Procurement & Contracting for IT Professionals

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NIGP Definition of IT Procurement

The procedures and processes to acquire hardware and software products and services, including professional assistance and operations and maintenance.

- *Software*
- *Hardware*
- *Services*
- *Support and Maintenance*

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NC Definition of IT Procurement
G.S. 147-33.81

Goods and Services for:

- Electronic data processing
- Telecommunications
- Security systems
- Microprocessors
- Software
- Information processing
- Office systems

Services include:

- Consulting
- Design
- Installation
- Training
- Maintenance
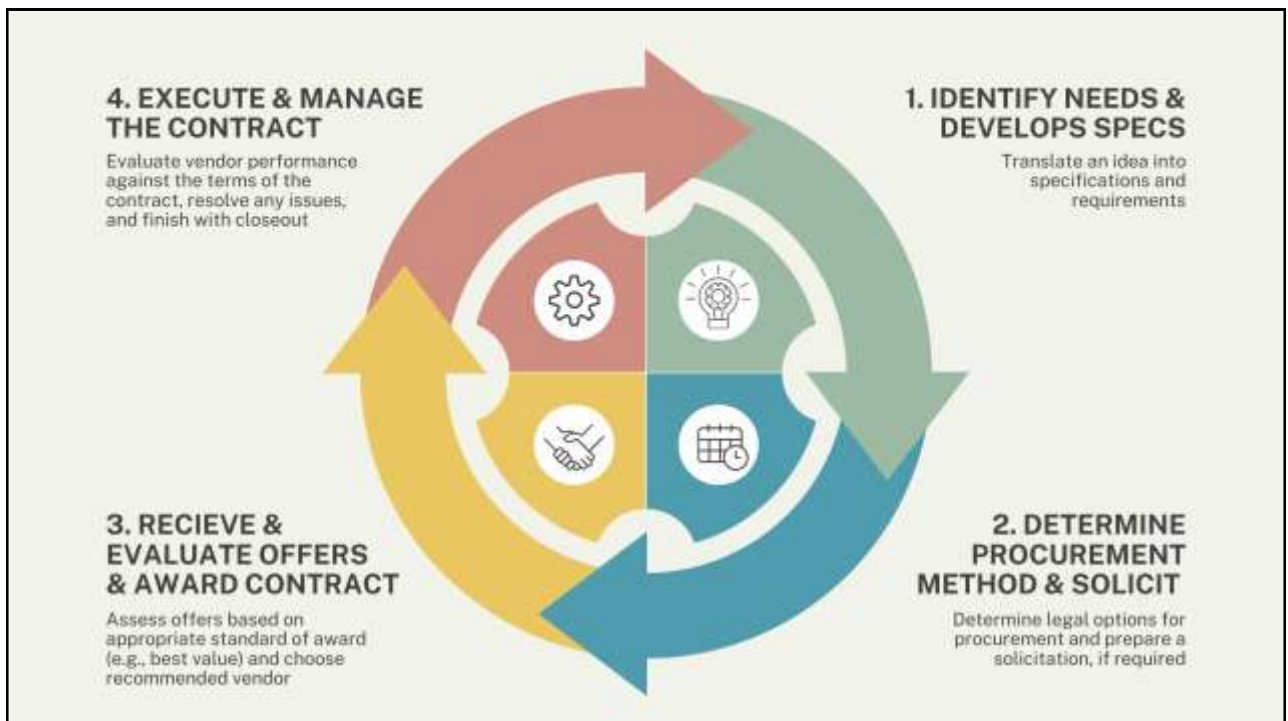- Operation

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Considerations for IT Procurement

☑ Following state procurement law

☑ Establishing need for IT solution

☑ Confirming compatibility with existing systems

☑ Ensuring appropriate protection of data

☑ Verifying effectiveness of the solution

☑ Understanding impacts of IT solution on organizational culture

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Procurement Lifecycle

- Where does procurement start?
- What are the steps along the way?
- When is a procurement finished?
- What is the most challenging part of procurement?

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4. EXECUTE & MANAGE THE CONTRACT
Evaluate vendor performance against the terms of the contract, resolve any issues, and finish with closeout

1. IDENTIFY NEEDS & DEVELOPS SPECS
Translate an idea into specifications and requirements

3. RECIEVE & EVALUATE OFFERS & AWARD CONTRACT
Assess offers based on appropriate standard of award (e.g., best value) and choose recommended vendor

2. DETERMINE PROCUREMENT METHOD & SOLICIT
Determine legal options for procurement and prepare a solicitation, if required

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Session Content

◦ The Basics of Procurement and Contracting

◦ The Complexities of IT Procurement

◦ The Peculiarities of IT Contracting

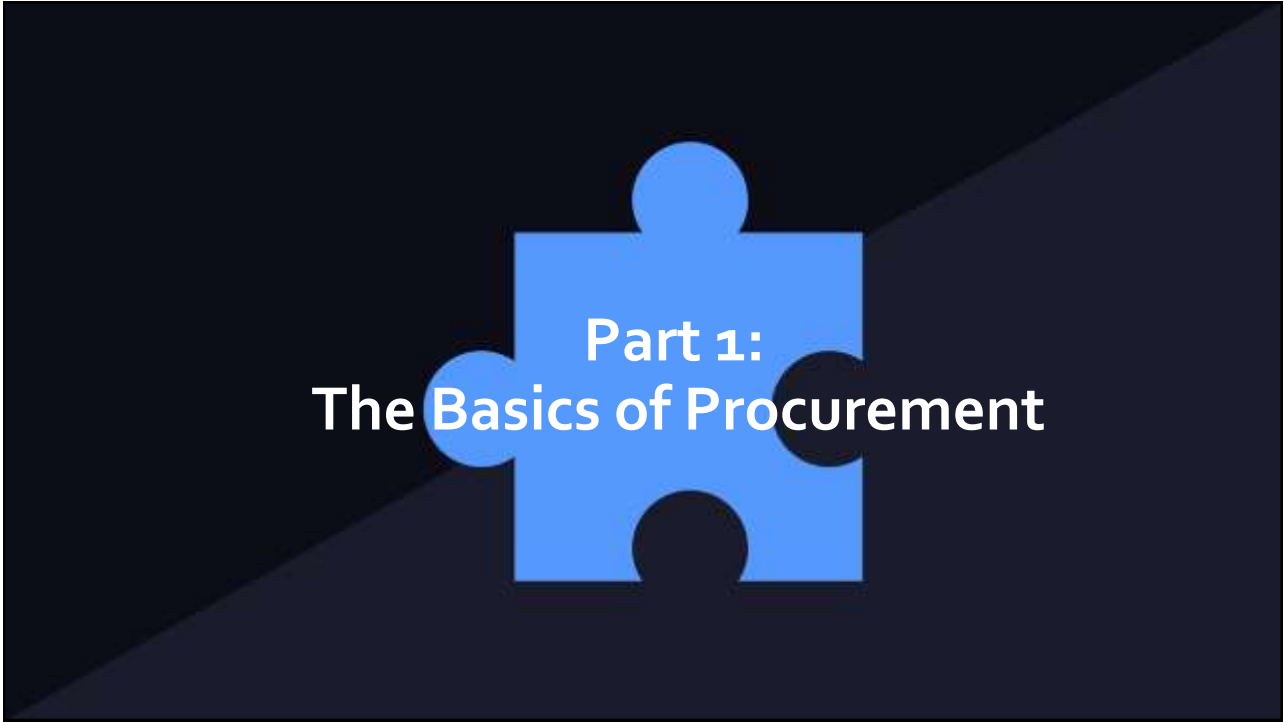*Look for this symbol to indicate a practice tip!*

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Discussion Question

What Do You Want to Know?

◦ What assumptions do you have about procurement?

◦ What gaps in knowledge do you have?

◦ What information or resources would be most useful for you or your organization?

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Part 1:
The Basics of Procurement

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Procurement Basics:
The People

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The Role of Procurement Officials

"Getting the right work done at the right time at the right price."

- Strategic partner in local government, with both internal and external "customers"
- Steward of public funds with the goal of maximizing the value of public spend
- Responsible for sourcing suppliers and materials for activities that benefit the public's health and safety
- Follow NC laws and federal regulations for procurement
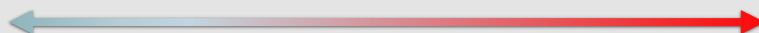
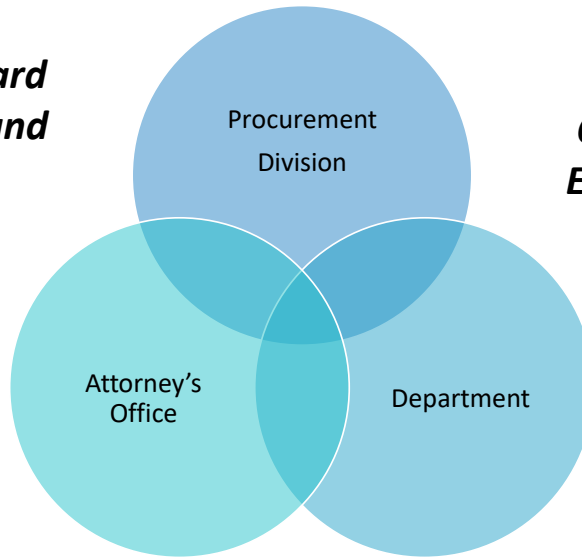Centralized ←————————————————→ Decentralized Or Delegated

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Collaboration! Communication!

Governing Board Expectations and Approvals

Procurement Division

Community Expectations

Staff Capacity

Attorney's Office

Department

Granting Agency Deadlines

Vendor Availability

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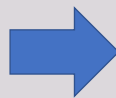
The Procurement Puzzle: Essential Questions to Ask

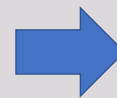## WHAT...

- Is the authority for expenditure?
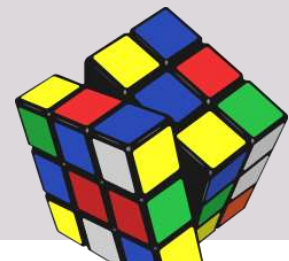- Is the source of funding?
- Is being procured?
- Is the cost?

WHAT...

Is the procurement method?

HOW...

Do we procure, step-by-step?

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Four Types of Contracts Under North Carolina Competitive Bidding Law

WHAT... Is being procured?

- Purchases of Goods
- Construction or Repair
- Professional Services
- Everything else...

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More on That "Everything Else"

○ Information Technology RFP, G.S. 143-129.8

○ Purchases of real property, G.S. 160A-11

○ Lease agreements, G.S. 160A-19 (lessee), G.S. 160A-272 (lessor)

○ Economic development incentive agreements, G.S. § 158-7.1

○ Interlocal agreements, G.S. 160A-460, et seq.

○ Statutory development agreements, G.S. 160D-1001, et seq.

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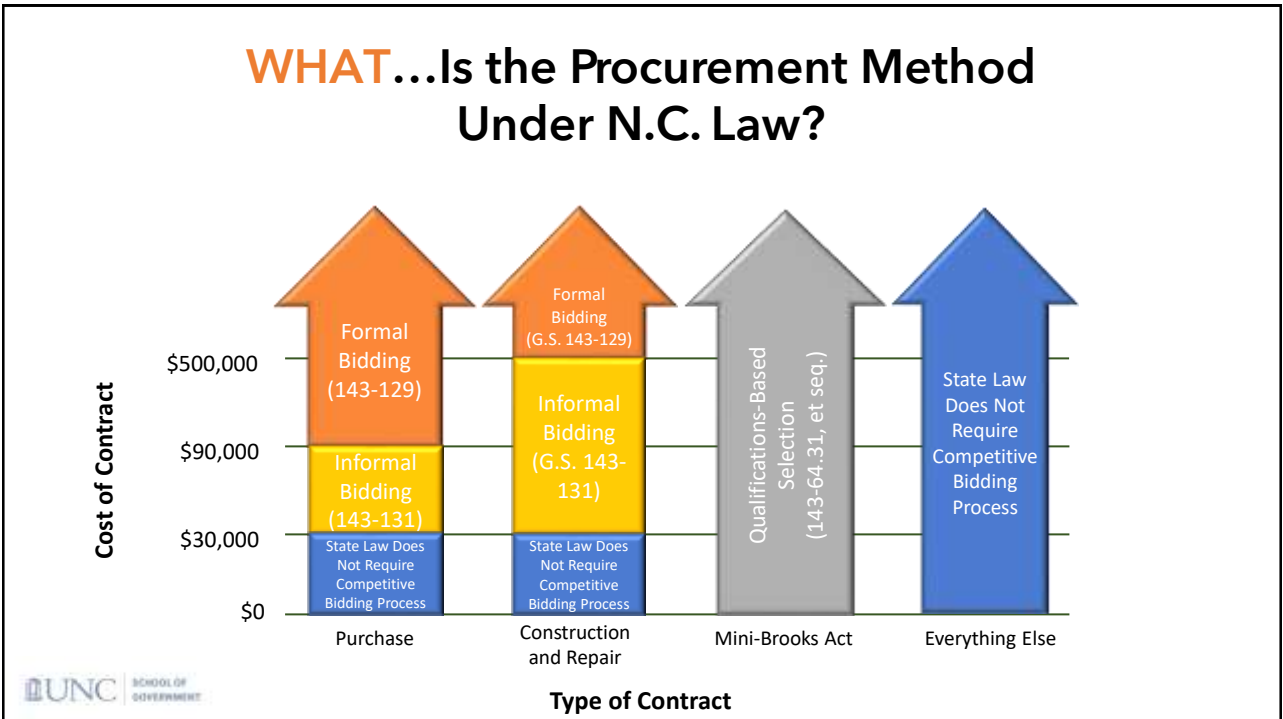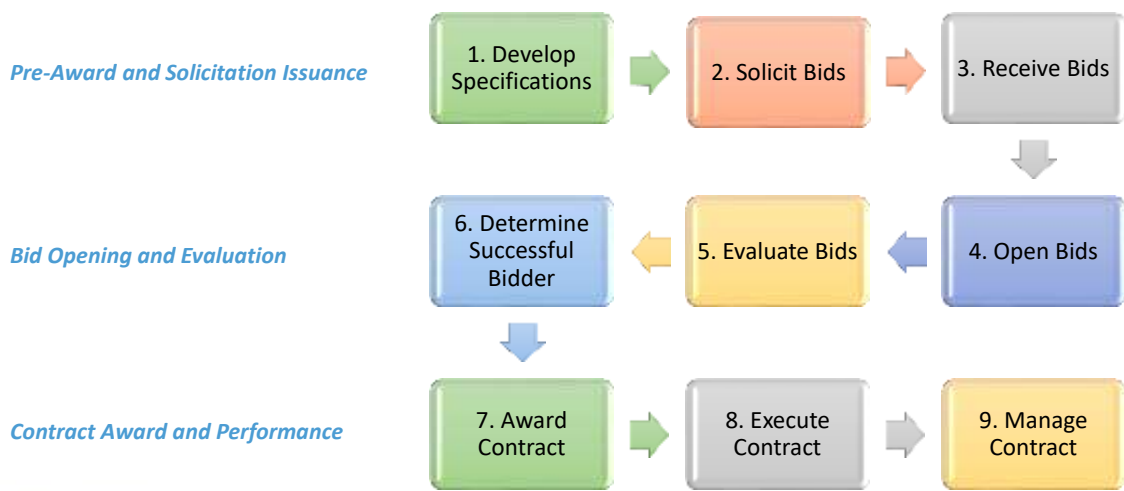## Thresholds for Contracts Under North Carolina Competitive Bidding Law

WHAT…Is the cost?

$500,000
Formal Construction

$90,000
Formal Purchase

$30,000
Informal Purchase
& Construction

$0
No statutory
requirements

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WHAT…Is the Procurement Method Under N.C. Law?

Cost of Contract

	Purchase	Construction and Repair	Mini-Brooks Act	Everything Else
$500,000	Formal Bidding (143-129)	Formal Bidding (G.S. 143-129)	Qualifications-Based Selection (143-64.31, et seq.)	State Law Does Not Require Competitive Bidding Process
$90,000	Informal Bidding (143-131)	Informal Bidding (G.S. 143-131)		
$30,000	State Law Does Not Require Competitive Bidding Process	State Law Does Not Require Competitive Bidding Process		
$0				

Type of Contract

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HOW…Do we procure step-by-step?

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Legal Requirements and Bidding Procedures
Purchase and Construction Contracts

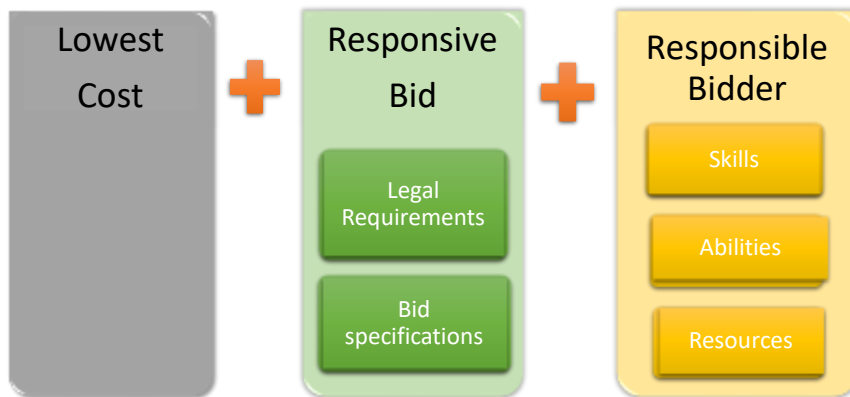*Pre-Award and Solicitation Issuance*

1. Develop Specifications → 2. Solicit Bids → 3. Receive Bids

Bid Opening and Evaluation

6. Determine Successful Bidder ← 5. Evaluate Bids ← 4. Open Bids

Contract Award and Performance

7. Award Contract → 8. Execute Contract → 9. Manage Contract

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The "How": Summary of North Carolina Procurement Requirements

	Informal	Formal	QBS	RFP
Solicitation / Advertisement	Not required	Newspaper/ electronic at least 7 days before bid opening	Must "announce" requirements	Not required (IT—must advertise like formal bid)
Form / Minimum #	Any form; keep record; no minimum #	Sealed bids; 3-bid minimum for construction contracts	No specific form required; no minimum #	No form required (IT – sealed proposals)
Public bid opening	Not required	Required	Not required	Not required
Standard of Award	Lowest responsive, responsible bidder	Lowest responsive, responsible bidder	Best qualified, regardless of cost	Best meets criteria set in the RFP
Board Approval	Not required	Required (may delegate for purchases only)	Not required	Not required
Public Record	Record of bids not public until contract award	Bids public when opened	Proposals public when opened	Public when opened (IT – not public until contract award)

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Lowest Responsive, Responsible Bidder Standard of Award for Informal & Formal Bidding

Lowest Cost **+** Responsive Bid (Legal Requirements, Bid specifications) **+** Responsible Bidder (Skills, Abilities, Resources)

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Responsive & Responsible Checklist

1. Is the lowest bid **responsive**?
   - Does it meet the statutory requirements?
   - Does it substantially conform to the specs?

2. Is the lowest bidder **responsible**?
   - Can the bidder perform the contract?

3. Accept or reject:
   - If lowest bid is responsive **and** lowest bidder is responsible, accept bid.
   - If not, document—then repeat checklist with next lowest bidder, and/or reject and re-bid
   - **Can *always* reject all bids**

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Uniform Guidance: Procurement Standards

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Uniform Guidance Procurement Methods, 2 C.F.R. 200.320

1. **Informal Procurement Methods**
   - Micro-Purchase
   - Small Purchases

2. **Formal Procurement Methods**
   - Sealed Bids
   - Competitive Proposals

3. **Non-Competitive Proposals**
   - Micro-purchase
   - Single source (AKA sole source)
   - Emergency
   - Approval by federal agency
   - Inadequate competition after solicitation

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Pre-Procurement Requirements

Cost or Price Analysis, 2 C.F.R. § 200.324(a)

- Units must perform (and document!) a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications

- The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the NFE must make independent estimates **before** receiving bids or proposals
  - Comparing historical prices with current proposed prices
  - Comparing offers with competitively published catalog prices or published market prices
  - Using prices set by law or regulation
  - Comparing proposed prices with market research

Click logos for examples of federal agency guidance

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Applying ALL of the Rules
Applicable to Public Procurement

**Follow the
"Most Restrictive
Rule"**

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Part 2:
Complexities of IT Procurement

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Complexities of IT Procurement

- ◦ Technology changes rapidly
- ◦ Constant updates require an ongoing relationship with vendors
- ◦ Complex interdependencies and continuity requirements
- ◦ Risk considerations regarding data and security

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Potential Solution?
Structured IT Acquisition Process

Using a structured IT acquisition process can help to ensure that:

- ◦ Omissions from business, technical or legal standpoints are anticipated and prevented
- ◦ The costs and resources for the IT sourcing process are appropriate and are efficiently deployed
- ◦ The business case for the IT procurement is reaffirmed prior to selecting a solution
- ◦ Organizational buy-in to the new system or technology is measurable because of user group involvement throughout the IT sourcing process

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Exercise: Mapping Your Organization

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Mapping Your Organization

- Using the blank sheets of paper on your table, map the IT procurement process in your organization for acquisition and implementation of a solution for a single department

- While you are mapping, think about the additional steps that might be needed for an enterprise-wide solution

- On your map, note where "sticky" issues exist in the process and reflect on possible ways to solve those sticky issues

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IT Procurement RFP Option
G.S. 143-129.8

- Statutory Request For Proposals (RFP) procedure for IT **"goods and services"**

- Optional, meaning either bid *or* use RFP method

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IT RFP Procedures

- Notice (i.e., formal advertisement) in compliance with G.S. 143-129
- Evaluate proposals based on RFP criteria
- Standard of Award = "best overall proposal" (**not low bidder**)
- May negotiate with **any** proposer within scope of RFP
- Proposals not public until **contract awarded**
- Governing board approval **not statutorily** required

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How do you judge the best overall proposal?

◦ Software Functionality
◦ Implementation Methodology and Approach
◦ Vendor Capability and Background
◦ Technology
◦ Total Cost
◦ Software Demonstration
◦ Implementation Interview
◦ Compliance with Terms and Conditions
◦ Data Conversion and Ownership
◦ Warranties
◦ Maintenance

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Discussion Question

How might you use the IT RFP Option?

- **Forsyth County:** ERP System

- **Surry County:** "A comprehensive, fully integrated, public safety information management solution that includes Computer Aided Dispatch (CAD), Records Management System (RMS), and a Jail Management System (JMS)"

- **Gastonia:** Server Environment Refresh Project

- **AppalCART:** Real-Time Passenger Information System (includes federal funding and clauses)

- **City of Durham:** Audio Visual (AV) Design and Implementation Services

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Best Value Procurements
G.S. 143-135.9

- G.S. 143-129.8 states that the "awarding authority" may use procurement methods under this statute in *developing and evaluating* the optional RFPs

- G.S. 143-135.9(c) states any "city, town, or subdivision" of the State *may acquire* IT using Best Value Procurement, Solutions-Based Solicitation, or Government-Vendor Partnership

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Best Value Procurements
G.S. 143-135.9

- Best Value Procurement = trade off between price and performance

- Government-Vendor Partnership = mutually beneficial contract between government and contractor, where they share in risk and reward

- Solution-Based Solicitation = states requirements as business objectives instead of technical design

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Other Tools in the Toolbox

- Requests for Information (RFI)
- Demonstrations
- Pilot Programs

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Part 3:
Peculiarities of IT Contracting

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Peculiarities of IT Contracting

- ◦ No universal standard for contracts
- ◦ Vendors and suppliers often require use of their contracts
- ◦ IT companies have difficulty complying with standard government contract clauses
- ◦ Diffused responsibility for monitoring compliance of contractor

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Need for Negotiation!

- ◦ Limitations of liability
- ◦ Indemnification or hold harmless
- ◦ Data security services and location
- ◦ Cyber liability insurance
- ◦ Governing law
- ◦ Exhibits and hyperlinks

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Thank you!

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