

Town of Woodfin

Purchasing Manual



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Town of Woodfin, North Carolina

Purchasing Policy

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I. Policy Information

Category & Subcategory:	Purchasing Policy and Procedures	Original Effective Date:	5/17/2022	This Revision Effective:	n/a
Persons Affected:	Eligible Town of Woodfin Workforce				
Approvals:	Approved By:		Approved By:		
	Date Approved:		Date Approved:		

Revision History

Effective Date:	Version	Section	Summary of Changes	Author
4/1/2022	1		New Policy	S. Powers

II. Policy Purpose

This policy is intended to be a guide to all Town of Woodfin Government employees responsible for obtaining apparatus, supplies, materials, equipment, and services. The intent is to design policies and procedures that will serve the Town’s needs, provide for effective, efficient, and economical buying processes, and follow the legal guidelines set forth in the North Carolina General Statutes (NCGS).

III. Roles and Responsibilities

The Purchasing roles and responsibilities of Town of Woodfin can largely be assigned to the following:

a. Woodfin Town Manager

The Town Manager is responsible for:

- Oversight of policy development, revision, implementation, and monitoring;
- Administration of centralized Purchasing programs and processes;
- Development and provision of any required Purchasing-related training to Town employees;
- Assisting all Town employees with Purchasing needs.
- Assigning, in writing, a Designee to administer any or all portions of this Policy.

b. All Other Town Staff with Purchasing Responsibilities

Department Directors and their Designees and all staff with Purchasing-related roles are responsible for the following:

- Conducting all purchasing activities in accordance with the applicable NCGS, Town policies and procedures, ordinances, Federal rules and regulations, and in pursuit of the best interests of Town of Woodfin;
- Developing and maintaining good public, Suppliers, and internal relationships;
- Ensuring fair and open competition by ethical means;
- Extending honest, courteous, and impartial treatment to all interested Suppliers;
- Respecting public trust and not abusing the Purchasing process for personal advantage or gain.

c. Standards of Conduct

1. Gifts and Favors from Suppliers

NCGS §133-32 addresses the legal implications of governmental employees accepting gifts and favors from Suppliers. Briefly summarized, this statute states it is unlawful for any Supplier who has a current contract with a governmental agency, has performed under such a contract within

the past year, or anticipates bidding on such a contract in the future to give gifts or favors to any employee of a governmental agency who is charged with preparing plans, specifications, or estimates for public contracts, awarding or administering such contracts, or inspecting or supervising construction. It is also unlawful for a governmental employee to willfully receive or accept such gifts or favors.

2. Supplier Relations

Should departmental staff have trouble with a Supplier, concerns should be documented in an email to the Town Manager or Designee. Correspondence should be as specific as possible, detailing the circumstances, dates, personnel involved (including titles), and phone numbers. This information will be helpful in determining if the Supplier will be considered for future bid awards.

3. Conflicts of Interest or the Appearance of Conflicts of Interest

- i. No Town staff member shall make a decision related to the purchase or acquisition of any goods or services provided by a Supplier with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest, the decision shall be assigned to the supervisor of the staff member or other designee as determined by the Town Manager. In the case of a potential conflict of interest for the Town Manager, the decision shall be assigned to the Town Board.
- ii. No Town staff member shall have financial interest in, or be employed by, a business that has financial interest in providing goods or services to the Town.

IV. Definitions

- a. **Supplier:** a person or organization that provides something needed, such as a good or service, as part of a transaction. A contractor or vendor are also considered Suppliers. A bidder is considered a Supplier once the bidder has been awarded a Contract.
- b. **Designee:** a person selected or designated to carry out a duty or role.
- c. **Town Board:** the Woodfin Board of Commissioners.
- d. **General Services:** any service provided to the Town other than those that fall under two other types of services: 1) Architects, Engineers, Surveyors, Design and Build, or Construction Manager-At-Risk, and 2) Construction or Repair exceeding \$500,000 in anticipated cost.
- e. **Purchasing Card:** a type of charge card used for purchases subject to spending limits. Purchasing Cards achieve great cost efficiency, control, and convenience than typical credit cards.

V. Penalties for Non-Compliance

Failure to comply with this policy may result in an audit finding and/or disciplinary action, including termination and criminal charges. Individuals and departments identified as failing to comply with Town of Woodfin policies shall be notified and identified to Town management and/or law enforcement, as appropriate.

VI. Types of Purchases

Purchases must be made according to the dollar thresholds set forth by North Carolina law (see Exhibit A – Dollar Thresholds in North Carolina Public Contracting Statutes). Additional Town policies may also apply, as shown below.

a. Goods (Apparatus, supplies, materials, equipment, or IT software and systems)

The following thresholds are established to govern Purchasing of goods.

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$4,999	<ul style="list-style-type: none"> Multiple quotes not required P-Card recommended Purchase Order or Contract optional 	Department Director or Designee(s)
\$5,000 - \$29,999	<ul style="list-style-type: none"> Multiple quotes recommended Purchase Order or Contract required 	Town Manager or Designee
\$30,000 - \$89,999	<ul style="list-style-type: none"> Informal bid process Purchase Order or Contract required 	Town Manager or Designee
\$90,000 or greater	<ul style="list-style-type: none"> Formal bid process Purchase Order or Contract required 	Town Manager or Designee; Town Board Approval Required

1. Food Purchases

Food may be purchased for meetings with the prior approval of the Town Manager (or Designee?) Otherwise, food or meals should not be purchased for Town staff using a Purchasing card. Town staff receive a per diem rate for meal expenses while traveling outside Buncombe County; please contact the Finance Officer for more information regarding per diem rates and meal expenses while traveling.

2. Vehicle Purchases

The acquisition of vehicles – whether by purchase or lease – must be coordinated with the Town Manager. Title and/or bill of sale must be received and maintained for all vehicle purchases.

3. Real Property

Acquisition and sale of real property at any dollar amount must be approved by the governing board.

b. General Services

Competition may be formal or informal based on dollar amount or project in the form of a Request for Proposal (RFP), simple quotes, or other best practice method. Award should be based on the best overall, justifiable solution, which may include cost and other factors. Refer to Exhibit B - Independent Contractor / Employee Checklist for help in determining whether someone qualifies as an independent contractor.

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$4,999	<ul style="list-style-type: none"> Purchase Order recommended Contract advisable 	Department Director or Designee(s)
\$5,000 - \$89,999	<ul style="list-style-type: none"> Purchase Order or Contract required 	Town Manager or Designee; Town Board Notified
\$90,000 or greater	<ul style="list-style-type: none"> Solicitation or Request for Proposals required unless waived by Town Manager (reason for waiver must be provided, see below) Purchase Order or Contract required 	Town Manager or Designee; Town Board Approval Required
One-year leases, rentals and maintenance contracts	<ul style="list-style-type: none"> Contract 	Town Manager or Designee
Multi-year leases, rentals and maintenance contracts	<ul style="list-style-type: none"> Contract 	TOWN BOARD approval or Town Manager if contract includes non-appropriations clause

For services contracts, consider the following:

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

Waiver of competitive solicitation of services contracts

The Town Manager or Designee may waive the requirement for issuance of a competitive solicitation for a services contract over \$90,000 when it is in the Town’s best interests to do so. Examples of such instances include the following:

- Continuation of service delivery is paramount.
- Competition will not yield significant benefits.
- When only a single vendor can provide a specific service.

c. Architects, Engineers, Surveyors, Design-Build, Construction Manager-At-Risk, or Private Developer for a Public-Private Partnership Development Agreement

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$49,999	<ul style="list-style-type: none"> • Qualification-Based Selection (see below, unless exempted) • Contract 	Town Manager or Designee
\$50,000 - \$89,999	<ul style="list-style-type: none"> • Qualification-Based Selection • Contract 	TOWN BOARD or Designee
\$90,000 or greater	<ul style="list-style-type: none"> • Qualification-Based Selection • Contract 	TOWN BOARD Approval

Qualification-Based Selection (QBS), as governed by NCGS 143-64.31 (Mini-Brooks Act)

- A Selection Committee comprised of at least 3 members must be used.
- A scoring process and criteria based on “demonstrated competence and qualification for the type of professional services rendered” (rather than costs) shall be used to evaluate participating firms.
- Process and criteria must be detailed in a Request for Qualification (RFQ) to assist bidders’ conformity with these standards.
- When using construction manager at risk, prequalification of first-tier subcontractors must be determined as stated in General Statute §143-128.1.
- An exemption from the QBS process is available so long as the exemption is reduced to writing and the estimated cost of the contract is less than \$50,000. Any exemption from this process must be noted in any advertisement or announcement.

Task Orders

Any task order issued by an architect, engineer, or surveyor shall be approved by the Town Manager or Designee.

d. Construction or Repair

NCGS § 143-129 requires local governments to obtain formal bids for construction or repair for projects of \$500,000 and above. An advertisement must run one time at least ten calendar days before the bid opening. The advertisement must list the date and time of the bid opening, mention where the specifications may be obtained, and state that the Board reserves the right to reject any and all bids. Three bids are required, and if three are not received the project must be re-advertised at least ten days before the next bid opening. If three are still not received, a contract may be awarded by the Town Board after evaluation to the lowest responsive, responsible bidder, taking into consideration quality, performance, and the time specified for performance of the contract.

The Town of Woodfin requires that contractors make a good faith effort to use minority and women owned business enterprises (MBWE) for subcontracting needs to increase opportunities for historically underutilized businesses and to promote diversity. A written action plan of engagement with MBWE's is a requirement of any submittal package under this type of purchase.

Dollar Threshold	Minimum Requirements	Approval/Signature authority
\$0 - \$4,999	<ul style="list-style-type: none"> • Purchase Order recommended • Contract advisable 	Department Director or Designee(s)
\$5,000 - \$29,999	<ul style="list-style-type: none"> • Purchase Order or Contract required 	Town Manager or Designee
\$30,000 - \$89,999	<ul style="list-style-type: none"> • Informal bid process • Purchase Order or Contract required 	Town Manager or Designee
\$90,000 - \$499,999	<ul style="list-style-type: none"> • Informal bid process • Purchase Order or Contract 	Town Manager or Designee; TOWN BOARD Approval Required
\$500,000 or greater	<ul style="list-style-type: none"> • Formal bid process • Contract 	TOWN BOARD Approval Required

VII. Bidding

This section ensures that all bidding is administered in compliance with North Carolina General Statutes in addition to compliance with this Policy.

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

A written record of bids submitted shall be maintained. Departments should supply this record to the Town Manager or Designee as directed.

a. Formal Bid Process

1. A competitive bid process in compliance with NCGS § 143-129 must be used in the following cases:
 - i. Purchase of supplies, materials, and equipment estimated at \$90,000 and above;
 - ii. Construction or repair contracts estimated at \$500,000 and above.
2. Notify Town Manager or Designee that a formal bidding process is required.
3. Prepare Specifications – detailed written specifications will be prepared by the requesting Department with the assistance of the Town Manager or Designee when needed. Refer to Bid Specifications, below, for additional information.
4. Create bid package or Request for Bid (RFP or RFQ).
5. A Request for Bid will be issued containing at a minimum the following information:
 - i. The name of the requesting department.
 - ii. A brief description of the goods or services to be purchased.
 - iii. The date and time of the bid opening.
 - iv. The date and time of the pre-bid conference, if applicable.
 - v. The name of the Town Manager or Designee to whom questions may be directed and to whom bids must be addressed.
 - vi. General Conditions, applicable for a Formal Bid Proposal.
 - vii. Specific requirements for the goods or services to be purchased.

6. Post Advertisement of Bids - NCGS § 143-129(b) requires that at least seven (7) calendar days must lapse between the date the advertisement appears and the date of the opening of formal bids. Bidding opportunities are generally publicized electronically using the Town website.
7. Conduct Pre-bid Conference (optional) – a pre-bid conference is a meeting between the Town Manager or Designee, the requesting departmental staff, and prospective Suppliers during which the specifications will be reviewed, and/or the site toured. The Town Manager or Designee will explain the scope, objectives, and techniques of the purchasing with emphasis on critical elements of the bid documentation and encourage input from the Suppliers. A site visit allows Suppliers to observe physical characteristics of the land or structures that are relevant to the purchasing. A pre-bid conference and site visit are collectively referred to as a “Pre-Bid Conference.”
 - i. Pre-bid conferences may be particularly advisable when the Town seeks to procure goods or services that are highly technical or complex.
 - ii. If a pre-bid conference is conducted, the bid documents must provide the time, date and location of the conference. The conference should be held as soon as possible after the Bid Package is issued.
 - iii. Attendance of Suppliers at pre-bid conferences is encouraged but is not mandatory unless otherwise specified in the Bid Package.
 - iv. The Town Manager, Designee or requesting departmental staff will make a written note of all inquiries and points of contention raised by prospective bidders. Clarification may be provided at the pre-bid conference as long as the specifications or conditions are not altered. Oral representations made at the pre-bid conference by the Town Manager, Designee, or the requesting departmental staff will not be binding upon the Town. All material clarifications of any provision of the invitation for bids, or the amendment of a specification or condition of the Bid Package, will be made only in writing as an addendum available for all prospective or potential bidders to review.
 - v. The Town Manager or Designee may add any additional requirements to a pre-bid conference as deemed appropriate.
8. Proposals submitted in response to Formal Bids must comply with the following:
 - i. Formal Bids must be provided in writing.
 - ii. The Town Manager, Designee, or departmental staff will not accept oral bids in person, by email*, by telephone or fax, as formal bids.
 - iii. Bids shall remain sealed until the date and time set for the opening. Submittals in response to an RFQ, however, are an exception under the QBS rules and are not required to remain sealed.
 - iv. Bids containing conditions, omissions, erasures, alterations, or items not called for in the bid may be rejected by the Town as being incomplete.
 - v. The bid forms must be signed in order to be considered a responsive, responsible bid. If a bidder is a corporation, the bid must be submitted in the name of the corporation, not the corporation’s trade name. The bidder must indicate the corporate title of the individual signing the bid.
 - vi. Confirmation of receipt: The bidder is responsible for confirming the Town’s receipt of a bid submission.
 - * The Town is not currently able to keep bids sealed prior to the date and time of bid opening.
9. The Town Manager or Designee will receive bids as follows:
 - i. If bid specifications indicate bids are to be delivered in person, through the postal mail, or by parcel service, bids must be delivered no later than the date and time set for the receipt of bids in the bid specifications.
 - ii. All bids received must be sealed and kept in a secure location until the time and date set for the opening of bids.

- iii. Prior to the time and date of opening, the identity of the Suppliers submitting bids and the number of bids received is confidential and may be disclosed only to Town officials and only when disclosure is considered necessary for the proper conduct of the bidding process.
- iv. If a bid is inadvertently opened in advance of the prescribed bid opening, the Town Manager or Designee will write an explanation of the inadvertent opening on the envelope, with the bid number, time and date of opening. The envelope will be resealed and deposited with the other bids.
- v. Late bids will not be considered under any circumstances and will be returned unopened with a letter or email of explanation to the sender.

10. The Town Manager or Designee will open formal bids according to the following procedure:

- i. All bids received timely will be opened and publicly* read aloud at the time and date established for such opening in the Bid Package.
 - ii. A bid tally will be prepared indicating the Suppliers responding to the bid and their bid amounts as submitted.
- * Proposals submitted for information technology goods or services, including software, telecommunications, data processing, etc., are not subject to public inspection until a contract is awarded. Therefore, there will be no public bid opening to comply with NCGS § 143-129.8 for information technology related items.

11. Bids received timely will be examined by the Town Manager or Designee for compliance with the requirements set forth in the Bid Package. The Town Manager or Designee will review each bid to determine whether it has facial deficiencies that preclude it from being examined further.

12. Bids shall be awarded in accordance with NCGS § 143-129(b) to the lowest responsive, responsible bidder taking into consideration quality, performance, and the time specified in the proposal for the performance of the contract.

b. Informal Bid Process

1. An informal bidding process will be used for the following:

- i. Construction or repair contracts estimated from \$30,000 to \$499,999.
- ii. Purchases of supplies, materials, and equipment estimated from \$30,000 to \$89,999.

2. While informal bids are acceptable at these thresholds, departments may also choose to use a formal process if desired. If the estimated total dollar amount of an informal purchase is over \$80,000 for purchases of goods or over \$450,000 for construction or repair contracts, then it is recommended to use a formal bid process to prevent rebidding if all quotes received are over the formal

3. NCGS § 143-131 does not specify any methods for securing informal bids, however it does require awards 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. Methods of receiving quotes are at the discretion of the Town Manager or the requesting department Designee.

4. Town policy requires the following for all informal bids:

- i. Written documentation of contacting more than one vendor to support the competitive process.
- ii. The preferred minimum number of vendor contacts is three (3).
- iii. All verbal pricing or quotes must be documented in writing.
- iv. The record of bids shall not be subject to public inspection until the contract is awarded.

c. Bid Specifications

When using a formal or informal bidding process, specifications must be prepared. All specifications should do at least the following:

1. Identify minimum requirements;
2. Encourage competitive bids;
3. Be capable of objective review;
4. Provide for an equitable award at the lowest possible cost;
5. Identify factors to be used in evaluating bids.
6. Specifications will be as simple as possible while maintaining the degree of exactness required to prevent bidders from supplying substandard goods or services and otherwise taking advantage of their competitors.
7. All specifications utilizing a name brand must include the term "or substantially equivalent" to avoid being restrictive and eliminating fair competition from the bidding process.

Different methods of structuring specifications include:

1. Qualified products on acceptable Supplier list
2. Specification by architectural or engineer drawings
3. Specification by chemical analysis or physical properties
4. Specification by performance, purpose, or use
5. Specification by identification with industry standards
6. Specification by samples

d. Request for Proposal (RFP)

NCGS § 143-129.8 authorizes the use of a Request for Proposal (RFP) process to be used for the following:

1. Purchases of services;
2. Any combination of goods or services, particularly when the services component of the purchase is greater than the goods component;
3. Technology and services contracts;
4. Other combinations of goods and services not best handled by NCGS 143-129 and where departments have a need for a more flexible approach.

e. Request for Qualifications (RFQ)

In instances where a Qualifications-Based Selection (QBS) is required, a Request for Qualifications (RFQ) will be used to solicit responses from interested firms and individuals. The Town Manager or Designee must be notified before beginning this process, to guide the QBS through selection, and to assist with creation of a proper RFQ.

f. Exemptions

NCGS § 143-129 defines several exemptions to the competitive bidding requirements. The following categories of purchases are exempt from both the formal and informal bidding requirements established in NCGS § 143-129. However, the following list is just a shorthand statement of these categories; before attempting to make purchases using these exceptions, a thorough review of the relevant sections of NCGS § 143-129 is necessary to provide additional guidance.

Items 1 – 11 of the following list are found in NCGS § 143-129(e). Statutory guidance for other items is also denoted.

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 NCGS § 143-129.4).
9. State Contract Purchases.
10. Federal Contract Purchases.
11. Purchase of Used Goods (See NCGS § 143-129(e)(10)).
12. Construction Management at Risk.
13. Previously Bid or “Piggybacking” Contracts (See NCGS § 143-129 (g)).
14. Solid Waste Management Facilities (See NCGS § 143-129.2).
15. Use of Unit’s Own Forces (force account work).(See NCGS § 143-135 & SL 2009-250).
16. Purchases of Goods and Services from Nonprofit Work Centers for the Blind and Severely Disabled (See NCGS § 143-129.5).

Additional information regarding the most common exemptions follows:

- **Emergency Purchases**

NCGS § 143-129(e)(2) defines emergency purchase as “Cases of special emergency involving the health and safety of the people or their property.” This exception is used in rare circumstances, such as natural disaster or sudden and unforeseeable damage to property. In cases of emergencies, the Department Head or Designee may purchase directly from any Supplier, supplies or services whose immediate Purchasing is essential to prevent delays in work, which may affect the life, health, or safety of Town of Woodfin employees or citizens. The user department will exercise good judgment and use established Suppliers when making emergency purchases. Always obtain the best possible price and limit purchases to those items’ emergency related. Not anticipating needs does not constitute an emergency.

The following procedure should be used for emergency purchases:

1. Authorized Department staff will make a request to the Town Manager* or Designee for an emergency purchase order by providing:
 - Item(s) to be purchased with estimated quantities;
 - The reason for the emergency purchase;
 - Any other pertinent information associated with for the emergency purchase;
2. After verifying available funds, a purchase order number will be issued for the expenditure. Should the purchase exceed the available account budget, the Budget Officer will determine how to best course of action to remedy the budgetary constraint.

* The procedure remains the same after working hours; staff must seek the Town Manager’s (or Designee’s) approval before proceeding with the emergency purchase.

Emergency purchases, although sometimes necessary, are costly both in time and money. The use of emergency procedures will be limited and monitored for abuse.

- **State Contract Purchases**

Departments may use State of North Carolina contracts to procure available items without bidding if the contractor is willing to extend to the Town the same or more favorable prices, terms, and conditions. Following is a link to the state purchasing and contracting site where items can be searched for by keyword. These Purchases do not require TOWN BOARD approval.

<http://www.doa.state.nc.us/PandC/keyword.asp>

- **Cooperative and Group Purchasing Programs**

Similar to State Contract Purchases, the Town may make purchases of supplies and equipment through group purchasing programs, by which another entity has already carried out a competitive process to establish contracts on behalf of multiple entities at discount prices. These Purchases do not require Town Board approval.

- **Sole Source**

In the rare event there is only one Supplier capable of providing a particular good or service, the competitive pricing procedures outlined in this manual may be waived by the Town Manager. Whenever Department Heads or Designees determine a need to purchase goods from a “sole source”, they will document the reason. The provisions of NCGS § 143-129 require the Town Board to approve this sole source exception. A sole source purchase exemption applies when at least one of these conditions exist:

1. Performance or price competition for a product is not available.
2. A needed product is available from only once source of supply.
3. **Standardization of compatibility is the overriding consideration.**

If one of these conditions applies to the good to be purchased, then the item will be exempt from bidding and the purchase must have board approval. Contact the Town Manager or Designee for guidance before proceeding.

- **Piggybacking**

NCGS § 143-129(g) allows local governments to piggyback for supplies, materials, or equipment from another governmental entity that has, within the previous 12 months, completed a formal bid process, to purchase similar supplies, materials, or equipment if agreed upon by the Supplier. The Supplier must be willing to supply the same item at the same or more favorable prices and other terms.

The Statute requires approval by the Town Board and advertisement of intent to award. Federal guidelines may prohibit the option of piggybacking.

- **Grants**

When the Town is awarded a grant that has Purchasing requirements specified by the grantor, the Town will follow these requirements as long as they do not violate NC General Statutes or Federal Uniform Guidance.

- **Use of Federal Funds**

When using federal funds, the Town must follow NC Statutes as well as OMB Guidance provided in the Code of Federal Regulations, Subpart D - Post Federal Award Requirements. The thresholds for micro-purchases, small purchases, and when sealed bids are required are set by OMB Guidance provided in

the Code of Federal Regulations Title 2 Vol. 1 § 200.67 and §200.88. This guidance includes but is not limited to the following requirements:

- 1. Micro-purchases (\$0 - \$9,999);** when practical, distribute micro-purchases among qualified Suppliers.
- 2. Small Purchases (\$10,000 – \$249,999)**
 - i. Price rate quotations must be obtained from an adequate number of qualified sources.
 - ii. Written Purchasing procedures to define number and methods for obtaining quotes.
- 3. Sealed Bid Procedures Required (\$250,000 and higher)**
 - i. Price rate quotations must be obtained from an adequate number of qualified sources.
 - ii. Publicly advertised.
 - iii. Competitive proposals.
 - iv. Non-competitive proposals require written approval and justification (e.g. only one source/vendor available, inadequate competition, emergency).
- 4. Documentation required (all amounts)**
 - i. Evidence the awarded Supplier is not excluded from doing business with the Federal Government.
 - ii. When quotes are required, documentation that an attempt was made to contact at least three Suppliers to obtain quotes.

View Exhibit C - Purchasing Guidance When Using Federal Funds for further guidance.

VIII. Purchasing Methods and Tools

a. Requisitions

A requisition initiates the encumbrance of budgeted funds for purchase orders or contracts in the financial accounting system. The Town uses a paper requisition to document information needed for a purchase order or to summarize certain information from a contract. Department Directors must assure there is available budget for the purchase order or contract before approving any requisition for his/her department. Final approval is then needed from the Town Manager or Designee.

b. Purchase Orders

A Purchase Order is a contract between the Town and a Supplier and is not binding until accepted by the Supplier. Obtaining supplies, materials, equipment, or services \$5,000 and over without a Purchase Order is an unauthorized purchase. Unauthorized purchases or single purchases split to avoid the \$5,000 threshold are against Town policy and may result in disciplinary action.

Purchase Order Requirements:

- 1.** Submission of a requisition using the Town's paper Requisition form. The Requisition must have on its face the signatures of the Department Director and Town Manager or their Designee(s).
- 2.** Terms and conditions must clearly define the delivery and performance requirements of the services, supplies, or equipment.
- 3.** Signed requisition forms and a copy of the quote or contract is submitted to the Finance Officer for entry into the financial accounting system and creation of a Purchase Order.
- 4.** The Purchase Order must be preaudited by the Finance Officer to be valid.
- 5.** Processing invoice(s) for payment against a Purchase Order requires a sufficient remaining

unpaid balance of the Purchase Order before the invoice may be paid.

6. The Department Director or authorized Department staff should ask Suppliers to indicate the applicable Purchase Order number on all invoices submitted for payment.
7. Receipts of goods and/or services must be verified by the Department Director or Authorized Department staff prior to payment of an invoice.

c. Blanket Purchase Orders

Blanket Purchase Orders can be used when there is a recurring need for expendable goods that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably. Use of this process helps to avoid the creation of numerous purchase orders and contracts for routine purchases. Blanket Purchase Orders can also be a useful budgetary tool, as they obligate funds and allow easy tracking of recurring purchases throughout the year. A Blanket Purchase Order should be used if the following criteria are applicable:

1. The annual cost can be reasonably estimated;
2. The purchases are paid through invoices (though it can be done if Purchasing Cards are used);
3. There is a single account to which the expenses should be charged.

Examples would include maintenance agreements, purchase of building/cleaning supplies, etc. Requests for Blanket Purchase Orders must, in addition to the required information, indicate the following:

- Items covered by the Blanket Purchase Order and the amount should be encumbered in the financial accounting system;
- If Blanket Purchase Order purchases should be limited to authorized Department staff, requisitioners should include the names of those employees in the Purchase Order.

The issued purchase order will instruct the Supplier that unauthorized purchases will not be allowed. It is the responsibility of the individual authorized to purchase under a blanket purchase order to ensure that an unspent balance remains to cover the purchases to be made for the remainder of the purchase order period.

d. Change Orders

- Changing, modifying, or canceling an existing Purchase Order can be initiated in writing by the Department Director in writing to the Town Manager or Designee.
- Approval of Change Orders is based on the new cumulative amount of the Purchase Order. Refer to the Types of Purchases section to view approval authorities.
- Changes to a Purchase Order will not be processed if the scope of services has been rendered or materials have already been received.

e. Purchasing Cards

Purchases for less than \$5,000 should be obtained by a purchasing card when possible. Purchases above \$5,000 are permissible, subject to credit limits, if accompanied by a Purchase Order or Contract.

f. Contracts (refer to Contracting Policy for additional guidance)

All Contracts are required to follow the Types of Purchases section of this Purchasing Policy. It is acceptable to use a Supplier's Contract or the Town of Woodfin's Contract template. All Contracts must be reviewed and approved by the Town Manager or Designee. No Contract is valid unless it also contains the signed Preaudit Certificate, as defined by NCGS § 159-28.

It is the responsibility of Department Directors or their Designees to ensure that fully executed copies of each Contract are forwarded to Finance staff so that an encumbrance can be established in the financial accounting system and to be centrally filed.

1. Contracts for Services

Contracts are advisable when the terms and conditions of the Town's purchase order is not sufficient to adequately protect against possible risk, or the scope of work is too complex to be adequately detailed in a purchase order.

2. Contracts for Goods

In most cases a Purchase Order is sufficient as a contract for goods. Contracts for goods are advisable if the nature of Purchase is high risk and is not sufficiently controlled by the terms and conditions in the Purchase Order.

3. Contracts for Grants

- A grant awarded to the Town must be accompanied by a Contract following review by the Town Manager and Finance Officer or other Designee(s) to ensure grant terms and conditions may be met.
- The Finance Officer will create an encumbrance in the financial software for any grant awarded by the Town Board. A Contract is advisable for this type of obligation.

4. Multi-year Contracts

Contracts that are not associated with a project ordinance, more than 12 months in length, cross Town fiscal years, and require funding from subsequent annual Town budgets require a non-appropriation clause or Town Board approval of the Contract. For example:

- A Contract runs from June – May (12 months) and the total for the entire Contract is \$60,000 (\$5,000 per month). The current fiscal year funds \$5,000 and the subsequent fiscal year funds \$55,000. This Contract does not require Town Board approval because the term is not more than 12 months.
- A Contract runs from June – September (16 months) and the total for the entire Contract is \$80,000 (\$5,000 per month). The current fiscal year funds \$5,000 and the subsequent fiscal year funds \$75,000. This contract requires Town Board approval because the contract requires funding from more than one fiscal year and the term exceeds 12 months.
- A Contract runs from April – June the following year (15 months) and the total for the entire Contract is \$75,000 (\$5,000 per month). The current fiscal year funds all the \$75,000. This Contract does not require Town Board approval because all the funding comes from the current fiscal year, not requiring funding in subsequent fiscal years.

IX. Delivery and Performance**a. Delivery Schedule**

The importance of the delivery schedule may be emphasized to the Supplier within the bid documents. Delivery requirements must be clearly written and fully understood by all Suppliers. If several items are required by a Purchase Order or Contract, there may be a different delivery schedule for each item. It is important to clearly indicate the delivery location on the Purchase Order or Contract.

b. Non-Performance

If a Supplier fails to meet any requirements of the specifications or terms and conditions of the Purchase Order or Contract, the Supplier can be cited for non-performance. The seriousness of non-performance will be evaluated by the Department Director and Town Manager or Designee(s) based upon the circumstances of each violation.

Additionally, all written statements, certifications or intentions made by a bidder will become a part of the agreement between the contractor and Town of Woodfin for performance of this contract. Failure to comply with any of these statements, certifications, or intentions will constitute a breach of the Contract. A finding by Town of Woodfin that any information submitted either prior to award of the Contract or during performance of the Contract is inaccurate, false or incomplete, will also constitute a breach of the Contract. Any such breach may result in termination of the Contract in accordance with the termination provisions contained in the Contract. It will be solely at the discretion of Town

Manager or Designee whether to terminate the Contract for breach. In determining whether a contractor has made best faith efforts, the Town Manager or Designee will evaluate all efforts made by the contractor and will determine compliance.

c. Inspection and Testing

Goods and materials should be checked at the time of receipt for damage or defects. The inspection will include assuring goods comply with the specifications. If damage is found or the goods fail to comply with the specifications, the item(s) will be rejected. To protect the Town's rights in the event of a rejection for any reason, the Supplier will be informed immediately. Reasons for the rejection must be documented in writing to the Town Manager or Designee in a timely manner.

d. Supplier Relations

Should a department have trouble with a Supplier, concerns should be documented in writing to the Town Manager or Designee. Correspondence should be as specific as possible, detailing the circumstances, dates, personnel involved (including titles) and phone numbers. This information will be helpful in determining if the Supplier will be considered for future bid awards.

X. Minority, Women, and Local Business Suppliers

According to NCGS § 143-129(b) the Town has no authority to establish preferences of any kind and is bound by law to award in most instances* to the "lowest responsible, responsive bidder, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract." However, it is the desire of the Town to purchase from Minority and Women Owned Business Enterprises (MBWE) or other Suppliers located within Town of Woodfin whenever possible. MBWEs and local Suppliers are encouraged to compete for Town business.

* Award of certain professional services subject to the Mini-Brooks Act are determined based on qualifications, as described in this Policy.

Exhibit A – Dollar Thresholds in North Carolina Public Contracting Statutes

Requirement	Threshold	Statute
Formal Bids		
Construction or repair contracts	\$500,000 and above (estimated cost of contract)	NCGS §143-129
Purchase of apparatus, supplies, materials, and equipment	\$90,000 and above (estimated cost of contract)	NCGS §143-129
Informal Bids		
Construction or repair contracts	\$30,000 to formal limit	NCGS §143-131
Purchase of apparatus, supplies, materials, and equipment	\$30,000 to formal limit	NCGS §143-131
Construction methods authorized for building projects		
Separate Prime	Over \$300,000 (estimated cost of project)	NCGS §143-128
Single Prime		
Dual Bidding		
Construction Management at Risk		
Minority-business enterprise requirements – Building Projects		
Projects with state funding	\$100,000 or more	NCGS §143-128.2(a)
Locally funded projects	\$300,000 or more	NCGS §143-128.2(a)
Projects in the informal range	\$30,000 to \$500,000	NCGS §143-131(b)
Limit on use of own forces		
Construction or repair projects	Not to exceed \$125,000 (total project) or \$50,000 (labor only)	NCGS §143-135
Bid bond or deposit		
Construction or repair projects	Formal bids (see above)	NCGS §143-129(c)
Purchase contracts	Not Required	
Performance/payment bonds		
Construction or repair projects	Projects over \$300,000 for each contract over \$50,000	NCGS §143-129(c); NCGS §44A-26
Purchase contracts	Not Required	
General Contractor's License	\$30,000 and above	NCGS §87-1
Use of registered architect or engineer required		
Nonstructural work	\$300,000 and above	NCGS §133-1.1(a)
Structural repair or new	\$135,000 and above construction	
Repair work affecting life safety	\$100,000 and above systems	
Selection of architect, engineer, surveyor, or construction manager at risk		
"Best qualified" selection procedure	All contracts unless exempted	NCGS §143-64.31
Exemption authorized	Projects where estimated fee is less than \$50,000 or other projects in sole discretion of the Town Board	NCGS §143-64.32

Exhibit B - 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 Town 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: _____

Circle Answer

1. Is the worker currently employed by the Town or has the worker previously been an employee of the Town? Position: _____	Yes	No
2. Are the hours of work established or regulated by the Town?	Yes	No
3. Are tools and equipment supplied by the Town? Independent contractors use their own equipment.	Yes	No
4. Does the worker provide their service only to the Town? 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 Town - either formally or informally?	Yes	No
7. Are repairs to equipment paid by the Town? 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 Town'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 Town to account for their actions?	Yes	No
10. Are business and/or travel expenses directly paid by the Town? Independent contractors pay their own expenses.	Yes	No
11. Does the Town 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 Town by hiring others, supervising them and paying them at the direction of the Town?	Yes	No
13. Does the worker wear a uniform with the Town logo or other means of identification, except for security tags?	Yes	No
14. Is insurance coverage (liability, health, etc.) supplied by the Town?	Yes	No
15. Does the Town use the worker for any odd jobs that differ from their normal activities?	Yes	No
16. Is the relationship between the Town 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 Town?	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.

If any question above is answered **YES**, explain 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.

Exhibit C - Purchasing Guidance When Using Federal Funds

OMB Guidance provided in the Code of Federal Regulations Subpart D - Post Federal Award Requirements, sections 200.318 through 200.326.

	Goods & Supplies	Construction/Repair	Services	
FORMAL	<ul style="list-style-type: none"> Formal bidding process required Publicly advertise Sealed Bids required Attempt to get bids from at least three bidders Award to lowest bidder Public bid opening 	<ul style="list-style-type: none"> Formal bidding process required Publicly advertise Sealed Bids required Attempt to get bids from at least three bidders Award to lowest bidder Public bid opening 	<ul style="list-style-type: none"> Request for proposals required Publicly advertise Attempt to get quotes from at least two sources Award to proposal most advantageous to the program, price and other factors considered 	\$250,000 or greater
		<ul style="list-style-type: none"> Informal quotes required 	<ul style="list-style-type: none"> Informal quotes required 	\$90,000
INFORMAL	<ul style="list-style-type: none"> Informal quotes required Attempt to get quotes from at least two sources Award to lowest bidder 	<ul style="list-style-type: none"> Attempt to get quotes from at least two sources Award to lowest bidder 	<ul style="list-style-type: none"> Attempt to get quotes from at least two sources Award to proposal most advantageous to the program with price and other factors considered 	\$10,000
NO QUOTES	<ul style="list-style-type: none"> No competitive quotes required if price appears to be reasonable 	<ul style="list-style-type: none"> No competitive quotes required if price appears to be reasonable 	<ul style="list-style-type: none"> No competitive quotes required if price appears to be reasonable 	\$0

ALWAYS	ALLOWED EXCEPTIONS
<ul style="list-style-type: none"> Document procedures Award on fixed price or not to exceed Document the awarded Supplier is not excluded Contract or PO contain UG provisions Solicit M/WBE businesses when possible 	<ol style="list-style-type: none"> The item is available only from one single source. An urgent need or emergency will not permit a delay for competitive solicitation. The Federal awarding agency or pass-through allows noncompetitive proposals. from doing business with the FederalGov.

If seeking a Contract with an Architect, Engineer, Surveyor, Design-Build contractors, Construction Manager-at-Risk, or Private Developer for a Public-Private Partnership Development Agreement, the Purchasing method must follow the Qualification Based Selection process described in this Policy.



Town of Woodfin, North Carolina

Contracts Policy

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I. Policy Information

Category & Subcategory:	Contracting Policy and Procedures	Original Effective Date:	5/17/2022	This Revision Effective:	n/a
Persons Affected:	Eligible Town of Woodfin Workforce				
Approvals:	Approved By:	-	Approved By:		
	Date Approved:		Date Approved:		

Revision History

Effective Date	Version	Section	Summary of Changes	Author
4/1/2022	1		New Policy	S. Powers

II. Introduction

This policy applies to all Contracts entered into by the Town.

III. Policy Purpose

This policy is intended to be a guide to all Town of Woodfin Government employees responsible for creating, evaluating, executing, maintaining, managing, and retaining Contracts to which the Town is or will be a party. This policy is a companion to and does not replace the Purchasing Policy.

IV. Definitions

- a. **Certificate of Insurance:** a document that verifies a company has insurance coverage under specific conditions.
- b. **Contract:** Any agreement involving the exchange of obligation(s) or promise(s), either promise(s) to perform or an exchange(s) of something of value. Contracts are sometimes called, among other things:
 - Service contracts
 - Contracts for the sale of goods
 - Agreements
 - Memorandums of understanding
 - Memorandums of agreement
 - Licenses
 - Leases

Oftentimes, contractual obligations can be created by documents that are not readily identifiable as Contracts, such as:

- Grant applications
- Quotes
- Order forms
- Invoices

Contact the Town Manager or Designee with questions concerning whether a document or undertaking constitutes a Contract.

- c. **Contract Control Process:** the established routing process for all contracts.
- d. **Contract Administrator:** the person assigned for day-to-day responsibility and representation of the Town regarding the specific Contract.
- e. **Contract Execution:** a Contract that has been signed by all parties to the Contract.

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- f. **Contract Repository:** one central location determined by the Town Manager or Designee where all active Contracts are housed following Contract Execution.
- g. **Contractor:** Supplier once Contract is executed.
- h. **Designee:** an individual given the authority by the Town Manager or Woodfin Board of Commissioners to award and sign contracts of certain categories and dollar thresholds.
- i. **Handshake Deal:** an informal verbal agreement with no documentation (such agreements should be avoided).
- j. **Supplier:** the provider of goods or services with whom the Town intends to contract.
- k. **Town Board:** the Woodfin Board of Commissioners.

V. Practices to be Followed

- a. Contracts shall comply with Federal, North Carolina, and Town of Woodfin law. Contracts (or aspects of Contracts) inconsistent with law may be void or voidable.
- b. No Town officer or employee who is involved in making or administering a contract on behalf of the Town or its subparts may derive a direct benefit from the contract except as allowed by law. A violation of this provision is not only a violation of this policy; it could subject the offending Town officer or employee to criminal liability and may render the contract void. NCGS § 14-234.
- c. Town officers and employees shall take into account all costs associated with a purchase or contract and shall not divide purchases or contracts for the purpose of circumventing the requirements set forth herein. The same may constitute a violation of this Policy and state law.
- d. All contracts shall originate, be routed through, and follow the Contract Control Process outlined below; shall be reviewed by the Manager or Director of the Contract Administrator’s Department, the Town’s attorney when applicable and at the discretion of the Manager or Designee; and shall be preaudited by the Finance Officer as required by law.
- e. Violations of the requirements set forth in this Policy should be reported to the Town Manager or Designee.
- f. Any Contract that creates a financial obligation for the Town must be accompanied by a preaudit certificate signed by the Finance Officer.

VI. Required Contract Elements

Contracts are required to address, at minimum, the following elements where applicable:

- a. **Scope of Work:** A detailed description of all deliverables provided by the Supplier.
- b. **Term (length of time):** A specific beginning and ending date of the Contract or a project start and completion schedule.
- c. **Maximum Amount Payable:** Specific amount the Contract payments cannot exceed. Uncertainty as to the amount of the final obligation under a Contract does not excuse the Contract from stating a maximum amount payable.
- d. **Cancellation:** A clause defining the specific conditions under which either party has rights to terminate the Contract.
- e. **Indemnification:** A clause protecting the Town from legal issues related to Supplier performance.
- f. **Non-assignment:** A clause prohibiting the assignment of specific rights or of the entire Contract to another party without the consent of the Town.
- g. **Governing Law:** A clause specifying that any dispute resulting from the Contract shall be determined in accordance with the laws of North Carolina.
- h. **Insurance:** A clause controlling risks by requiring Contractors to have liability insurance (amounts determined on a case-by-case basis). An example of terms and conditions can be found in Exhibit B - Contract Minimum Insurance Requirement.
- i. **Penalties for Non-performance:** Contracts should stipulate any penalties that may result from non-performance by either party. Penalties will be determined on a case-by-case

- basis in consultation with the Town Manager or Designee.
- j. **Preaudit Certification:** All Contracts creating a financial obligation are required to have a preaudit certification, in accordance with NCGS § 159-28.
 - k. **Non-appropriation Clause:** If a Contract is not associated with a project ordinance, is more than 12 months in length, crosses Town fiscal years, and requires funding from subsequent Town budgets; then a clause allowing the Town to terminate the Contract if funding is not available in future fiscal years. Board approval is required to execute the Contract if the conditions triggering a non-appropriations clause are present and the clause is not included in the Contract.
 - l. **Financial Assurance Clause:** If an agreement is with a public or non-profit organization, then a clause allowing the Town the right to review the financial records of the organization must be included in the Contract.

VII. Contract Signature Authority

- a. By North Carolina law and the annual budget ordinance, Town Contracts may only be signed by authorized representatives. Signature authority is derived solely from the Town Board, consistent with NCGS § 153A-13.
- b. The Town Board delegates certain signature authority to the Town Manager and authorizes the Town Manager to delegate that authority via the Budget Ordinance.
- c. The Manager may grant express written or electronic delegation for the signature of certain Contracts on a case-by-case basis.
- d. Only those with properly delegated authority shall sign Contracts or otherwise obligate the Town. Anyone who attempts to bind the Town or its divisions without properly delegated authority may be liable under NCGS § 143-58.
- e. Any written Contract that creates a financial obligation must include “on its face a certificate stating that the instrument has been preaudited to assure compliance” with NCGS §159-28(a). The certificate must be signed by the Finance Officer or a deputy finance officer designated by the governing board for this purpose.
- f. Town of Woodfin’s Purchasing Policy, Section VI. Types of Purchases, addresses signature authority for purchases and contracts by type and dollar threshold.
- g. The signature of the Supplier or Supplier’s representative is dependent on the legal structure of the Supplier’s organization. Example signature pages are part of Exhibit A – Woodfin Contract Template.

VIII. Contracts without a financial obligation

The Town Manager or Designee may enter into Contracts that do not create a financial obligation if authorized under North Carolina law, provided that any such agreement requiring Town Board approval receives such approval.

IX. Contract Control Process

The Contract Control Process is the required process that all contracts must follow, as outlined below. Some steps may not apply to Contracts that do not create a financial obligation.

a. Contract Administrator

A Contract Administrator shall be assigned by the appropriate Department Director for every Contract to which the Town is a party. It is the duty of the Contract Administrator to ensure that a Contract follows the Contract Control Process.

b. Contract Creation

1. Contracts may be created using templates provided by the Supplier or using the Town’s Contract template (see Exhibit A – Woodfin Contract Template).
2. Any Supplier Contract template must be reviewed by the Town Manager or Designee and the Town’s attorney when applicable prior to Contract Execution.
3. If using Woodfin’s Contract Template, any deviations from the template must be identified and reviewed by the Town Manager or Designee and the Town’s attorney

when applicable prior to Contract Execution.

4. The Contract Administrator shall manage the negotiation of the Contract in coordination with the Town Manager or Designee.

c. Contract Routing, Approval, and Execution

All Contracts shall be reviewed and approved by all required parties prior to Contract Execution. The Contract Administrator will ensure the appropriate process sequence is utilized based on availability and the nature of the Contract. Steps should include:

1. Review by the Town's attorney when applicable or a written justification for lack of review will be provided.
2. Review by the Department Director having responsibility for the corresponding budget against which future invoice(s) will be paid.
3. Review by the Town Manager or Designee.

Contracts that create a financial obligation also require:

4. Verification by the Town Manager or Designee for compliance with state bidding requirements prior to award.
5. Pre-audit certification by the Finance Officer as required by state law.

Any significant revision(s) to the draft of a Contract after a review step has been completed will require a follow-up review by the appropriate person(s).

d. Monitoring and Compliance

The Contract Administrator has responsibility to:

1. Monitor Contractor performance for compliance with Contract terms and take appropriate action concerning the same in consultation with the Department Director or Designee and the Town Manager or Designee;
2. Maintain relevant documents, such as certificates of compliance;
3. Track important dates, such as renewal and termination dates of the Contract or Certificate(s) of Insurance, and take appropriate action(s) concerning the same;
4. If required by funding source determine if Supplier is subrecipient or contractor and follow the funding source's prescribed monitoring of subrecipients.

e. Archival

All Executed Contracts must be housed in the Town's central Contract Repository. It is the responsibility of the Contract Administrator to ensure that Contracts are provided to the custodian of that repository.

f. Amendments

1. All amendments must be reviewed and approved by the original signing authority.
2. If an amendment increases an existing Contract beyond an approval threshold, then the Contract as a whole must be approved at the increased dollar amount as required by law.
3. In general, all amendments modifying the term, price, and scope of Contracts previously approved by the Town Board must be reviewed and approved by the Town Board.

g. Extensions and Renewals

Any Contract extension, renewal, or amendment known before Contract Execution shall be counted in calculating the total amount of that Contract when considering whether Town Board approval is required. For Formal Solicitations, the Contract Administrator, in consultation with the Town Manager or Designee, should ask the Town Board to approve the Contract and authorize the exercise of all options and extensions that the Department expects to enter.

X. Insurance coverage for contracts

Recommended guidance for Contract insurance requirements is included in Exhibit B - Contract Minimum Insurance Requirement. All Contracts require a Certificate of Insurance prior to commencement and at any subsequent renewals of the Contractor's policies during

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the life of the Contract. The Certificate of Insurance should be retained with the Contract document. When a Certificate of Insurance is requested, it must name Town of Woodfin as an additional insured under general liability and possibly other coverages.

Please contact the Town Manager or Designee with any questions regarding “additional insureds” as this may vary by type or terms of the of Contract. The Town Manager or Designee must approve any deviations in advance.

XI. Practice Points

- a. Read the Contract before signing it and only sign if the Contract has been reviewed by the Department Director and the Town Manager or Designee(s).
- b. Use Woodfin Contract Template when the Supplier does not provide a template.
 - i. Avoid Contracts that include an auto renewal without any type of notice from the Contractor.
 - ii. Avoid contracts that allow price increases without the approval of the Town Manager or Designee.
 - iii. Town employees should not enter into handshake or verbal agreements. Contracts must be in some written format.

EXHIBIT A – Woodfin Contract Template

Town of Woodfin Service Contract

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

THIS SERVICES CONTRACT, made and entered into this ____ day of _____ 20__, by and between the Town of Woodfin, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter referred to as “TOWN”), and _____ (state of incorporation or type of organization) hereinafter referred to as (“CONTRACTOR”).

WITNESSETH:

Upon the terms and conditions hereinafter set forth, the TOWN has requested and CONTRACTOR has agreed to furnish the TOWN with services as set forth in this contract. The TOWN and CONTRACTOR agree as follows:

A. TERMS AND CONDITIONS:

1. CONTRACTOR shall provide **(DESCRIBE SERVICE)** as set forth more explicitly in **Exhibit A – Scope of Work**.
2. The term of this contract shall be from _____ until _____.
3. The TOWN will compensate the CONTRACTOR a maximum amount of \$_____. The CONTRACTOR shall **(INVOICING TERMS // bill the TOWN on a monthly basis // bill the TOWN \$_____ per hour // bill XX% upon execution of the contract and XX% thereafter // etc.)**.
4. If the contract exceeds the maximum amount threshold, the TOWN must amend or renew the contract in accordance with all applicable TOWN policies.
5. **(If applicable)** The CONTRACTOR shall provide a timekeeping record of all hours worked and description of the duties performed during the hours worked. All timesheets shall be submitted to the Town Administrator or his or her designee for review and payment of services. These time sheets shall be submitted on a monthly basis.
6. The TOWN shall pay all invoices within thirty (30) days of submittal.
7. Any employees furnished by CONTRACTOR, pursuant to this contract, will be employees of CONTRACTOR, an independent contractor. CONTRACTOR will maintain complete control over the employees’ conduct and will disburse all payrolls, taxes, licenses, insurances, uniforms and all other expenses incurred by CONTRACTOR in performing the terms of this contract.
8. **INSURANCE:** The CONTRACTOR agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the TOWN’S signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on CONTRACTOR’S duty to carry adequate insurance. **[Refer to Exhibit B of the Contracting Policy for description of insurance**

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minimum limits based on the type of Contract under consideration.] All policies of insurance shall be primary insurance and non-contributory with respect to all other available sources. The minimum insurance coverage which the CONTRACTOR shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

Worker's Compensation. Coverage at the statutory limits in compliance with applicable State and Federal laws. CONTRACTOR shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

Employer's Liability. Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.

Commercial General Liability. Insurance covering all operations performed by the Contractor with a minimum limit of \$_____ per occurrence with a \$_____ aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations or Contractual Liability.

Professional Liability. Insurance covering the CONTRACTOR for acts, errors, or omissions in performance of the Agreement with a minimum limit of \$1,000,000 per claim with a \$2,000,000 aggregate. The policy shall remain in effect two (2) years following expiration or termination of this Agreement and shall provide for a retroactive date no later than the inception date of this Agreement.

Business Automobile Liability. Insurance covering all owned, non-owned, and hired vehicles used in performance of this Agreement. The minimum combined single limit per occurrence shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.

Medical Professional Liability. Covering CONTRACTOR'S acts, errors, or omissions in rendering of or failure to render professional health care services in performance of the contract in an amount no less than \$_____ per claim with \$_____ in the aggregate for the duration of this Agreement. If policy is of a claims made type, such coverage shall be for a minimum of five (5) years following expiration or termination of this Agreement and shall provide for a retroactive date no later than the inception date of this Agreement.

Crime. Policy covering acts of employee dishonesty, forgery or alteration and computer fraud with minimum limit of \$1,000,000 per loss. The policy shall include coverage for all directors, officers, agents and employees of the CONTRACTOR.

- The bond or policy shall include coverage for extended theft and mysterious disappearance.
- The bond or policy shall not contain a condition requiring an arrest and conviction.

Cyber Liability. Providing third party coverage to include security, privacy, regulatory action, event management for all affected persons whose confidential information was compromised or was reasonably likely to have been compromised, cyber extortion, and crisis fund insurance. This policy shall carry a minimum limit of \$_____. If policy is of a claims made type, such coverage shall be for a minimum of two (2) years following expiration or termination of this Agreement and shall provide for a retroactive date no later than the inception date of this Agreement.

Property. CONTRACTOR shall not be obligated to maintain property insurance on CONTRACTOR'S furnishings, fixtures, equipment and personal property. All furnishings,

fixtures, equipment, and property of every kind and description of CONTRACTOR and of persons claiming by, through, or under CONTRACTOR which may be located on TOWN property shall be at the sole risk and hazard of CONTRACTOR and no part of loss or damages to such property from whatever cause shall be the responsibility of, charged to, or borne by the TOWN.

Umbrella/Excess Liability. If the underlying liability policy limits are less than those required, CONTRACTOR may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over the underlying _____ liability policy(s). Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

Additional Insurance Provisions:

If the CONTRACTOR maintains higher limits than the minimums shown above, the TOWN requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the TOWN.

The CONTRACTOR shall provide the TOWN with certificates of insurance on an approved form, evidencing the above amounts. The Town of Woodfin shall be named as additional insured under the commercial general liability policy. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under the Contract and remain in effect for the duration of the Agreement.

Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the TOWN, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina with a rating of A-, VII or better as determined by A. M. Best Company and shall be in a form acceptable to the TOWN.

CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that Town of Woodfin is listed as additional insured on insurance required from subcontractors.

Waiver of Subrogation: CONTRACTOR hereby grants to TOWN a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the TOWN by virtue of payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The limits of coverage under each insurance policy maintained by the CONTRACTOR shall not be interpreted as limiting the CONTRACTOR'S liability and obligations under this Agreement.

Nothing in this section is intended to affect or abrogate Town of Woodfin's governmental immunity.

Certificate of Insurance lists Town of Woodfin, 90 Elk Mountain Rd, Woodfin, NC 28804, as Certificate Holder.

9. CONTRACTOR shall indemnify and hold harmless the TOWN and its subsidiaries, divisions, officers, directors and employees from all liabilities, losses, costs, claims, damages, expenses, attorney

fees, judgments and awards that are proximately caused by the negligent acts or omissions of the CONTRACTOR or any employee, agent or assign of the CONTRACTOR. **Nothing herein shall be construed as a waiver on the part of the TOWN to any defense of any claim, including, but not limited to the defense of governmental immunity.**

10. The CONTRACTOR shall be properly licensed and skilled in his/her respective trade.
 11. CONTRACTOR shall comply with all state, federal or local laws, or ordinances, codes, rules or regulations governing performance of this Agreement, including but not limited to, equal opportunity employment laws, O.S.H.A., minimum wage and hour regulation, North Carolina State Building Code regulations and immigration laws.
 12. CONTRACTOR shall maintain all fiscal records relating to this Agreement in accordance with Generally Accepted Accounting Principles, and shall maintain any other records pertinent to this Agreement in a manner so as to clearly document Contractor's performance. The TOWN shall have a right to access the fiscal and other records of CONTRACTOR that are pertinent to this Agreement to perform examinations and audits. CONTRACTOR shall retain and keep accessible all the fiscal and other records for a minimum of three (3) years following final payment and termination of this Agreement, or until the conclusion of any audit or controversy related to this Agreement, whichever is later.
- B. TERMINATION AND MODIFICATION:** This contract may be terminated by either party, with thirty (30) days prior written notice. Notice shall be served under this contract by registered mail, certified mail or by other means.
- C. ENTIRE AGREEMENT:** This agreement contains the entire agreement between the parties.
- D. SEVERABILITY:** Should any provision or provisions contained in this agreement be declared by a court of competent jurisdiction to be void, unenforceable or illegal, such provision or provisions shall be severable and the remaining provisions hereof shall remain in full force and effect.
- E. GOVERNING LAW:** This contract is entered into in North Carolina and shall be construed under the statutes and laws of North Carolina.
- F. ASSIGNABILITY:** This contract is not assignable by either party without the prior written consent of the other party.
- G. REQUIREMENTS OF TOWN CONTRACTS:**
1. AMERICANS WITH DISABILITIES ACT
CONTRACTOR shall comply with the provisions of the Americans with Disabilities Act and all rules and regulations promulgated thereunder. CONTRACTOR hereby agrees to indemnify the TOWN from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of CONTRACTOR, its subcontractors, agents, successors, assigns, officers or employees to comply with the provisions of the ADA or the rules and regulations promulgated thereunder.
 2. DRUG FREE WORKPLACE
The TOWN is a drug-free workplace employer. By executing this contract, CONTRACTOR certifies that they and their subcontractors shall comply with the TOWN's Drug Free Workplace policy.
 3. E-VERIFY EMPLOYER COMPLIANCE

Title: Contracting Policy	Policy #: n/a	Version #: 1
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By executing this contract, the CONTRACTOR and their subcontractors with 25 or more employees as defined in Article 2 of Chapter 64 of the NC General Statutes, certify they shall comply with E-Verify requirements to contract with governmental units. E-Verify is a Federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. E-verify can be accessed via this link:

<http://www.uscis.gov/e-verify/employers>

4. IRAN DIVESTMENT and ISRAEL BOYCOTT:

TOWN staff are responsible for verifying that the bidder/contractor is not listed on the Iran Divestment List or the Companies Boycotting Israel Final Divestment List published by the NC State Treasurer pursuant to N.C.G.S. 147-86.60 and 147-86.82. The TOWN shall not contract with any company or their affiliates listed on these divestment lists.

5. NON-APPROPRIATION CLAUSE: Notwithstanding any other provisions of this Agreement, if the TOWN does not receive said funding for this Agreement from the TOWN Council for any fiscal year applicable to this Agreement, then the TOWN shall have the right to terminate this Agreement without penalty by giving not less than thirty (30) days' written notice documenting the lack of funding.

Contract Signature Pages

Commission Resolution # _____ (if applicable)

IN WITNESS WHEREOF, each party has caused this agreement to be executed by its duly authorized official as of the day and year written below.

The Town Manager or Department Director by Written Approval conveys that this contract has been reviewed and presented for approval by the Town of Woodfin.

_____ DATE _____
Department Director

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

_____ DATE _____
Town Finance Officer

Town Manager's signature

_____ DATE _____
Town Manager

PARTNERSHIP SIGNATURE FORM

Signature: _____
 General Partner

 Name of Partnership

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public for said County and State, do hereby certify that
_____, General Partner of _____ Partnership, personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this _____ day of _____, 20_____

Notary Public
Printed Name: _____
My Commission Expires: _____

LIMITED LIABILITY CORPORATION (LLC) FORM

BY: _____
Name of Limited Liability Corporation

Signature: _____
Member/Manager

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public for said County and State do hereby certify that
_____, Member/Manager of _____, a limited liability company, personally appeared before me
this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and notarial seal this _____ day of _____, 20_____

Notary Public

Printed Name: _____

My Commission Expires: _____

Exhibit B: Contract Minimum Insurance Requirement

The information provided below is not considered to be official policy but has been provided as a guidance for insurance requirements. Review with the Town Manager is recommended for any "High Risk" or "Specialty" exposure contracts as documented here. "Medium" and "Low" risk contracts may be routed through the Contract Control Process as described in the Contracting Policy.

VENDOR CLASSIFICATION		Commodities Delivered by Suppliers or Common Carrier	Low Risk Exposures (see Comments, below)	Medium Risk Exposure (see Comments, below)	High Risk Exposures (see Comments, below)	Specialty Exposures (see Comments, below)	Licensed Consultant: Legal, Accting, Medical, Architect	Public Transportation Services	Aircraft Liability Exposure
Type of Insurance									
Commercial General Liability (CGL) each	Commercial General Liability	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000*	\$1,000,000*	\$1,000,000	\$5,000,000*	\$3,000,000
	General Aggregate	\$2,000,000	\$2,000,000	\$2,000,000	\$3,000,000*	\$3,000,000*	\$2,000,000	\$5,000,000*	\$3,000,000*
Auto Liability- (AL)	Combined Single Limit per Accident	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000*	\$1,000,000*	\$1,000,000	\$5,000,000*	n/a
	Coverage for Any Auto								
Worker's Compensation & Employers Liability (EL)	Worker's Compensation	Statutory	Statutory	Statutory	Statutory	Statutory	Statutory	Statutory	Statutory
	Each Employee Accident (EL)	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
	Each Employee Disease (EL)	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Professional Services	Per Claim (Errors & Omissions)	n/a	\$1,000,000	\$1,000,000	\$3,000,000	\$3,000,000	\$1,000,000	n/a	n/a
	Aggregate	n/a	\$2,000,000	\$2,000,000	\$3,000,000	\$3,000,000	\$1,000,000	n/a	n/a
Medical Professional Services	Per Claim (Always treat as high risk exposure) Higher limits may be required by Town Manager or Designee	n/a	n/a	n/a	\$1,000,000*	\$1,000,000*	\$1,000,000*	n/a	n/a
	Aggregate	n/a	n/a	n/a	\$3,000,000*	\$3,000,000*	\$3,000,000*	n/a	n/a
Builder's Risk	Contractor shall purchase and maintain in force insurance on entire work. Insurance shall be written on a completed value form and in an amount equal to the initial contract sum, subject to subsequent modifications of the contract sum	n/a	TBD	TBD	TBD	TBD	n/a	n/a	n/a
Umbrella or Excess Liability	Each Occurrence	NA	NA	\$1,000,000	\$5,000,000	\$5,000,000	TBD	\$10,000,000	\$10,000,000
	Aggregate	NA	NA	\$1,000,000	\$5,000,000	\$5,000,000	TBD	\$10,000,000	\$10,000,000
Environmental / Pollution Liability	Each Occurrence	TBD	TBD	TBD	TBD	TBD	NA	TBD	NA
	Aggregate	TBD	TBD	TBD	TBD	TBD	NA	TBD	NA
Other Coverage as Required	Employee Dishonesty (Crime policy)								
	Cyber Liability								
	Liquor Liability								
Waiver of Subrogation on Worker's Compensation	(Party to a contract waives the right of their insurer to subrogate against the Town in case of loss.)	Required	Required if available	Required	Required	Required	Required	Required	Required
Town of Woodfin to be named as Additional Insureds on these coverages		CGL-AL	CGL-AL	CGL-AL	CGL-AL	CGL-AL	CGL-AL	CGL-AL	CGL
Certificate Holder shall read: Town of Woodfin									

PROPERTY - Contractor shall not be obligated to maintain property insurance on Contractor's furnishings, fixtures, equipment and personal property. All furnishings, fixtures, equipment, and property of every kind and description of Contractor and of persons claiming by, through, or under Contractor which may be located on Town property shall be at the sole risk and hazard of Contractor and no part of loss or damage to such property from whatever cause shall be the responsibility of, charged to, or borne by the Town.

Comments	*Low Risk Exposures	*Medium Risk Exposures	*High Risk Exposures	Specialty Exposures
Automobile coverage is only necessary if vehicles are used in the provision of services under the Contract and/or brought on a Town of Woodfin site.	Word Processing; Financial Services; Insurance Broker	Carpentry; Painting; Pool Cleaning; Movers; Catering	Large Excavation; Grading of Land over \$25,000	Asbestos Removal
The Per Occurrence and Aggregate limits for specified coverage should apply on a per location or per project basis.	Copying; Copier Repair; Copier Lease; Graphics	Concrete Work; Paving Contractors; Tree Maintenance	Firework Display; Medical Services	Demolition/ Environmental Hazard
Worker's Comp is required if the contractor/vendor has 3 or more employees. Owner Waiver is acceptable for a Sole Proprietor, Partners, or LLC that has no employees.	Microfilm Services; Consultant under \$10,000	Minor Excavation; Grading of Land <\$25,000; Trade Contractors; Sign Painting; Window Cleaning- 1 story	Hi Tech Installation; Roofing > \$25,000; Water Remediation	Heavy Construction Projects
Professional Liability may be required on a risk depending on nature of services provided by contract.	Classroom Instruction; Software design	Fork Lift Repair; Fire Extinguisher Testing	Temporary Employment Services	Sensitive Equipment
*A combination of Umbrella/Excess and primary limits may be used to provide coverage for the amount shown.	Small low risk repair or Service jobs	Electrical Repair; Refrigeration; Pest Control	Road Contractor; Building Construction	
Contractor agrees to endorse Town of Buncombe and (Issuing Dept) as Additional insureds on CGL and AL.	Minor Landscaping; Title Search Firm	HVAC; Plumbing; Roofing; Employee Assistance Program	Major Landscaping Projects	
Contract language should make Contractor responsible for sub-contractors carrying the same limits.	Sports Instructors	Janitorial; Welding; Elevator Maintenance	Environmental Hazard	