





**Public Purchasing and Contracting**  
*Chief Technology Officers*

Norma Houston  
January 24, 2017



### Today We'll Discuss

- Public Contract Requirements
- Procurement Methods
- Procurement Requirements
- IT RFP Procurement Option
- Competitive Bidding Exceptions
- Resources





**ARE YOU SMARTER  
THAN A . . .**  
■ ■ ■ ■ ■ ■ ■ ■ ■ ■  
**. . .PURCHASING  
OFFICER?**



### Test Your Knowledge

Only 2 bids received for purchase of IT system costing \$295,000. Can you open the bids?

**1. Yes**      **2. No**



### Test Your Knowledge

Local vendor's bid is only \$250 higher than out-of-state vendor. Can you award to local vendor?

1. Yes

2. No



### Test Your Knowledge

Fed Ex delivers bid late through no fault of bidder. Can you accept the bid?

1. Yes

2. No



### Test Your Knowledge

Bidder notices calculation error after you open his bid. Can you allow him to correct his mistake?

1. Yes

2. No



### Test Your Knowledge

Vendor asks you to keep bid documents confidential after bid opening because they are "proprietary"? Can you?

1. Yes

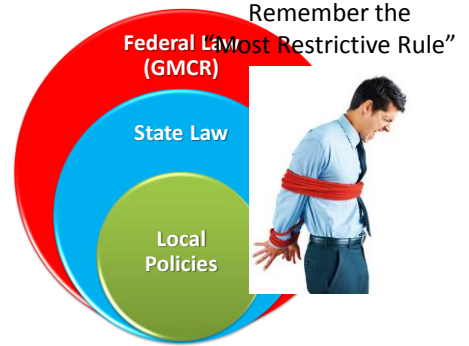
2. No



# PUBLIC CONTRACT REQUIREMENTS



## Sources of Legal Requirements



UNC

## What is a Contract?



"An agreement between two or more parties creating obligations that are enforceable or otherwise recognized by law."

- Black's Law Dictionary (7<sup>th</sup> ed.)



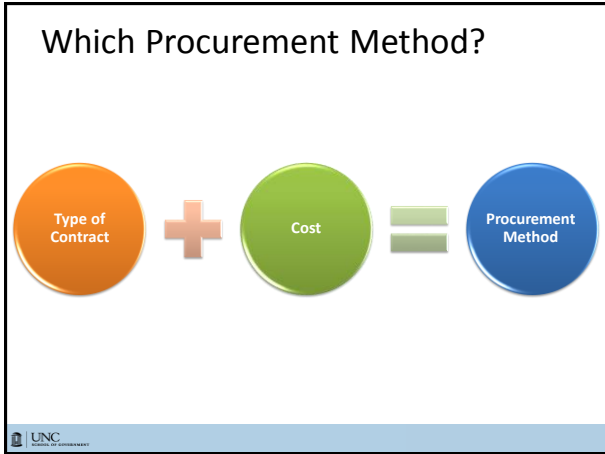
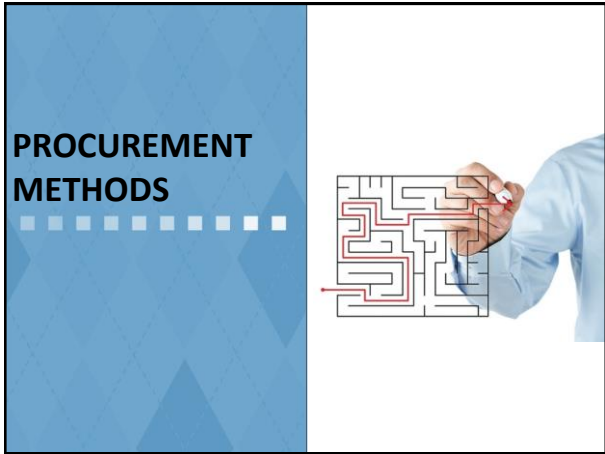
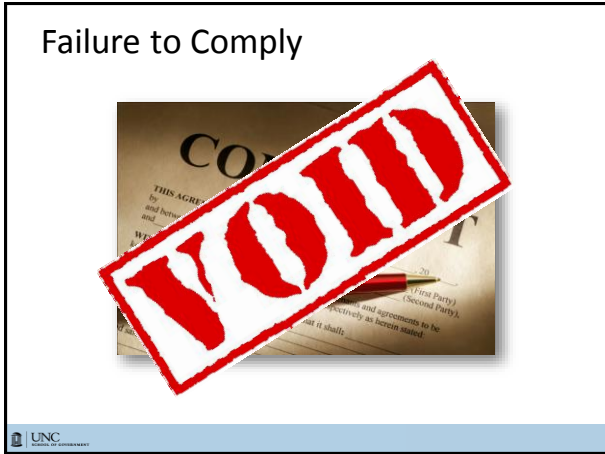
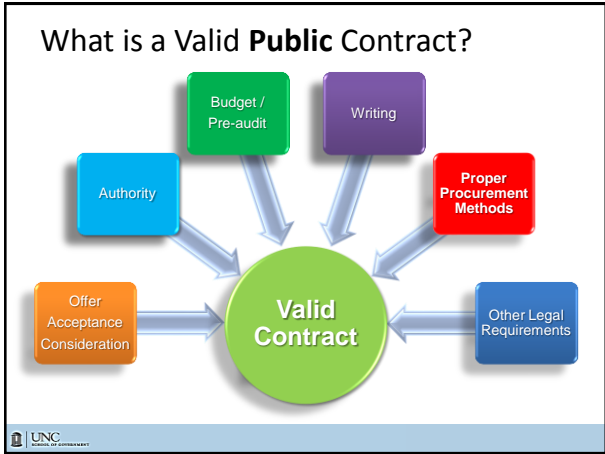
UNC

## Are These Contracts?

- Construction
- Repair
- Services
- Property Transaction (real and personal)
- Property disposal (sales, auctions, etc.)
- Invoice
- Purchase Order
- Credit Card Purchase
- P-Card Purchase



UNC



## Type of Contract

## Type of Contract

Type of Contract

- 1. Purchase**  
Apparatus, supplies, materials, & equipment

## Type of Contract

Type of Contract

- 2. Construction or Repair**  
New buildings, renovations, “non-vertical” construction (utility lines, roads, etc.)

## Type of Contract

Type of Contract

- 3. “Mini-Brooks Act” design services**  
architectural, engineering, survey, CMR, DB, BDD, P3

## Type of Contract



4. **Everything Else**  
Includes service contracts and land purchases

## What Kind of Contract Is It?

### Buying and installing new carpet

1. Purchase

2. Service

3. Construction



## What Kind of Contract Is It?

### Smart phones with master service agreement

1. Purchase

2. Service



## What Kind of Contract Is It?

### New computer system with warranty

1. Purchase

2. Service



## What Kind of Contract Is It?

Lease of copiers with option to purchase

1. Purchase

2. Service



## Cost



### Bidding Thresholds



## Procurement Method



### 1. Informal Bidding

- Applies to purchases and construction/repair within a certain cost range
- Has minimal requirements to ensure competition with focus on getting the lowest cost



## Procurement Method




### 2. Formal Bidding


- Applies to purchases and construction/repair above a certain cost
- Has very specific requirements to ensure competition with focus on getting the lowest cost




## Procurement Method




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**3. Qualifications Based Selection (QBS)**

- Required for selection of “Mini-Brooks Act” services - architect, engineer, survey, CMR, DB, DBB, P3
- Contract award based on qualifications of responder rather than price
- Local government can exempt itself in writing *if contract is under \$50,000.*


## Procurement Method




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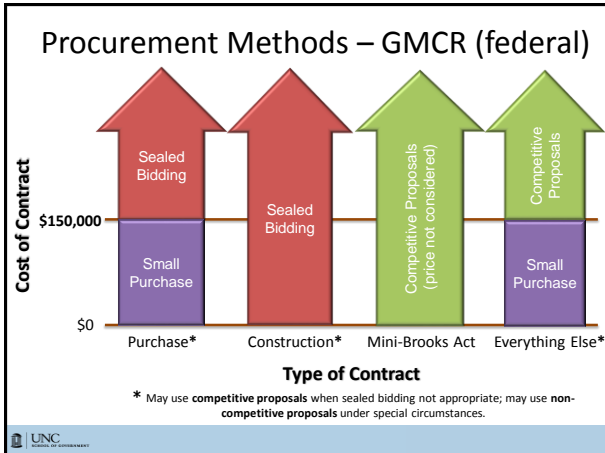
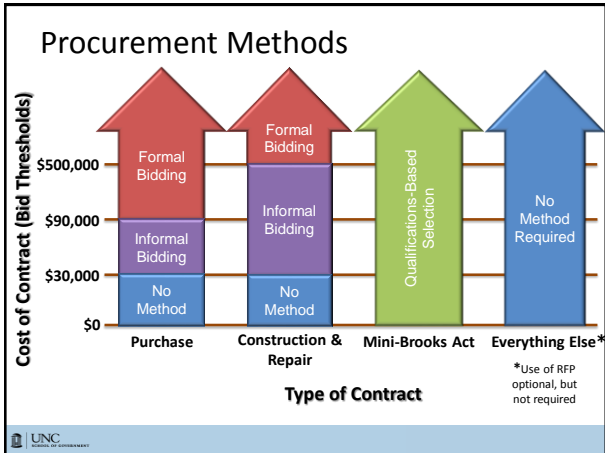
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**4. Requests for Proposals (RFP)**

- Optional for IT purchases
- Can be used (but is not mandated) for other service contracts





# PROCUREMENT REQUIREMENTS



## 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)

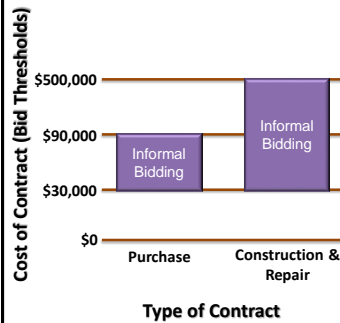


## Developing Specifications

- **Special requirements** for designing construction projects
- Statutes **don't** govern:
  - Operational objectives
  - Performance measures
  - Process for developing specifications
  - Details of specifications
  - Specific evaluation criteria or matrix
  - Evaluation process

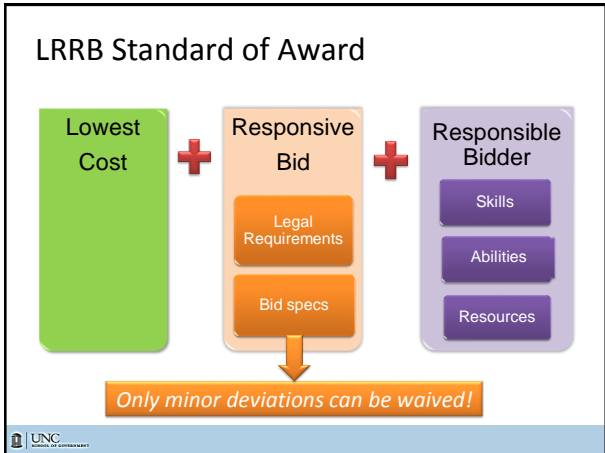
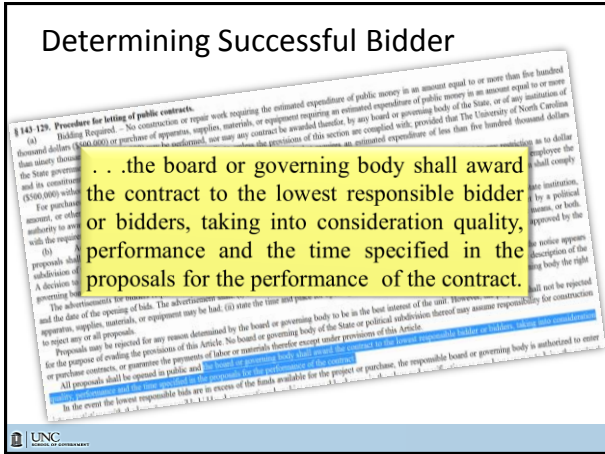
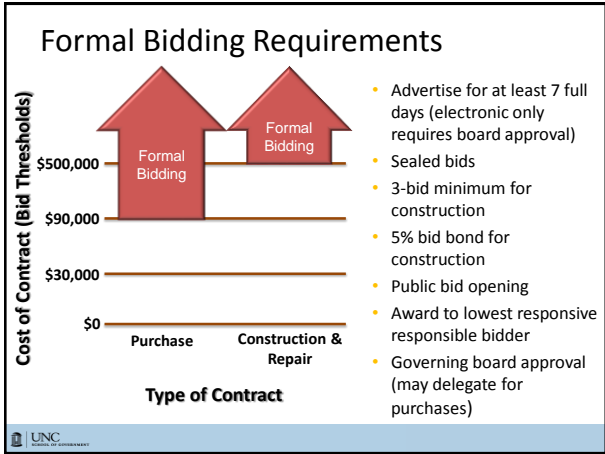


## Informal Bidding Requirements



- No specific method of advertising
- No specific form of bids
- No minimum number of bids
- No public bid opening
- **Keep record of bids**
- **Award to lowest responsive responsible bidder**
- No governing board approval





- ### Responsive & Responsible Checklist
1. Is the lowest cost bid **responsive**?
    - Does it meet the legal requirements?
    - Does it substantially conform to the specs?
  2. Is the lowest cost bidder **responsive**?
    - Can the bidder perform the contract?
  3. **Accept or reject:**
    - If lowest bid is responsive and lowest bidder is responsive, accept bid.
    - If not, document—then repeat checklist with next lowest bidder, and/or reject and re-bid.
    - Can always reject all bids.
- 
- UNC  
University of North Carolina

## When Bids Become Open To Public Inspection

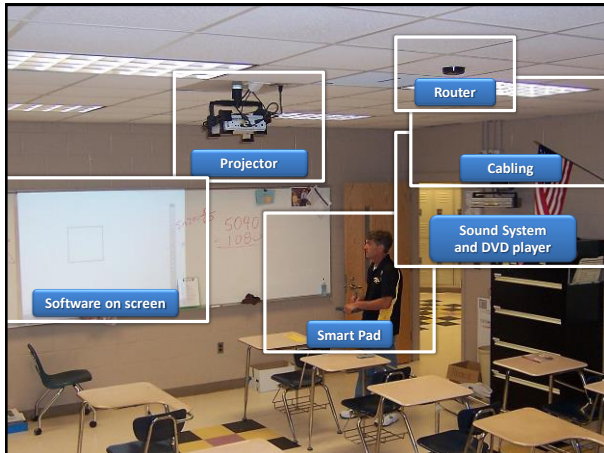


When Received, Or If Sealed, When Opened	When Opened	When Contract is Awarded
Purchase & Construction <i>Below</i> Informal Range	<i>Formal</i> Purchase and Construction	<i>Informal</i> Purchase and Construction
Mini-Brooks Act		Optional IT RFP
Everything Else		

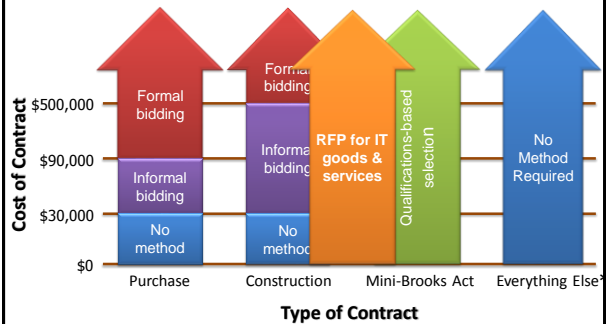
"Trade Secrets" remain confidential ONLY under statutory criteria



## IT RFP OPTION



## IT Procurement Method Selection



\* Optional: May use a **request for proposals** for service contracts or information technology purchases & services.



## IT Procurement – RFP Option

- Flexible, optional RFP Procedure for IT “**goods and services**”
- Can be used **in lieu of** traditional competitive bidding procedures



GS 143-129.8

## What is “IT”?

### Goods and Services for:

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

### Services include:


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

GS 147-33.81

## IT RFP Procedures

- Formal advertisement
- 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

## EXCEPTIONS



There is an exception to every rule, except this one.

## Competitive Bidding Exceptions

1. **Special Circumstances**
  - a. Sole Source
  - b. Emergencies
  - c. Fuel
  - d. Force Account Work
2. **Existing Contracts**
  - a. State and Federal Contracts
  - b. Piggybacking
  - c. Change Orders
3. **Direct Purchases**
  - a. Purchases From Other Units of Government
  - b. Group Purchasing Programs
  - c. Used Items




## Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

**Sole Source** *GS 143-129(e)(6)*

- Applies to formal and informal purchases (not construction)
- Only one *source of supply* (not only one manufacturer)
- Competition not available
- Standardization/compatibility is overriding consideration
- Board approval is required




## Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

**State and Federal Contracts**  
*GS 143-129(e)(7),(e)(9),(e)(9a)*

- Applies to formal and informal purchases (not construction)
- Purchasing **same item** from **same vendor**
- Vendor must agree to sell at the **same or more favorable** prices, terms, and conditions
- Includes state P&C contracts, IT purchases through ITS, and federal agency contracts
- Board approval **not** required







## Competitive Bidding Exceptions



Special Circumstances

Existing Contracts

Direct Purchases

**Piggybacking** *GS 143-129(g)*

- Applies to formal purchases only
- Purchasing **same item** from **same vendor**
- Vendor must agree to sell at the **same or more favorable** prices, terms, and conditions
- Contract competitive bid within **previous 12 months**
- Board approval is required with 10 days public notice

## Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

### Purchases from other units of government

GS 143-129(e)(1)

- Applies to formal and informal purchases
- Purchase directly from federal, state, or local governments anywhere in the US (not purchasing from a gov't vendor)
- Includes bidding on surplus sales
- Board approval **not** required



## Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

### Group Purchasing Programs GS 143-129(e)(3)

- Applies to formal and informal purchases
- Formally organized program
- Purchases obtained through competitive process
- Items offered at discount prices
- To at least two public agencies
- Board approval **not** required



## Competitive Bidding Exceptions

Special Circumstances

Existing Contracts

Direct Purchases

### Used Items GS 143-129(e)(10)

- Applies to formal and informal purchases
- Can purchase from public and private entities
- Does not include:**
  - Remanufactured
  - Refabricated
  - Demo
- Board approval **not** required

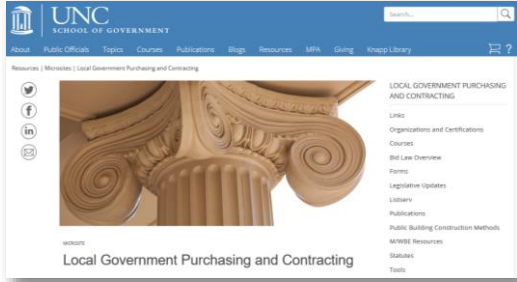


## RESOURCES



## SOG Purchasing Website

[www.ncpurchasing.unc.edu](http://www.ncpurchasing.unc.edu)



## SOG Coates' Canons Blog

[www.canons.sog.unc.edu](http://www.canons.sog.unc.edu)



**THANK YOU FOR WHAT YOU DO!**



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