, certain contracts originally approved by the BOCC may be processed through the County Manager's Office if substantive changes are not required. This excludes construction projects provided that the appropriation of additional funds is not necessary. In general, all amendments modifying the term, the price, the scope, and certain terms and conditions must be approved by the BOCC. Splitting purchases to avoid either the formal bidding or contract approval processes will constitute a violation of this policy and possibly G.S. 143-133.

12.2 Contract Extensions and Renewals

Contract extension and renewal options and anticipated amendments shall be counted in calculating the total amount of a contract when considering whether or not BOCC approval is required. For Formal Solicitations, the Department should ask BOCC to approve the contract and authorize the exercise of all options and extensions that the Department expects to enter into.

12.3 Contract Award Authority Violations

Failing to take into account all costs associated with a contract or dividing a contract for the purpose of circumventing the requirements set forth in this Section constitutes a violation of this Policy and may also constitute a violation of G.S. 143-133. Violations of the requirements set forth in this section will be reported to the County Manager's Office and referred to Internal Audit for review.

12.4 Contract Terminations

Department Directors are authorized to terminate contracts that have been approved by the County Manager or Designee, except when termination payments are required, excluding those for goods and services already received. Contract terminations that trigger termination payments require the review and approval of the County Attorney. Contracts that have been approved by the BOCC will have to be taken to the BOCC for approval to terminate. Contract terminations must be in writing.

12.5 Countywide Master Contracts

Every effort must be made to purchase from master contracts. The contracts have been through the formal solicitation process and negotiated discounts have been secured. A list of these vendors is posted on the City's website at the link below.

<http://cnet/KBUs/BSS/psd/Pages/default.aspx>

12.6 Insurance Requirements for Contracts

The Risk Management Division of the City of Charlotte Finance Department provides insurance and risk management services to the County. Insurance requirements for contracts will vary depending on the good or service being procured. The County Attorney determines which contracts require the approval of the Risk Management Department. Exhibit E provides general information on insurance requirements for contracts.

13. SERVICES

Non-professional or professional services (other than construction), are distinguished by the provision of personal performance rather than the delivery of a tangible item. Although the procurement of services greater than \$100,000 is not governed by G.S. 143-129, these procurements must undergo an RFP process. Services exempt from the RFP requirement include those human services for which continuum of service delivery is paramount, competition will not yield significant benefits or when only a single vendor can provide a specific service. However, the County desires to take advantage of a flexible approach and allow County departments to procure services under \$100,000 with or without a process. However, best business practices strongly suggest that testing the market for competitive pricing and creative solutions are beneficial.

In some cases, a Department may need to purchase a combination of goods and services in a single procurement. In determining whether or not a purchase is subject to a mandatory procurement process, the predominant aspect review must be applied. The predominant aspect review will determine which element, goods or services constitute the larger portion of the cost. The element constituting the larger portion is the predominant aspect and the procurement method associated with that aspect must be followed. See Exhibit F for additional information on the predominant aspect review.

County departments are encouraged to competitively solicit bids or proposals when there is a competitive market for the service and when it is in the best interest of the County. Although no procurement process is required for service procurements under \$100,000, County departments may choose to utilize any formal or informal method of procurement for services. The standard for services contracting should be based on the "best value" or best overall proposal or solution.

For services contracts, consider the following:

- 1) Issuance of a Request for Proposals (RFP) is the preferred method when and if a County department chooses to use a more formal competitive solicitation process;
- 2) The procedures for advertising and proposal opening are flexible;

- 3) The selection criteria in an RFP may be more subjective than that allowed in an ITB, and factors other than price may be considered;
- 4) Negotiation is allowed, and the County has more flexibility in waiving adherence to RFP requirements;
- 5) Award of service contracts may be based on factors other than cost and responsiveness with such factors as vendor experience, qualifications, and solution possible taking precedence over price;
- 6) A Department may waive the issuance of a competitive solicitation for a services contract when it is in the County's best interest to do so;
- 7) Services contracts, regardless of the amount, do not require Board approval if funds have been appropriated; and
- 8) The County Manager is authorized to approve, award and execute all services contracts.

13.1 Determining "Best Value" in Procurements

In determining "best value" in procurements, consider the following:

- 1) The purchase price;
- 2) The reputation of the vendor and the vendor's goods and/or services;
- 3) The quality of the vendor's goods and/or services;
- 4) The extent to which the goods and/or services meet County needs;
- 5) The vendor's past relationship with the County;
- 6) The impact on the ability of the County to comply with the laws and rules regarding the procurement of goods and/or services;
- 7) The total long-term cost to the County of acquiring the goods and/or services;
- 8) The material used in repairing goods and/or property;
- 9) Adherence with the County Environmental Policy regarding purchase of Environmentally Preferable Products; and
- 10) Any other relevant factor regarding the particular good and/or service.

13.2 Independent Contractors or Former County Employees

County departments requiring the services of independent contractors and/or former employees should refer to the Contractor Checklist to determine the status and ensure compliance with the Internal Revenue Employee Service requirements. According to the IRS regulations, when an independent contractor or a former employee is engaged to provide services, Mecklenburg County must determine whether they should be classified as an employee subject to withholding tax, or as an independent contractor. Determining independent contractor status is driven by facts and circumstances. The facts and circumstances that make one individual an independent contractor may differ from those that make another individual an employee.

See Appendix G for the Independent Contractor checklist.

14. TECHNOLOGY

The Information Services & Technology Department (IST) is responsible for procurement, including the bidding process, for all County technology items. Requests to purchase technology items from the approved Internal Service Requests list should be made to IST's Office of Asset and Procurement Management, which will coordinate the purchase. In order to assure efficient and appropriate deployment of technology items using their operating budget, Departments must go through the IST review process when they wish to purchase technology items. This includes items to be purchased with a P-Card. Any technology (hardware and/or software), that can or must be connected to and/or installed to a PC, Laptop, Printer, and/or the network, must be bought through IST. Technology which is not being purchased with County funds and will not be owned by the County does not require the approval of IST, unless the item/s will be connected to the County network and/or used by County staff for County work. County funds are defined as any funds, grant or otherwise, that have been deposited into a Mecklenburg County account. County ownership is defined as any asset that is bought with County funds, where the County takes title of the asset, which does not have a board action specifying ownership outside the County. Example: "Community Alternatives Program - for Mentally Retarded or Developmentally Disabled": AMH has a BOCC authorization for this program, which allows them to buy a PC for a client to use in their home. The PC is bought in the name of the client, thus the County never has title to the PC.

County departments are subject to the following procedural requirements:

- 1) All Departments must submit to IST a request for procurement of all technology items with a brief justification with the source of funds identified;
- 2) IST will review Department requests and provide recommendations as to the best solution for the stated need; and
- 3) Once a solution is agreed upon, IST will procure the technology item and handle installation.

15. PROCUREMENT EXEMPTIONS

G.S. 143-129 defines a number of exemptions to the competitive bidding requirements. The following categories of purchases are exempt from both the formal and informal bidding requirements established in G.S. 143-129. However, the following list is just a shorthand statement of the categories which are exceptions to the competitive bidding requirements. Before attempting to make purchases using these exceptions, read the relevant sections of the statute contained in exhibit B very carefully as this statute provides additional guidance and limitations as to the use of these exceptions. Items 1) through 11) are found in G.S. 143-129 (e). Statutory guidance as to the other items is found in the statutes listed beside the item.

- 1) Purchases from other units of government;
- 2) Emergencies;
- 3) Group or Cooperative Purchasing Programs;

- 4) Change Order Work;
- 5) Gas, Fuel, and Oil;
- 6) Sole Source Purchases;
- 7) Information Technology Goods and Services awarded by the North Carolina Office of Information Technology Services;
- 8) Guaranteed Energy Savings Contracts; (See also G.S. 143-129.4)
- 9) State Contract Purchases;
- 10) Federal Contract Purchases
- 11) Purchase of Used Goods;
- 12) Construction Management at Risk;
- 13) Previously Bid or “Piggybacking” Contracts; (See G.S. 143-129 (g))
- 14) Solid Waste Management Facilities; (See G.S. 143-129.2)
- 15) Use of Unit’s Own Forces (force account work); (See G.S. 143-135 & SL 2009-250)⁵ and
- 16) Purchases of Goods and Services from Nonprofit Work Centers for the Blind and Severely Disabled. (G.S. 143-129.5)

Five of the most common exemptions are described below. 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 procurements under these exemptions.

Sole Source. This exemption applies to the solicitations of goods both formal and informal 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.

Sole source purchases of goods totaling \$30,000 or more must be supported by a Sole Source Justification Form, (See Exhibit H). The Sole Source Justification Form must be completed and approved by a Department Director or designee prior to submission to PSD. PSD will review all Sole Source Justification Forms for compliance with the Mecklenburg County Process and Procedure Manual and state law, provide an indication of concurrence or non-concurrence, ensure application of the required procedures, and maintain the sole source justification documentation. Departments that seek to purchase goods as a sole source procurement not initiated by PSD must: (a) ensure the correct application of the sole source exception, (b) complete and submit to PSD a Sole Source Justification Form and (c) maintain all required documentation as detailed in the

⁵ SL 2009-250 increases just for Mecklenburg County the force account limit to \$300,000, but only for nonutility construction or repair work for park and greenway projects.

Mecklenburg County Procurement Process and Procedure Manual. Sole source purchases are subject to review by Internal Audit.

A sole source determination is valid for either the term of the written contract if one has been executed or until the purchase order is closed.

Sole source procurements require approval by the BOCC.

Cooperative Purchasing Programs. This exemption allows Departments, under the appropriate circumstance, to utilize cooperative purchasing programs. Cooperative purchasing programs are formally organized programs that offer contracts that have been competitively bid on behalf of multiple entities that result in discount prices. Cooperative agreements may be prepared by PSD or by other local, state, or national entities. In order for a cooperative purchasing program to be considered a legitimate and appropriate procurement method, the contract that the County desires to purchase under must have been competitively bid, and must meet or exceed County needs related to specification, availability and cost per the Mecklenburg County Procurement Process and Procedure Manual.

These procurements do not require the approval of the Board of County Commissioners.

State Contract Purchases. [G.S. 143-129 (e)(9)] Departments may utilize State of North Carolina contracts to procure items available under contracts awarded by a North Carolina State agency if the vendor is willing to extend to the County the same or more favorable prices, terms and conditions. Before purchasing from a North Carolina State contract, however, Departments should conduct enough investigation to ensure that the specifications, terms and conditions, and pricing meet or exceed what might be available through an internal procurement process per the Mecklenburg County Procurement Process and Procedure Manual.

These procurements do not require the approval of the Board of County Commissioners.

Federal Contract Purchases. [G.S. 143-129 (e)(9a)] Departments may utilize contracts established by the United States of America or any federal agency, if the vendor is willing to extend to the County the same or more favorable prices, terms and conditions. As is the case with North Carolina State contracts, before purchasing from a federal contract, Departments should conduct enough investigation to ensure that the specifications, terms and conditions, and pricing meet or exceed what might be available through an internal procurement process per the Mecklenburg County Procurement Process and Procedure Manual.

These procurements do not require the approval of the Board of County Commissioners.

Piggybacking. [G.S. 143-129(g)] **THIS EXCEPTION ONLY NEEDS TO BE USED WHEN PURCHASING FROM A STATE OR SUBDIVISION OF A STATE OTHER THAN NORTH CAROLINA, AND THEN ONLY WHEN THE PURCHASE IS NOT BEING MADE UNDER THE COOPERATIVE PURCHASING EXCEPTION IN G.S. 143-129(e)(3).** Piggybacking allows Departments to purchase goods without bidding from a person or entity that has, within the past twelve months, contracted to furnish an item to any other state public agency, including subdivisions, anywhere in the country. 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. Additional requirements apply, such as approval by the BOCC, as outlined in the Mecklenburg County Procurement Process and Procedure Manual.

Emergencies. [G.S. 143-129 (e)(2)] Departments are not required to utilize formal bidding processes when a special emergency is in effect, such that the health and safety of the people or their property are in jeopardy. Purchases needed in response to a natural disaster or other sudden and unforeseeable situations most closely reflect the intent of the emergency exemption. Emergency procurements must be approved by the County Manager's Office.

The North Carolina Supreme Court has interpreted the emergency exemption to the bid statutes very narrowly, and the situations in which it may legitimately be used are rare. The requirements for invoking the emergency exemption are:

- 1) The emergency must be present, immediate and existing;
- 2) The harm must be one that cannot be averted through temporary measures;
- 3) The emergency cannot be self created due to failure to take precautions.

Purchase of Used Goods: [G.S. 143-129(e)(10)] Local governments may purchase used apparatus, supplies, materials or equipment without complying with the competitive bidding requirements. This exception recognizes the situation that usually exists with used equipment, which is that each item is unique in terms of age and condition, making bidding impractical. The exception does not apply, however, to remanufactured, refabricated, or "demo" items. For purposes of this exception, the statute defines a "demo" item as one that is used for demonstration and is sold by the manufacturer or retailer at a discount.

These procurements do not require the approval of the Board of County Commissioners.

16. ENVIRONMENTAL CONSIDERATIONS

The BOCC has requested inclusion of environmental considerations in purchasing decisions for goods and services.

In 2004, the BOCC created an Environmental Leadership Team to advise and guide the County in environmental initiatives that will set an example for public and private sector organizations in our region. An Environmental Leadership Policy and associated action plan provide the principles and guidance for recurring activities of the County that will improve its environmental performance. This policy furthers the County's goal to be the "best local government service provider."

You may find the Environmental Leadership Policy at the following link:

<http://www.charmeck.org/Departments/LUESA/Environmental+Leadership+Policy.htm>

17. MINORITY, WOMEN AND SMALL BUSINESS ENTERPRISES

The goal of the MWSBE Program is to provide minority-owned, women-owned and small business enterprises (collectively "MWSBE") as well as other responsible vendors with a fair and reasonable opportunity to participate in the County's business opportunities. County staff involved in the procurement of goods and services greater than \$1,000 are expected to make good faith efforts to utilize MWSBE vendors in according the procedures outlined in the MWSBE Program Policy. Department Directors shall be solely accountable for adhering to these procedures.

A complete copy of this policy may be found at the following link:

<http://newmeckweb/sites/MWSBE/shared%20documents/Forms/AllItems.aspx>

18. BUY AMERICAN

The BOCC adopted a policy directing County employees procuring or contracting for goods, supplies, materials or equipment to give preference as far as may be practicable to products manufactured in the United States of America.

See Appendix I for the Buy American Policy.

19. ETHICS AND CONFLICTS

All County employees involved in procurement activities must at all times:

- 1) act responsibly;
- 2) conduct business honestly;
- 3) avoid wasteful and impractical purchasing practices;
- 4) avoid real or perceived conflicts when conducting business on the County's behalf;
- 5) comply with all applicable federal, state or local laws or regulations;

- 6) comply with the County's Code of Ethics and any other applicable County policies;
- 7) maintain fiduciary responsibility and integrity; and
- 8) advise departmental personnel of expected professional standards of ethical and legal behavior and comply during any procurement activities.

20. COUNTY DEPARTMENTAL RESPONSIBILITIES

Department Directors and their designees are responsible for proactively managing procurement activities within their departments by:

- 1) Ensuring all procurement activities for goods, construction, technology and services are conducted in accordance with this Policy, all applicable state statutes, executive rulings, and the procedures and best business practices identified in the Mecklenburg County Procurement Process and Procedure Manual;
- 2) Ensuring available funding to meet encumbrance requirements for planned purchases and obtaining required approval for purchases;
- 3) Entering into contracts that are in the County's best interest;
- 4) Ensuring the appropriate utilization of competitively bid local, state, or national contracts when the specifications, terms and conditions, and pricing meet or exceed the Department's requirements;
- 5) Collaborating with PSD to develop contracts that meet department-specific, or countywide needs and requirements while also promoting economies of scale and volume discounting;.
- 6) Ensuring the procurement process is not manipulated in such a way as to circumvent BOCC approval or signature authority thresholds;
- 7) Working with the County's MWSBE Program to establish appropriate subcontracting goals and making efforts to seek out and include certified minorities and other County-identified socioeconomic groups as appropriate;
- 8) Promoting inclusion of environmental purchasing initiatives pursuant to the County's environmental policy;
- 9) Ensuring compliance with the procedures for utilizing procurement cards as set forth in the County's Procurement Card Policy and Procedures Manual; and
- 10) Ensuring the retention and maintenance of all relevant documentation, as required by the North Carolina Public Records Law and Retention Schedule, related to procurements made independent of PSD.

21. CITY-COUNTY PROCUREMENT SERVICES DIVISION RESPONSIBILITIES

The City-County Procurement Services Division is responsible for:

- 1) Ensuring that purchasing and contracting activities performed by PSD are established in the best interests of the County and in accordance with current federal, state and local laws and County policies and ordinances;
- 2) Administering and maintaining the Mecklenburg County Procurement Process and Procedure Manual consistent with current federal, state, and local laws, County policies, and procurement industry best practices, and advising Department employees of acceptable procurement procedures and practices as outlined in the manual;
- 3) Identifying and referring policy violations to the County Manager's Office, the County Finance Department, and/or Internal Audit, at the discretion of the County Manager's Office;
- 4) Advertising and promoting acceptable stand alone or countywide contracts that may be utilized by all Departments;
- 5) Ensuring the timely review of requisitions and processing purchase orders;
- 6) Working collaboratively with Department staff throughout the fiscal year to review procurement needs, determine vendor usage and spending totals, and to establish contracts that promote economies of scale and provide savings; and
- 7) Retaining and maintaining all relevant documentation, as required by the North Carolina Public Records Law and Retention Schedule, for procurements managed by PSD.

22. COMPLIANCE AND MONITORING

The County Finance Department and PSD will provide oversight for compliance and reporting related to countywide procurement activities in the following manner:

- 1) The County Finance Department and PSD will meet with County departments on an annual basis to discuss contracting opportunities and needs with the goal of working collaboratively towards application of compliance with this policy.
- 2) The County Finance Department and PSD will utilize various reporting capabilities to determine vendor spending totals within each Department and countywide throughout the year.
- 3) The County Finance Department and PSD will review expenditures on a quarterly and random basis to determine the need and feasibility of combining certain goods and services under countywide contracts in order to realize economies of scale and cost savings for all Departments.
- 4) The County Finance Department and PSD will contact Departments that are utilizing vendors with mid-year expenditures of more than \$50,000 to inquire if the expenditures will continue and if total expenditures for the vendors are expected to exceed \$100,000 for all Departments.

- 5) The County Finance Department and PSD will refer inappropriate spending activity identified through quarterly, mid-year, and annual reporting that is in violation of this policy to the County Manager's Office and Internal Audit for review and monitoring.
- 6) The County Finance Department, PSD, and Internal Audit will be responsible for reporting non-compliance with this policy to the County Manager.

EXHIBIT A DEFINITIONS

A Legal Guide to Purchasing and Contracting for North Carolina Local Governments: A comprehensive volume, written by Frayda S. Bluestein and published by the UNC School of Government that explains and interprets North Carolina law on purchasing and contracting.

Architectural, Surveying and Engineering Services: Contracts performed by private consulting firms as agents of Mecklenburg County including feasibility studies, planning, design, testing, and construction administration or management services.

Best Value: Means the overall combination of quality, price, and various elements of required services that in total are optimal relative to the County's needs.

Bidder: Any person, firm, partnership, corporation, association, or joint venture seeking award of a public contract or subcontract with the Mecklenburg County, or their agents.

Board of Mecklenburg County Commissioners (BOCC): The governing board of Mecklenburg County.

Change Order Work: A change in the original construction plans due to unanticipated circumstances that arise after the work is under way, are incorporated into the original contract through the use of a written change order. The change order must describe the additional or revised work undertaken in writing.

Construction: Means building, altering, repairing, or improving any structure, building, road, drainage, or sanitary facility, and any draining, dredging, excavation, grading or similar work upon real property. [Demolition of a structure or building is not classified as construction and contracts for demolition work are normally awarded using the RFP process.]

Contract: A legally binding agreement through which the Mecklenburg County agrees to procure goods or services. Contracts do not include financial partner agreements that the Mecklenburg County enters into with non-profit organizations to provide services to the community.

Decentralized Purchase Order (PD): A legal contract document issued to a vendor for the purchase of goods or services less than \$30,000 by the Department.

Encumbrance: Expenditure commitments created by purchase orders or contracts that have been issued, but for which no goods or services have been received. Encumbrances become expenditures and liabilities only if goods or services are actually provided or rendered.

Formal Solicitation: A competitive procedure required for awarding contracts equal to or exceeding \$100,000. The requirements for a Formal Solicitation are described in Sections 6.1. and 6.2. of this Policy, and vary based on whether the Mecklenburg County is procuring goods or services.

Goods: All apparatus, supplies, materials or equipment within the meaning of N.C. General Statute 143-129.

Informal Solicitation: Procedure used for expenditures exceeding \$30,000 but less than \$100,000. The requirements for an Informal Solicitation are described in Section 6.3. of this Policy, and vary based on whether the Mecklenburg County is procuring goods or services.

Invitation to Bid: The solicitation document utilized to solicit bids in the formal, sealed bid procedure and all documents attached or incorporated by reference. ITBs are not used for services.

IT Asset: Items that must be purchased through IST to include any hardware and/or software that can or must be connected to or installed to a PC, Laptop, Printer, and/or the network. Exceptions include Flash Memory (Compact flash, USB thumb drives, SD cards, memory sticks), Monitor privacy or glare screens, printer ink and toner cartridges, blank CDs, DVDs, and floppy disks. For additional clarification, please email APM@MecklenburgCountyNC.gov.

Minority and Women Owned/ Small Business Development (MWSBE): A Mecklenburg County program responsible for ensuring maximum utilization of minority-owned, women-owned and small business enterprises firms in all areas of Mecklenburg County procurement.

Piggybacking: To purchase, without bidding, from a person or entity that has, within the past twelve months, contracted to furnish an item to any other public agency following a procurement process substantially similar to that required by North Carolina law.

Procurement: Purchasing, leasing, contracting or otherwise acquiring goods or services.

Purchase Order (PO): A legal contract document issued to a vendor for the purchase of goods or services more than \$30,000 by BSS/Procurement Services Division.

Requisition (RQS): A request for procurement of purchases more than \$30,000.

Request for Proposals (RFP): The solicitation document typically utilized to solicit written proposals from vendors for the provision of services.

Request for Quote (RFQ): Informal procurement procedure for expenditures under \$100,000.

Responsive Bidder: Means an individual, company, firm, corporation, partnership or other organization who has submitted a bid which conforms in all material respects to the Invitation to Bid or Request for Proposals and further, who has the capability in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance.

Services: All services of any kind or nature, calling for personal performance of work, provided, however, services for construction work, and for architecture, engineering, surveying or construction manager at risk services are subject to special procurement rules as stated in this policy.

Sole Source: Purchases made without formal bidding wherein performance or price competition is not available, a needed product is available from only one source, or standardization or compatibility is the overriding consideration.

- EXHIBIT B

NORTH CAROLINA GENERAL STATUTE 143-129

§ 143-129. Procedure for letting of public contracts.

(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than five hundred thousand dollars (\$500,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars (\$90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with; provided that The University of North Carolina and its constituent institutions may award contracts for construction or repair work that requires an estimated expenditure of less than five hundred thousand dollars (\$500,000) without complying with the provisions of this section.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager, school superintendent, chief purchasing official, or other employee the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body.

(b) Advertisement and Letting of Contracts. – Where the contract is to be let by a board or governing body of the State government or of a State institution, proposals shall be invited by advertisement in a newspaper having general circulation in the State of North Carolina. Where the contract is to be let by a political subdivision of the State, proposals shall be invited by advertisement in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to advertise solely by electronic means, whether for particular contracts or generally for all contracts that are subject to this Article, shall be approved by the governing board of the political subdivision of the State at a regular meeting of the board.

The advertisements for bidders required by this section shall appear at a time where at least seven full days shall lapse between the date on which the notice appears and the date of the opening of bids. The advertisement shall: (i) state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials, or equipment may be had; (ii) state the time and place for opening of the proposals; and (iii) reserve to the board or governing body the right to reject any or all proposals.

Proposals may be rejected for any reason determined by the board or governing body to be in the best interest of the unit. However, the proposal shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or political subdivision thereof may assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefore except under provisions of this Article.

All proposals shall be opened in public and the board or governing body shall award the contract 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.

In the event the lowest responsible bids are in excess of the funds available for the project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and

specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work or provide the apparatus, supplies, materials, or equipment at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project or purchase within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefore.

No proposal for construction or repair work may be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed and the opening of an envelope or package with knowledge that it contains a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a Class 1 misdemeanor.

(c) Contract Execution and Security. – All contracts to which this section applies shall be executed in writing. The board or governing body shall require the person to whom the award of a contract for construction or repair work is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and the contract shall not be altered except by written agreement of the contractor and the board or governing body. The surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, the board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

(d) Use of Unemployment Relief Labor. – Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

(e) Exceptions. – The requirements of this Article do not apply to:

- (1) The purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment from: (i) the United States of America or any agency thereof; or (ii) any other government unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may designate any officer or employee of the State or political subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment, or other property owned by: (i) the United States of America or any agency thereof; or (ii) any other governmental unit or agency thereof within the United States. The Secretary of Administration or the governing board of any political subdivision of the State may authorize the officer or employee to make any partial or down payment or payment in full that may be required by regulations of the governmental unit or agency disposing of the property.
- (2) Cases of special emergency involving the health and safety of the people or their property.
- (3) Purchases made through a competitive bidding group purchasing program, which is a formally organized program that offers competitively obtained purchasing services at discount prices to two or more public agencies.
- (4) Construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section.
- (5) Purchase of gasoline, diesel fuel, alcohol fuel, motor oil, fuel oil, or natural gas. These purchases are subject to G.S. 143-131.
- (6) Purchases of apparatus, supplies, materials, or equipment when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. Notwithstanding any other provision of this section, the governing board of a political subdivision of the State shall approve the purchases listed in the preceding sentence prior to the award of the contract.

In the case of purchases by hospitals, in addition to the other exceptions in this subsection, the provisions of this Article shall not apply when: (i) a particular medical item or prosthetic appliance is needed; (ii) a particular product is ordered by an attending physician for his patients; (iii) additional products are needed to complete an ongoing job or task; (iv) products are purchased for "over-the-counter" resale; (v) a particular product is needed or desired for experimental, developmental, or research work; or (vi) equipment is already installed, connected, and in service under a lease or other agreement and the governing body of the hospital determines that the equipment should be purchased. The governing body of a hospital shall keep a record of all purchases made pursuant to this subdivision. These records are subject to public inspection.

- (7) Purchases of information technology through contracts established by the State Office of Information Technology Services as provided in G.S. 147-33.82(b) and G.S. 147-33.92(b).
 - (8) Guaranteed energy savings contracts, which are governed by Article 3B of Chapter 143 of the General Statutes.
 - (9) Purchases from contracts established by the State or any agency of the State, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the State contract.
 - (9a) Purchases of apparatus, supplies, materials, or equipment from contracts established by the United States of America or any federal agency, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the federal contract.
 - (10) Purchase of used apparatus, supplies, materials, or equipment. For purposes of this subdivision, remanufactured, refabricated or demo apparatus, supplies, materials, or equipment are not included in the exception. A demo item is one that is used for demonstration and is sold by the manufacturer or retailer at a discount.
 - (11) Contracts by a public entity with a construction manager at risk executed pursuant to G.S. 143-128.1.
 - (12) **(Repealed effective July 1, 2011)** Build-to-suit capital leases with a private developer under G.S. 115C-532.
- (f) Repealed by Session Laws 2001-328, s. 1, effective August 2, 2001.
- (g) Waiver of Bidding for Previously Bid Contracts. – When the governing board of any political subdivision of the State, or the person to whom authority has been delegated under subsection (a) of this section, determines that it is in the best interest of the unit, the requirements of this section may be waived for the purchase of apparatus, supplies, materials, or equipment from any person or entity that has, within the previous 12 months, after having completed a public, formal bid process substantially similar to that required by this Article, contracted to furnish the apparatus, supplies, materials, or equipment to:
- (1) The United States of America or any federal agency;
 - (2) The State of North Carolina or any agency or political subdivision of the State; or
 - (3) Any other state or any agency or political subdivision of that state, if the person or entity is willing to furnish the items at the same or more favorable prices, terms, and conditions as those provided under the contract with the other unit or agency. Notwithstanding any other provision of this section, any purchase made under this subsection shall be approved by the governing body of the purchasing political subdivision of the State at a regularly scheduled meeting of the governing body no fewer than 10 days after publication of notice that a waiver of the bid procedure will be considered in order to contract with a qualified supplier pursuant to this section. Notice may be published in a newspaper having general circulation in the political subdivision or by electronic means, or both. A decision to publish notice

solely by electronic means for a particular contract or for all contracts under this subsection shall be approved by the governing board of the political subdivision. Rules issued by the Secretary of Administration pursuant to G.S. 143-49(6) shall apply with respect to participation in State term contracts.

(h) Transportation Authority Purchases. – Notwithstanding any other provision of this section, any board or governing body of any regional public transportation authority, hereafter referred to as a "RPTA," created pursuant to Article 26 of Chapter 160A of the General Statutes, or a regional transportation authority, hereafter referred to as a "RTA," created pursuant to Article 27 of Chapter 160A of the General Statutes, may approve the entering into of any contract for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without competitive bidding and without meeting the requirements of subsection (b) of this section if the following procurement by competitive proposal (Request for Proposal) method is followed.

The competitive proposal method of procurement is normally conducted with more than one source submitting an offer or proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, all of the following requirements apply:

- (1) Requests for proposals shall be publicized. All evaluation factors shall be identified along with their relative importance.
- (2) Proposals shall be solicited from an adequate number of qualified sources.
- (3) RPTAs or RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal.
- (4) The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal may not be disclosed to other offerors during any period of negotiation or discussion.
- (5) The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered.

The contents of the proposals shall not be public records until 14 days before the award of the contract.

The board or governing body of the RPTA or the RTA shall, at the regularly scheduled meeting, by formal motion make findings of fact that the procurement by competitive proposal (Request for Proposals) method of procuring the particular apparatus, supplies, materials, or equipment is the most appropriate acquisition method prior to the issuance of the requests for proposals and shall by formal motion certify that the requirements of this subsection have been followed before approving the contract.

Nothing in this subsection subjects a procurement by competitive proposal under this subsection to G.S. 143-49, 143-52, or 143-53.

RPTAs and RTAs may adopt regulations to implement this subsection. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1; 1985, c. 145, ss. 1, 2; 1987, c. 590; 1987 (Reg. Sess., 1988), c. 1108, ss. 7, 8; 1989, c. 350; 1993, c. 539, s. 1007; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 367, s. 6; 1997-174, ss. 1-4; 1998-185, s. 1; 1998-217, s. 16; 2001-328, s. 1; 2001-487, s. 88; 2001-496, ss. 4, 5; 2005-227, s. 1; 2006-232, s. 2; 2007-94, s. 1; 2007-322, s. 4; 2007-446, s. 6.)

EXHIBIT C

PROCEDURE FOR SELECTION OF ARCHITECTS COMMITTEE

Purpose

By Board of County Commissioner policy the Selection of Architects Committee recommends to the Board of County Commissioners those Consultants selected for award of contracts on public projects except where the estimated fee is less than \$30,000 or where the Board of County Commissioners exercises its right under G.S. 143-64.32 to exempt the selection from the requirements of G.S. 143-64.31. It provides the government with the services of the most qualified Architectural and Landscape Architectural firms at a professional fee that is fair and reasonable to the taxpayer. This Committee functions under the authority of G.S. 143-64.31.

Selection Committee

The selection of Architects and Landscape Architects Committee is composed of the Mecklenburg County Manager (or his designee), two Mecklenburg County Commissioners (alphabetically on a rotating basis for all nine members), the Director of Real Estate Services (or his designee), the head of the agency which will occupy the facility or head of the agency which will maintain and operate the structure, and a General contractor appointed by the Board of County Commissioners for a term of one year. In no event will the final interview of architects and landscape architects take place unless at least one member of the Mecklenburg County Board of Commissioners is sitting on the Selection Committee.

Selection Procedure

(A) Expression of Interest by Architectural and Landscape Architectural Firms - Firms interested in providing services to Mecklenburg County should write a letter to the Director of Real Estate Services expressing their interest in being considered for County work. This letter should contain or be accompanied by general information about the firm, limited to not more than two pages. This expression of interest will be updated periodically by the Architectural and Landscape Architectural firms.

(B) Announcement of Projects - When Architectural and Landscape Architectural services are desired for a specific project, firms having expressed an interest in working with the County will be notified in writing and invited to submit their Statements of Qualification to the Selection Committee, with supporting data, as they relate to the project. This notification should include a description of the project, its location, the scope of services required, the estimated construction cost, the proposed completion date and a description of any special requirements or unique features. Firms interested in the project will respond to the announcement with descriptions of their firm and Statements of Qualification with supporting documentation, as they relate to the proposed project.

(C) Initial Qualification - The Selection Committee will review all responses and determine those best qualified to perform the services for the project under consideration. The Selection Committee may also choose to list a group of architectural and/or landscape architectural firms qualified to perform services on a list of projects such as park bond referendum projects. The Selection Committee may conduct oral interviews if the Committee considers such "interviews necessary prior to making a final recommendation.

(D) Interview – If the Selection Committee determines to interview firms then the Committee would then meet with the firms selected for interview to make an in depth appraisal of their capabilities to perform the work and to assess their capability to organize and provide the services. Interview times may vary, depending on the scope of the project, from 30 to 50 minutes.

(E) Ranking/Listing Top Firms - The Selection Committee will then document the ranking in order of qualification of at least two firms considered to be the most highly qualified to perform the required services on the specific project described in the Request for Qualifications (RFQ). If the RFQ is for a multiple projects, or for a group of projects such as park bond projects, the Selection Committee will submit a list of firms to the Board of County Commissioners that are considered to be qualified to perform work on the projects. The following criteria will be used to rank and list firms:

1. Capacity and capability of the firm to perform the work within the time limits set forth.
2. Specialized design and technical competence of the firm including;
 - a. Previous experience on work of comparable type and scope.
 - b. Its approach to providing architectural and landscape architectural services and the experience and background of the firm providing the services.
 - c. The identification and qualifications of key personnel to be assigned to the project(s), with particular emphasis on the technical knowledge, judgment, skill and decision making capabilities of the Project Director.
3. Record of performance on previous contracts with the County, other government agencies and private industry with respect to such factors as;
 - a. Quality of work
 - b. Ability to control; cost (low bids within the established budget)
 - c. Ability to maintain time schedules.
 - d. Ability to work with the Owner in arriving at a solution that meets the needs of the project
 - e. Skill and management of the design and construction process.
4. The volume of work previously awarded the firm by the County, with the objective of affecting an equitable distribution of contracts among qualified firms and assuring that the interest of the public is having available a substantial number of qualified firms is protected, provided however, that the principal of selection of the most qualified firms is not violated.

5. General characteristics such as integrity, standing in the profession and, community, business acumen, creativity and ability to cooperate with all those involved in the project.

(F) Selection –The County Commissioners would then consider the Selection Committee recommendation and upon approval authorize the County Manager to negotiate a contract(s) with the top ranked firm for a specific project, or with one of the firms on a list of firms selected to work on multiple projects and/or on park bond projects.

Negotiations

(A) Individual Projects: The County Manager would then conduct negotiations with the top ranked firm on the scope of work and professional compensation. If a mutually satisfactory contract cannot be negotiated with that firm, the Manager will formally terminate negotiations and notify the firm. Negotiations would then be initiated with the firm ranked second and this procedure continued until a mutually satisfactory contract has been negotiated.

(B) Multiple projects (groups of projects and/or park bond projects): For multiple projects or park bond projects, the County Manager will determine which firms are best qualified to perform work on specific projects from the approved qualified firms list described in (E) above, along with any other special criteria which may be set forth in the announcement of the projects.

The County Manager would then conduct negotiations with the chosen firm on the scope of work and professional compensation. If a mutually satisfactory contract cannot be negotiated with that firm, the Manager will formally terminate negotiations and notify another of the firms on the approved list. Negotiations would then be initiated with that firm and this procedure continued until a mutually satisfactory contract has been negotiated. The County reserves the right to choose any of the firms on the approved list.

Rotation of Work

Mecklenburg County believes it is in the public interest to effect an equitable distribution of contracts among qualified firms, provided, however, that the principle of selection of the most highly qualified firms is not violated. The volume of work previously awarded a firm shall be a factor in the selection of a firm. Since all firms will not have the capabilities or specialized expertise to handle every job, this policy does not prevent consideration of firms who have been awarded County contracts in previous years. Consideration will be given to firms that have not previously worked for the County and newly formed firms will be given consideration to demonstrate their abilities and quality of services.

EXHIBIT D

PROCEDURE FOR SELECTION OF ENGINEERS AND SURVEYORS COMMITTEE

Purpose

By Board of County Commissioner policy the Selection of Engineers and Surveyors Committee recommends to the Board of County Commissioners those Consultants selected for award of contracts on public projects except where the estimated fee is less than \$30,000 or where the Board of County Commissioners exercises its right under G.S. 143-64.32 to exempt the selection from the requirements of G.S. 143-64.31. It provides the government with the services of the most qualified Engineering or surveying firm at a professional fee that is fair and reasonable to the taxpayer. This Committee functions under the authority of G.S. 143-64.31

Selection Committee

The selection of Engineers and Surveyors Committee is composed of the Director of Real Estate Services (or his designee) one Professional Engineer (P.E.) appointed by the Board of County Commissioners and an appropriate number of client representatives or Assistant County Managers.

Selection Procedure

(a) Expression of Interest by Engineering and Surveying Firms - Firms interested in providing services to Mecklenburg County should write a letter to the Director of Real Estate Services expressing their interest in being considered for County work. This letter should contain or be accompanied by general information about the firm, limited to not more than two pages. This expression of interest will be updated periodically by the Engineering and Surveying firms.

(b) Announcement of Projects - When Engineering and Surveying services are desired for a specific project, firms having expressed an interest in working with the County will be notified in writing and invited to submit to the selection committee statements of qualification, with supporting data, as they relate to the project. This notification should include a description of the project, its location, the scope of services required, the estimated construction cost, the proposed completion date and a description of any special requirements or unique features. Firms interested in the project will respond to the announcement with descriptions of their firm and statements of qualification with supporting documentation, as they relate to the proposed project.

(c) Initial Qualification - The Selection Committee will review all responses and determine those best qualified to perform the services for the project under consideration. The Selection Committee may conduct oral interviews if the Committee considers such "interviews necessary prior to making a final recommendation.

(d) Interview - The Selection Committee would then meet with the firms selected for interview to make an in depth appraisal of their capabilities to perform the work and to assess their capability to organize and provide the services. Interview times may vary, depending on the scope of the project, from 30 to 50 minutes.

(e) Ranking Top Firms - The Selection Committee will then document the ranking in order of qualification of three firms considered to be the most highly qualified to perform the required services.

(f) Selection - The County Commissioners would then consider the Selection Committee recommendation and upon approval authorize the County Manager to negotiate a contract with the top ranked firm.

Negotiations

The County Manager would then conduct negotiations with the top ranked firm on the scope of work and professional compensation. If a mutually satisfactory contract cannot be negotiated with that firm, the Manager will formally terminate negotiations and notify the firm. Negotiations would then be initiated with the firm ranked second and this procedure continued until a mutually satisfactory contract has been negotiated.

Rotation of Work

Mecklenburg County believes it is in the public interest to effect an equitable distribution of contracts among qualified firms, provided, however, that the principle of selection of the most highly qualified firms is not violated. The volume of work previously awarded a firm shall be a factor in the selection of a firm. Since all firms will not have the capabilities or specialized expertise to handle every job, this policy does not prevent consideration of firms who have been awarded County contracts in previous years. Consideration will be given to firms that have not previously worked for the County and newly formed firms will be given consideration to demonstrate their abilities and quality of services.

EXHIBIT E CONTRACT INSURANCE REQUIREMENTS

Automobile Liability Insurance

Contractor will be driving on to City/County/School property.

Contractor will transport City/County/School personnel or clients.

Contractor will use his vehicle on City/County/School business.

Commercial General Liability Insurance

Contractor will be providing any type of services or products to or for City/County/School.

Workers' Compensation Insurance

A contractor with three or more employees must provide workers' compensation for himself and his employees should they become injured while performing services to or for the City/County/School under a contract.

Professional Liability Insurance/Errors and Omissions

Contractor is to provide services, which involve a vocation, calling, occupation or employment involving a specialized knowledge, labor or skill predominantly mental or intellectual. i.e. Consulting, medical technical, etc.

Data processing services. Electronic Errors & Omissions.

Architects, engineers, etc – anyone furnishing plans, specifications, etc.

BONDS

Fidelity Bond – employee dishonesty – required when the contractor and/or his employees have access to monies or properties of the City/County.

Performance Bond – usually required under a construction contract Surety Bonding Company guarantees that if the contractor does not finish project, the bonding company will step in.

Indemnity & Insurance Requirements

To the extent permitted by law the Contractor shall indemnify and save harmless _____, its officers, agents, employees and assigns from and against all loss, cost, damages, expense and liability caused by an accident or other occurrence resulting in bodily injury, including death, sickness and disease to any person; or damage or destruction to property, real or personal arising directly or indirectly from operations or services rendered under this contract.

The contractor further agrees to purchase and maintain during the life of this contract with an insurance company acceptable to the _____, authorized to do business in the State of North Carolina the following insurance:

INSERT VARIOUS INSURANCE REQUIREMENTS HERE

_____ will be named as an additional insured under the commercial general liability insurance for operation or services rendered under this contract.

Certificates of all required insurance shall be furnished to _____, and shall contain the provision that the _____ will be given 30 day written notice of any intent or terminate by either the insured or the insuring company.

The contractor is advised that if any part of the work under the contract is sublet, he should require sub contractor(s) to carry insurance as required above. However, this will in no way relieve the contractor from providing full insurance coverage on all phases of the project, including any that are sublet.

AUTOMOBILE LIABILITY – Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit each occurrence/aggregate.

COMMERCIAL GENERAL LIABILITY – Bodily injury and property damage liability as shall protect the contractor and any subcontractor performing work under this contract from claims of bodily injury or property damage which arise from operation of this contract whether such operations are performed by contractor, any subcontractor or any one directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed operations, personal injury liability and contractual liability assumed under the indemnity provision of this contract.

WORKERS' COMPENSATION INSURANCE – Meeting the statutory requirements of the State of North Carolina and Employers Liability - \$100,000 per accident limit, \$500,000 disease per policy limit, \$100,000 disease each employee limit, providing coverage for employees and owners.

PROFESSIONAL LIABILITY/ERRORS & OMISSIONS

As shall protect the contractor and his employees for negligent acts, errors or omissions in performing professional services under this contract. The amount of such insurance shall not be less than \$1,000,000 each claim.

DIRECTORS & OFFICERS LIABILITY

As shall protect the contractor for negligent acts, errors or omission in performing services under this contract. The amount of such insurance shall not be less than \$1,000,000 each claim.

FIDELITY BOND – providing employee dishonesty coverage on all employees at a limit of no less than \$500,000 (depending on services provided by the contractor and amount of money involved).

PERFORMANCE BOND – Contractor shall furnish a performance bond in an amount at least equal to the contract price as security for the faithful performance and payment of all Contractor's obligations under this contract.

This is to be used on all contracts between the City, County or Schools.
There are no insurance requirements in an agreement between City, County or Schools.

MUTUAL INDEMNIFICATION AGREEMENT

_____ shall indemnify and hold harmless _____, its officers, employees and assigns from and against all claims, damages, losses and expenses, arising out of or resulting from the execution of terms and conditions of this agreement, except those claims, damages, losses or expenses which are due to the negligence of _____, its officers, employees and assign provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or damage to or destruction of tangible property. _____ shall indemnify and hold harmless _____, its officers, employees and assigns from and against all claims damages, losses and expenses arising out of or resulting from the execution of the terms and conditions of this agreement, except those claims, damages, losses or expenses which are due to the negligence of the _____, its officers, employees and assigns, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or damage to or destruction of tangible property.

EXHIBIT F PREDOMINANT ASPECT REVIEW

This review is supplied to assist you in determining the predominant aspect of your bid that includes both a service and the purchase of tangible property. In these circumstances, the County uses the “predominant aspect” rule to determine the best approach to obtain the goods and services.

When procurement requires both the purchase of goods, and service, it is imperative to determine which element, whether goods, or services, constitutes the larger component of cost. The element constituting the larger portion of the procurement is the predominant aspect. The predominant aspect must be identified in order to determine the procurement method required to fulfill the purchase.

In the instance where the predominant aspect is goods, equipment, supplies, apparatus, or other tangible items, then the procurement must be handled utilizing the bid laws contained in GS. 143-129, which requires an invitation to bid.

Alternatively, if the predominant aspect is the services, then the procurement procedure allows for a more flexible approach utilizing a request for proposals.

Another approach in these situations that may be considered is to separate the tangible and service components. This leaves the County free to negotiate the service contract while complying with the bidding requirements for the tangible component. This should only be done, however, where it is practical and will result in overall cost savings to the County, but should not be done solely to avoid competitive bidding requirements.

To assist you in determining if your purchase constitutes a majority purchase of either goods, or services, please adhere to the following guidelines:

PREDOMINANT ASPECT RATIONALE

The service provided is the predominant aspect of the contract because:

- The services related to the contract are incidental to the goods or supplies being purchased and constitutes the majority of the overall cost. *(i.e. A contract for Uniform rentals would be considered a service contract because the majority of the cost is put towards paying for the end service, in this case, the delivery, pickup, and cleaning of the uniforms, which are rented by the contractor for the length of the contract).*

In this case, the service constitutes the predominant aspect of the purchase, and is not subject to the usual bidding process.

The good provided is the predominant aspect of the contract because:

- The tangible item is the end product of the service provided and constitutes the majority of the overall cost. *(i.e. A contract for carpet installation. Although the service of installing the carpet is provided, the cost of the carpet material itself constitutes the majority of the cost, and is therefore the predominant aspect of the contract.)*

In this case, all goods purchased are subject to the bidding process and bidding can proceed as usual.

For additional processes and policies pertaining to the bidding process, please refer to the Mecklenburg County Procurement Policy and Procedures Documentation.

Exhibit G

Independent Contractor / Employee Checklist

To assist you in deciding whether a worker is an employee or an independent contractor, complete the following questions. A worker is generally considered to have an employee relationship with the County if the questions below are answered "YES". **Complete this checklist only for individuals-sole proprietors, and partnerships. Do not complete for employees of a corporation.**

NAME: _____
correct answer)

(Circle the

1. Is the worker currently employed by the County or has the worker previously been an employee of the County? Position:_____	Yes	No
2. Are the hours of work established or regulated by the County?	Yes	No
3. Are tools and equipment supplied by the County? Independent contractors use their own equipment.	Yes	No
4. Does the worker provide their service only to the County? Independent contractors may have several contracts with other companies and advertise their services in the phone book or other source. List source:_____	Yes	No
5. Is the method of payment by unit of time, (i.e. hourly, weekly or monthly wage)? Independent contractors are usually paid by job in a lump sum.	Yes	No
6. Is training received from or at the direction of the County - either formally or informally?	Yes	No
7. Are repairs to equipment paid by the County? Independent contractors pay for their own repairs.	Yes	No
8. Is the worker required to work at a specific place or to work on the County's premises if the work could be done elsewhere? Independent contractors usually have a main office or other facility. Office Location:_____	Yes	No
9. Does the worker submit regular oral or written reports to the County to account for their actions?	Yes	No
10. Are business and/or travel expenses paid by the County? Independent contractors pay their own expenses.	Yes	No
11. Does the County restrict the worker from accepting any other work? Independent contractors may have several jobs at one time.	Yes	No
12. Does the worker act in the capacity of a foreman for/or a representative of the County by hiring others, supervising them and paying them at the direction of the County?	Yes	No
13. Does the worker wear a uniform with the County logo or other means of identification, except for security tags?	Yes	No
14. Is insurance coverage (liability, health, etc.) supplied by the County?	Yes	No
15. Does the County use the worker for any odd jobs that differ from their normal activities?	Yes	No
16. Is the relationship between the County and the worker a continuing one?	Yes	No
17. Is the worker free from any liability for quitting a job before the job is completed?	Yes	No
18. Does the worker have to perform services in the order or sequence set by the County?	Yes	No

Note: Independent contractors are required to have all necessary licenses to perform the work that they are contracted to perform

If all questions above are answered NO, the worker is an Independent Contractor. Send the completed checklist with the Contract and the Contract Control Sheet to the Finance Department.

If any question above is answered YES, give an explanation for the question and send the checklist with the contract to the Finance Department for a determination as to whether the worker is an employee or an Independent Contractor. You will be notified if the contract is denied.

EXHIBIT H SOLE SOURCE JUSTIFICATION FORM

This form must be completed for all Sole Source purchase requests and submitted to Business Support Services, Procurement Services Division (BSS/PSD) for approval **prior** to submitting a Consent Item for **BOCC** approval.

Requestor:	Date:
Requestor	Department:
Title:	
Phone:	Requisition
	Number:
Product:	Amount:

I am aware that N.C. G.S. 143-129 and the Countywide Procurement Policy mandates that Mecklenburg County procure all apparatus, supplies, materials and equipment totaling \$30,000 or more by competitively bidding.

Recommended Sole Source Vendor:

Company Name: _____
 Contact Name: _____
 Address: _____
 City, State, Zip: _____
 Telephone: () _____

2. Is the recommended company the manufacturer? Yes No
3. Does the manufacturer sell the item(s) through distributors? Yes No

SOLE SOURCE RATIONALE

A specific contractor is the only source of the required item because (check all that apply):

- The required items are **proprietary to the Contractor**
- A specific item is needed:
- to be compatible or interchangeable with existing hardware,
 - as spare or replacement hardware,
 - for the repair or modification of existing hardware, or
 - for technical evaluation or test.
 - other (Provide information below)
- There is a **substantial technical risk** in contracting with any other contractor, thereby making that an unacceptable course of action (e.g., where only one contractor has been successful to date in implementing a difficult manufacturing process). *In a brief explanation, provide supporting*

evidence of other contractor's with relevant capabilities and emphasize their inability to overcome the substantial technical risk.

The requested product is essential in maintaining standardization and the use of another product would require considerable time and money to implement or evaluate.

The product must be compatible to existing equipment in order to operate adequately; or maintain existing warranties.

If this project is technology related, has it been reviewed and approved by IST?

No. (If No, you must complete this process before submitting the sole source form)

Yes. (If Yes, provide IST Project List documentation or the date of IST approval so we may confirm the project status.) IST Approval Date: _____

1. Provide detailed information about why you need to acquire these goods:

2. Has your department bought these goods in the past? Yes No

2a. Who was the contractor/supplier?

2b. Was the requirement competitively bid or declared a sole source?

2c. What was the last date and price paid for goods?

3. Why are the requested goods the only item that can satisfy your requirements? Indicate the unique features of the product that are not available in any other product. Provide specific, quantifiable factors and qualifications.

4. Were alternative goods evaluated? Yes No

4a. If yes, what were they and why were they unacceptable? Please be specific with regard to features, characteristics, requirements, capabilities and compatibility.

4b. If no, why were alternatives not evaluated?

5. What efforts were made to get the best possible price?

6. Will this purchase obligate the County to this vendor for future purchases? Yes No

6a. If yes, please provide details regarding future obligations and/or needs:

7. Why is the price for this purchase considered to be fair and reasonable?

8. What will be the financial or other impact to your department if this sole source is not approved and a competitive bid is required?

TERM

One Time Purchase

Ongoing Purchase

Procurement begin date:

Procurement end date:

I certify that the above information is true and correct and that I have no financial or other beneficial interest in the vendor or product.

Requestor/Responsible Person

Date: _____

Department Head

Date: _____

Procurement Official

Date: _____

EXHIBIT I
BUY AMERICAN POLICY

The Board of County Commissioners, the Director of Purchasing, and all County Employees involved in making purchasing decisions for Mecklenburg County shall, in the purchase of or in contracting for goods, supplies, materials or equipment, give preference as far as may be practicable to such products manufactured or produced in the United States of America. Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted: and provided further, that not preference shall be given to products manufactured or produced in the United States if giving such preference would violate any trade treaty to which the United States is a signatory.

Adopted December 2, 1985

EXHIBIT J

SELECTION OF ENERGY SERVICE COMPANIES (ESCO's)

I. Purpose

The purpose of this policy is to establish a process and committees for the selection of Energy Service Companies (ESCO's) for County projects. This policy will promote collaboration and transparency in selecting service providers.

II. Process

A. Posting

Place an advertisement in a newspaper(s) with local circulation. Allow the newspaper(s) proper notice to ensure publication in the necessary timeframe. Confirm that the paper received the advertisement.

Place the ad on the North Carolina State procurement web site at www.ips.state.nc.us.

B. Phase 1

All submitted proposals will be evaluated by the shortlist committee. The shortlist committee will comprise the following:

- County Manager or designee
- RES Department Director or designee
- Division Director of RES Buildings & Grounds or designee
- Finance Director or designee
- Management and Budget Director or designee
- RES Project Manager (serving as a non-voting facilitator)

This phase of the process will advance the most qualified candidates to the selection committee.

C. Phase 2

The recommendations of the shortlist committee will be reviewed by the selection committee and a final ranking of candidates established. The selection committee will comprise the following:

- County Manager or designee
- Two members of the Mecklenburg County Board of Commissioners, serving alphabetically on a rotating basis for all nine members; repeat cycle.

- RES Department Director or designee
- Head of the agency which will occupy the facility(s) or designee.*
- RES Project Manager (serving as a non-voting facilitator)

In no event will the final interview (if required) of ESCOs take place unless at least one member of the Mecklenburg County Board of Commissioners is sitting on the selection committee.

D. Liaison with Board

Contact the County Manager's Office to help coordinate Board members who will serve on the selection committee (based on the alphabetical rotation) and determines interview schedules.

Adopted the 17th day of November, 2009

** In the case of a multi-tenant facility, or multiple buildings in the same project, more than one agency may be represented.*