Buncombe County, North Carolina

Contracts Policy

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1.0 Policy Information

<table>
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<th>Category &amp; Subcategory:</th>
<th>Finance - Procurement</th>
<th>Original Effective Date:</th>
<th>11/20/2018</th>
<th>This Revision Effective:</th>
<th>9/3/2019</th>
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Revision History

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<th>Effective Date</th>
<th>Version</th>
<th>Section</th>
<th>Summary of Changes</th>
<th>Author</th>
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<td>11/20/18</td>
<td>1</td>
<td>Original version</td>
<td>Remove County Manager authority via Budget Ordinance</td>
<td>Michael Frue</td>
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<td>9/3/19</td>
<td>2</td>
<td>7.0 ii.</td>
<td>Remove County Manager authority via Budget Ordinance</td>
<td>Michael Frue</td>
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2.0 Introduction
This policy applies to all contracts entered into by the County.

3.0 Purpose
To establish a policy and procedure for creating, evaluating, executing, maintaining, managing, and retaining contracts to which the County is or will be a party. This policy is a companion to and does not replace the Procurement Policy.

4.0 Definitions
i. **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
   - 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 Legal Department with questions concerning whether a document or undertaking constitutes a Contract.

ii. **Designee**: an individual given the authority by the County Manager or Board of County Commissioners to award and sign contracts of certain categories and dollar thresholds.

iii. **BOCC**: abbreviation for Board of County Commissioners.

iv. **Contract Control Process**: the established routing process for all contracts.

v. **Certificate of Insurance**: a document that verifies a company has insurance coverage under specific conditions.

vi. **Contract Administrator**: the person assigned for day-to-day responsibility and representation of the County regarding the specific contract.

vii. **Handshake Deal**: an informal verbal agreement with no documentation (such agreements should be avoided).

5.0 Policies
i. Contracts shall comply with Federal, North Carolina, and Buncombe County law. Contracts (or aspects of Contracts) inconsistent with law may be void or voidable.

ii. No County officer or employee who is involved in making or administering a contract on behalf of the County 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 County officer or employee to criminal liability and may render the contract void. *See Generally*, N.C. Gen. Stat. (NCGS) § 14-234.

iii. County officers and/or 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.

iv. All contracts shall originate, be routed through, and follow the Contracts Control Process outlined in Exhibit A attached hereto; shall be reviewed by the Manager or Director of the Contract Administrator’s Department or Division, Risk Management and Compliance (as indicated in Exhibit C), and the Legal Department, and shall be preaudited as required by law.

v. Violations of the requirements set forth in this Policy should be reported to the County’s Whistleblower Hotline.

vi. Contracts that contain a scope which requires the sharing of Protected Health Information (PHI) for certain purposes, a Business Associate Agreement (BAA) must be executed in conjunction with the contract before PHI may be disclosed.
6.0 Required Contract Elements
Contracts are required to address, at minimum, the following elements where applicable:

i. **Scope of Work:** A detailed description of the deliverables provided by the supplier.

ii. **Term (length of time):** A specific beginning and ending date or a project start and completion schedule.

iii. **Maximum Amount Payable:** Specifications of the amount the contract payments cannot exceed. Uncertainty as to the amount of the final obligation under a contract does not excuse the contract from containing a maximum amount payable.

iv. **Cancellation:** A clause defining the specific conditions under which either party has rights to terminate the contract.

v. **Indemnification:** A clause protecting the county from legal issues related to supplier performance.

vi. **Non-assignment:** A clause prohibiting the assignment of specific rights or of the entire contract to another party without the consent of the County.

vii. **Governing Law:** A clause specifying that any dispute resulting from the contract shall be determined in accordance with the laws of North Carolina.

viii. **Insurance:** A clause controlling risks by requiring contractors and supplier to have liability insurance (amounts determined on a case-by-case basis). An example of terms and conditions can be found in Exhibit D.

ix. **Pre-audit Certification:** All contracts creating a financial obligation are required to have a pre-audit certification, in accordance with NCGS 159-28.

x. **Non-appropriation Clause:** If a contract is not associated with a project ordinance, more than 12 months in length, cross county fiscal years, and require funding from subsequent county budgets; then a clause allowing the County to terminate the contract if funding is not available in future fiscal years or Board approval is required.

xi. **Financial Assurance Clause:** If an agreement is with a public or non-profit organization, then a clause allowing the County the right to review the financial records of the organization must be included in the contract.

7.0 Contract Signature Authority

i. Pursuant to North Carolina law and the annual budget ordinance, County contracts may only be signed by authorized employees. Signature authority is derived solely from the BOCC, consistent with NCGS 153A-13.

ii. The BOCC delegates certain signature authority to the County Manager as set forth in the Procurement Policy.

iii. The Manager may grant express written or electronic delegation for the signature of certain Contracts on a case-by-case basis.

iv. Only those with properly delegated authority shall sign contracts or otherwise obligate the County. Anyone who attempts to bind the County or its divisions without properly delegated authority may be liable under NCGS§ 143-58.

v. Buncombe County’s Procurement Policy addresses signature authority for purchases and contracts by type and dollar threshold.

vi. The Buncombe County Sheriff, Register of Deeds, and Health and Human Services Director have additional delegated authority as authorized by state law to sign contracts that fall in the scope of their authority.

8.0 Contracts without a financial obligation
The County Manager or the Manager’s designee may enter into contracts that do not create a financial obligation if authorized under North Carolina law, provided that any such agreement requiring Board approval receives such approval.

9.0 Contract Control Process
The Contract Control Process is the required process that all contracts must follow (see Exhibit A), 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 head for every Contract to which the County is a party. It is the duty of the Contract Administrator to ensure that a contract follows the Contract Control Process.

b. **Contract Creation**

i. Contracts should be created using templates provided or approved by the Legal team. Deviations from such templates should be identified and reviewed by Legal prior to execution.

ii. The Contract Administrator shall manage the negotiation of the contract.

c. **Contract Routing, Approval, and Execution**
All contracts shall be reviewed and approved by all required parties prior to execution. The Contract Administrator will ensure the appropriate process sequence is utilized based on availability and the nature of the contract. Any significant
revisions to the draft of a contract after a review step has been completed will require a follow-up review. Steps should include:

i. Review by the Legal department will be performed or a justification for lack of review will be provided.
ii. Review by Risk Management or a justification for lack of review will be provided.
iii. All contracts requiring a County Manager signature should include a Contract Status Tracking Form (Exhibit B), or equivalent information, before being sent to the County Manager.

Contracts that create a financial obligation will also require:

iv. Review and approval by the Manager or Director of the Cost Center from which the obligation will be incurred.
v. Verification by the Procurement Division for compliance with state bidding requirements prior to award.
vi. Pre-audit certification as required by state law.

d. Monitoring and Compliance

The Contract Administrator or other designee will:

i. Monitor for compliance with terms and take appropriate action concerning the same;
ii. Maintain relevant documents such as certificates of compliance;
iii. Track important dates such as renewal and termination dates and take appropriate action concerning the same;
iv. 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 County Contracts must be housed in the County’s central Contract Repository. It is the responsibility of the Contract Administrator to ensure contracts are stored in the appropriate repository. Contracts in the Contract Repository should be retrievable by name, the company awarded the contract, the department awarding the contract, date of the contract, and the amount.

f. Amendments

i. All amendments must be reviewed and approved by the original signing authority.
ii. 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.
iii. In general, all amendments modifying the term, price, and scope of contracts previously approved by the BOCC must be reviewed and approved by the BOCC.

g. Extensions and Renewals

Any contract extension, renewal, or amendment known before the execution of a contract shall be counted in calculating the total amount of that contract when considering whether BOCC approval is required. For Formal Solicitations, the Department should ask BOCC to approve the contract and authorize the exercise of all options and extensions that the Department expects to enter.

10.0 Insurance coverage for contracts

Recommended guidance for contract insurance requirements is included in Exhibits C and D. All contracts require a certificate of insurance prior to commencement and at any subsequent renewals of the contractor’s policies during 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 Buncombe County as an additional insured under general liability and possibly other coverages. Please contact Risk Management with any questions regarding “additional insureds” as this may vary by Department. The County Manager must approve any deviations in advance.

11.0 Practice Points

i. Read the contract before signing it and only sign if the contract has been reviewed by the County Legal Department and all other appropriate departments such as Risk Management and Procurement.
ii. Use county standard form contracts when they exist. If a standard form does not exist, consult with the Legal Department before entering into a contract.
iii. 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 Director or a deputy finance officer designated by the governing board for this purpose.
iv. Avoid contracts that include an auto renewal without any type of notice from the vendor.
v. Avoid contracts that allow price increases without the County’s approval.
vi. County employees should not enter into handshake or verbal agreements. Contracts should be in some written format.
Exhibit A: Contract Control Process
The Buncombe County Contract Control Process is depicted below. Note that Departmental processes may vary, but all contracts that create a financial obligation require risk, legal, and pre-audit review.

Goals of Contract Control Process:
- Ensure all contracts can be easily identified and retrieved when needed
- Provide and require use of Legal Department-approved contract templates and/or Legal review
- Establish clear roles for contract owners and specialists
- Create a consistent and structured review process across all Buncombe County Departments
- Facilitate the monitoring of contract terms
Exhibit B: Contract Tracking Status Form
All County Contracts must complete a Contract Tracking Status form. This tracking form serves as a coversheet to contracts delivered to the County Manager for signature. A sample of information required is shown below.

![Contract Status Tracking Form]

Department/Program: 
Supplier Name: 
Description: 
Contract Administrator: 
Start & End Date (including potential renewals): 
Contract Value: [ ] This is a Contract Renewal

Department Level Certification

The Contract Administrator above certifies that:

- [ ] This Contract complies with NC bidding requirements and has been approved by Procurement Manager
- [ ] Administrator has consulted Risk for initial review or [ ] Risk Review not required (explain why below)
- [ ] Administrator has consulted Legal for initial review or [ ] Legal Review not required (explain why below)
- [ ] This Contract has been pre-audited by the Finance Officer or will be obligated by a purchase order
- [ ] This Contract has been signed by the other party

Comments (include concerns raised by Risk, Legal, or any others):

Signature of Contract Administrator: _____________________________ Date: _____________________________

Signature of Dept. Head (if not Contract Administrator): _____________________________ Date: _____________________________

Final Legal Review

The undersigned county staff attorney does hereby certify that after a final review, this Contract appears ready for the Board Chair or the County Manger’s (or her designee’s) signature.

This the _______ day of _________, 20______ Comments: _____________________________

Comments: _____________________________
Exhibit C: Contract Insurance Requirement Guidance

The below guidance is not considered to be official policy but has been provided as a guidance for insurance requirements. The County recommends a Risk Management review for any “High Risk” or “Specialty” exposure contracts as documented in the guidance below. “Medium” and “Low” risk contracts may still be routed through the risk management review as needed.

<table>
<thead>
<tr>
<th>VENDOR CLASSIFICATION</th>
<th>Commercials Delivered by Vendor/Commercial Carrier</th>
<th>Low Risk Exposures*</th>
<th>Medium Risk Exposures*</th>
<th>High Risk Exposures*</th>
<th>Specialty Exposures*</th>
<th>Licensed Professional Consultant-Legal; Acting; Medical; Software; Architect</th>
<th>Public Transportation</th>
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<tr>
<td>Commercial General Liability (CGL) each</td>
<td>Commercial General Liability</td>
<td>$1,000,000</td>
<td>$1,000,000</td>
<td>$1,000,000*</td>
<td>$1,000,000*</td>
<td>$1,000,000</td>
<td>$5,000,000*</td>
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<td>General Aggregate</td>
<td>$2,000,000</td>
<td>$2,000,000</td>
<td>$2,000,000</td>
<td>$3,000,000*</td>
<td>$3,000,000*</td>
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<td>$3,000,000*</td>
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<tr>
<td>Auto Liability- Inc BI and PD (AL)</td>
<td>Coverage for Any Auto</td>
<td>$1,000,000</td>
<td>$1,000,000</td>
<td>$1,000,000*</td>
<td>$1,000,000*</td>
<td>$1,000,000</td>
<td>$5,000,000*</td>
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<tr>
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<tr>
<td>Each Employee Accident (EL)</td>
<td>$1,000,000</td>
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<tr>
<td>Each Employee Disease (EL)</td>
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<td>Professional Services</td>
<td>Per Claim (Errors &amp; Omissions)</td>
<td>NA</td>
<td>NA</td>
<td>$1,000,000*</td>
<td>$1,000,000*</td>
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<td>Medical Professional Services</td>
<td>Per Claim (Always treat as high risk exposure)</td>
<td>Higher limits may be required - Check with Risk Mgmt</td>
<td>NA</td>
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<td>Builder’s Risk</td>
<td>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</td>
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<tr>
<td>Umbrella or Excess Liability</td>
<td>Each Occurrence</td>
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<td>NA</td>
<td>$1,000,000</td>
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<td>Required</td>
<td>Required</td>
<td>Required</td>
<td>Required</td>
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Comments:
- Carpentery; Painting; Pool Cleaning; Movers; Catering
- Construction Work; Paving Contractors; Tree Maintenance
- Large Excavation; Grading over $25,000
- Fireworks Display; Medical Services
- Asbestos Removal
- Demolition/ Environmental Hazard
- Heavy Construction Projects
- Hi Tech Installation; Roofing; >$25,000; Water Remediation
- Sensitive Equipment
- Temporary Employment Services
- Environmental Hazard

Certificate Holder shall read: County of Buncombe - “ATTN: Contract Manager” at issuing department's address.

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 County 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 County.
Exhibit D: Example Insurance Terms and Conditions

1. Insurance:

**Insurance.** Contractor agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the County’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. 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. Buncombe County shall be named as an additional insured under the policy.

**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.

   a. The bond or policy shall include coverage for extended theft and mysterious disappearance.
   b. 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
County 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 County.

**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.

**2. Additional Insurance Provisions:**

If the Contractor maintains higher limits than the minimums shown above, the County 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 County.

The Contractor shall provide the County with certificates of insurance on an approved form, evidencing the above amounts. Buncombe County and (only BCSO, maybe HHS and ROD – ask Legal) shall be named as additional insureds 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 County, 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 County.

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Buncombe County and (only BCSO, maybe HHS and ROD – ask Legal) are additional insureds on insurance required from subcontractors.

Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County 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 Buncombe County’s governmental immunity.

*(LEGAL TO PROVIDE SEPARATE SECTION FOR INDEMNIFICATION AND HOLD HARMLESS)*