

A Construction Journey: Federal Requirements for Construction

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Prepared 1/31/22

Steps in a Construction Journey

-  1. Planning and Approvals
-  2. Procurement Steps
-  3. Contracting
-  4. Design Phase
-  5. Build/Construction Phase
-  6. Post Construction



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Is it Construction¹, Maintenance² or Remodeling³?

Construction:

- Preparation of drawings and specifications for school facilities;
- Erecting, building, acquiring, altering, remodeling, repairing, or extending school facilities;
- Inspecting and supervising the construction of school facilities

1 - As defined in the Impact Aid Program (EDGAR)

2 - As defined in Uniform Guidance

3 - Per OESE presentation: [PowerPoint Presentation \(ed.gov\)](#)

Is it Construction, Maintenance & Remodeling?

- Construction is not: “Minor remodeling”
 - Minor remodeling means minor alterations in a previously completed building, for purposes associated with the coronavirus.
 - Includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building.
 - Some HVAC upgrades may constitute minor remodeling.
 - “Minor remodeling” does not include permanent building construction, structural alterations to buildings, building maintenance, or repairs.
 - Projects that constitute capital assets still require prior approval.
- Construction is not: Maintenance and Repair:
 - Generally operational costs incurred for:
 - utilities,
 - insurance,
 - security,
 - necessary maintenance,
 - janitorial services, repair, or upkeep of buildings and equipment (unless otherwise provided for)
- Which:
1. does not add to the permanent value of the property, and
 2. does not appreciably prolong its intended life
- but keep it in an efficient operating condition

[Per OESE: PowerPoint Presentation \(ed.gov\)](#)

Is it Construction*, Maintenance** or Remodeling***?

1. Are you erecting, building, acquiring, or extending school facilities?

•If yes, treat as construction.

2. Are you altering or remodeling, beyond the confines of the previously completed building?

•If yes, treat as construction.

3. Does the project include structural alteration to the building?

•If yes, treat as construction.

4. Is the project permanent building construction?

•If yes, treat as construction.

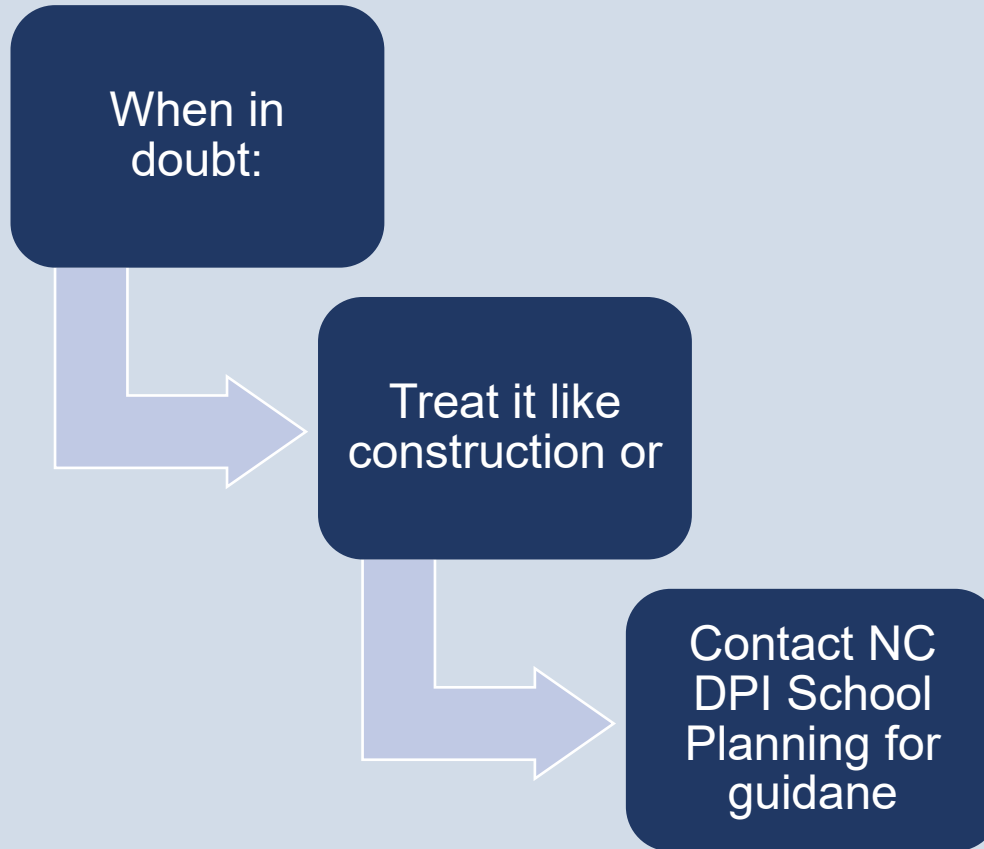
5. Answers to question 1-4 are no. Are you altering or remodeling, within the confines of the previously completed building for the purposes of coronavirus?

•If yes, minor remodeling, not construction.

6. Answers to question 1-5 are no. Are you repairing or performing necessary maintenance or upkeep that doesn't add to the value of the property or doesn't significantly prolong the life?

•If yes, treat as maintenance and repairs, not construction.

Is it Construction*, Maintenance** or Remodeling***?





1: Planning & Approvals

A grantee must have or obtain a **full title or other interest** in the site, including:

- right of access, that is sufficient to insure the grantee's undisturbed use, and
- possession of the facilities for **50 years or the useful life of the facilities**, whichever is longer



1: Planning & Approvals

Prior written approval needed for capital expenditures:

- general purpose equipment (with a unit cost of \$5,000 or more),
- buildings and land,
- including material improvements to buildings and land

How are projects approved?

- For ESSER related purchases, present project in the CCIP application for approval



1: Planning & Approvals

Construction Management At-Risk (CMAR)

- NCGS prohibits price as a factor in selection. This method will not comply with Uniform Guidance.

Design Build

- The adopted Budget Technical Corrections (page 6 in [section 1.6 Part 5](#) of S.L. 2021-180) amended the procurement standards related to design-build services for certain federal funds in a way that allows for compliance with the G.S. and Uniform Guidance. Expires on December 31, 2025.



2: Procurement Steps

General Procurement Requirements in 2 CFR 200-318 to 200.326:

Must avoid unnecessary or duplicative items.	Lease vs. Purchase analysis, when applicable
	Consolidate or break out purchases, for economy
Document SAMS compliance for vendor	Ensure not debarred
	SAM.gov
Identify Responsible Contractors	Integrity, compliance with public policy, record of past performance, and financial and technical resources



2: Procurement Steps

General Procurement Requirements in 2 CFR 200-318 to 200.326:

Maintain Records, including Bid Documentation

Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

Consider Domestic Preference for Procurement

Must include in contracts, purchase orders

Board Policy, Policy & Procedures, Strategic Advertising, RFP, Certification, Required Response, Factor in vendor selection, Update Website

Perform a Contract Cost or Price Analysis if >\$250,000

Minimum independent cost estimate before bid or RFP



2: Procurement Steps

General Procurement Requirements:

LEA must have a written method for conducting technical evaluations and making selections

Request for Proposals (RFP) must:

- Be publicized,
- Identify all evaluation factors and their relative importance;
- Solicited from an adequate number of qualified offerors;
- Awarded to responsible offeror, includes price and other factors

• Sealed Bid (Preferred for Construction)

- Award to lowest responsible bidder
- Two or more responsible bidders are willing and able to compete effectively for the business (over \$500k follower NCGS – 3 responsive bidders)
- Solicited from an adequate number of qualified sources
- Public opening
- May reject a bid for sound documented reason



2: Procurement Steps

MWBE Uniform Guidance Requirements:

- Must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible (regardless of cost).

Uniform Guidance requirements meet NCGS under \$300k:

- “public entities shall solicit minority participation in contracts for the erection, construction, alteration or repair of any building”

Affirmative Action Must:

- (1) Place qualified organizations on solicitation lists;

- (2) Assuring that the organizations are solicited when they are potential sources;

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation;

- (4) Establishing delivery schedules, where the requirement permits, which encourage participation the organizations;

- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps



2: Procurement Steps

MWBE/HUB NCGS for Construction Over \$300k (Additional Requirements)

Unit must establish goal for HUB participation in total contract amount. G.S. 143-128.2(a).

Unit must make good faith efforts to solicit HUB participation. G.S. 143-128.2(e).

Unit must require bidders to undertake good faith efforts to solicit minority participation. G.S. 143-128.2(f).

- 10 statutory good faith efforts.

Bidders must (1) submit affidavit of good faith efforts or self-performance affidavit (reflecting no subcontracting to occur), and (2) identify minority businesses on bid. G.S. 143-128.2(c).

Apparent lowest responsible bidder must submit either (1) affidavit showing unit's participation goal is met; or (2) documentation showing good faith efforts to meet participation goal. G.S. 143-128.2(c)(1).



2: Procurement Steps

Procurement Requirements More specific to Construction:

Maintain Contractor Oversight and maintain competent architectural and engineering supervision and inspection (Already required by NCGS)

Encouraged to use Value Engineering Clause

Cooperative Agreements and Consortia should not be used for Construction



2: Procurement Steps

More specific to Construction:

Special Rules for Architecture and Engineering Services

- Price can not be considered
- Must use an RFP process to ensure competition

No Time and Material type contract unless NO alternative

- Must use a ceiling price that the contractor exceeds at its own risk.
- Expect a high degree of oversight

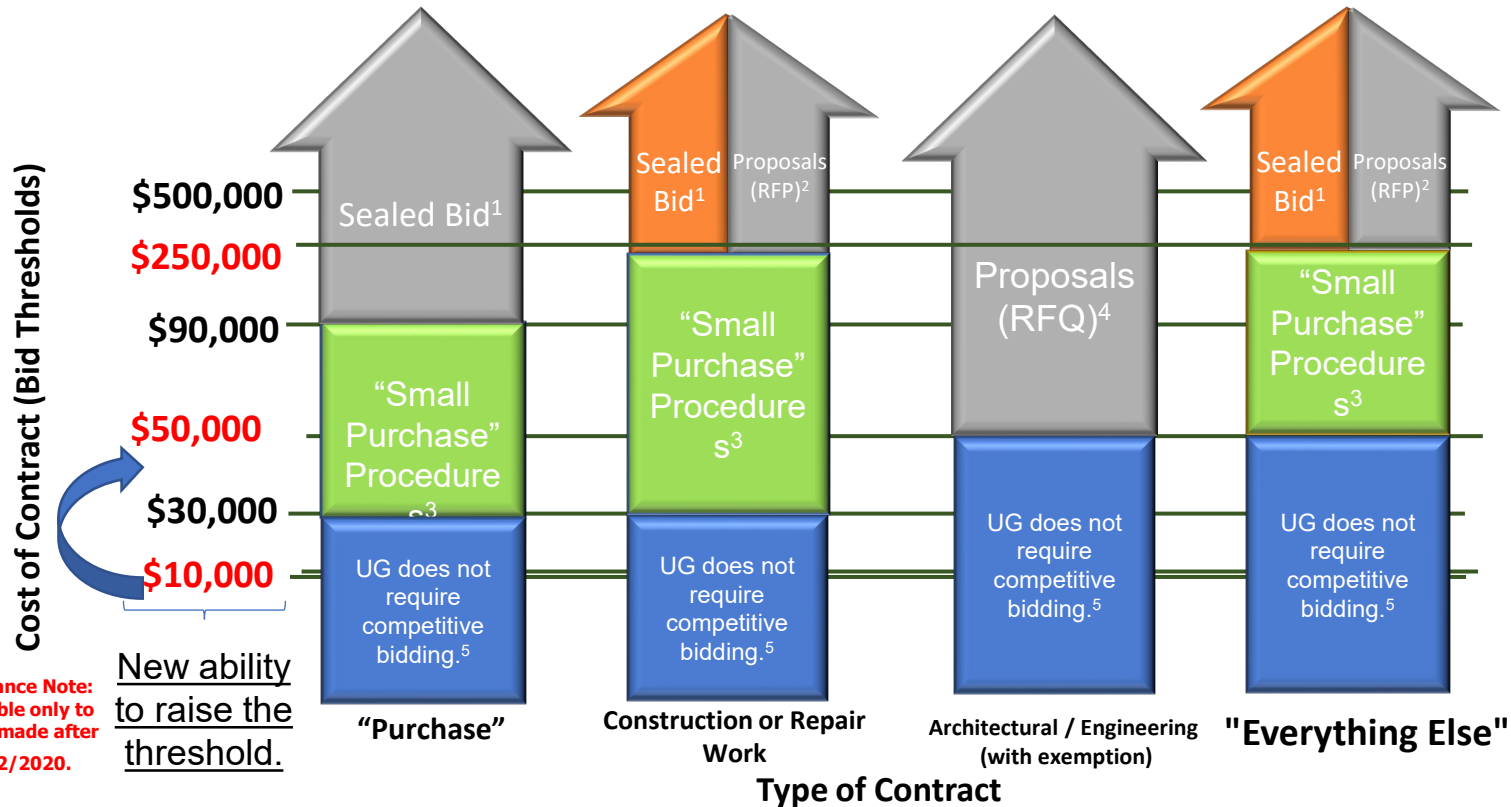
Bonding is Required when project price > \$250,000

- Bid Bond 5% of the project price
- Performance Bond equal to 100% of the project price
- Payment Bond equal to 100% of the project price
- Should consider for all projects



2: Procurement Steps

UG Procurement Rules with State Law Overlay – Only If Unit Adopts Highest Bidding Thresholds “Consistent With State Law”



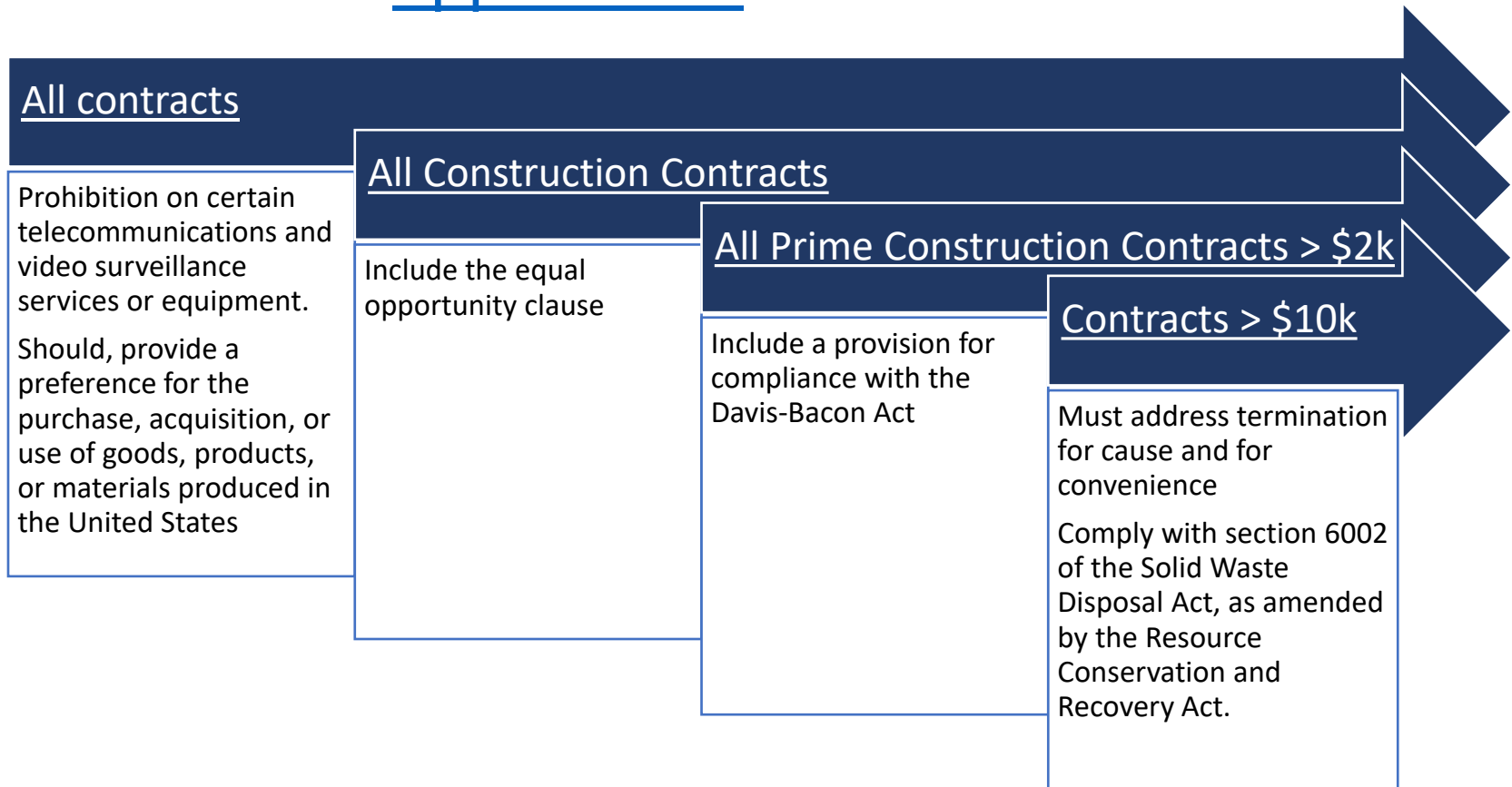
¹2 C.F.R. § 200.320(b)(1).
²2 C.F.R. § 200.320(b)(2).
³2 C.F.R. § 200.320(a)(2).
⁴2 C.F.R. § 200.320(a)(1).

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3. Contracting

Contracts must contain the applicable provisions described in [appendix II](#) to 2 CFR 200:





3. Contracting

Contracts > \$100k

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).
Contracts over \$100k that involve the employment of mechanics or laborers

Byrd Anti-Lobbying Amendment -
Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Contracts over \$100k that involve the employment of mechanics or laborers

Contracts > \$150k

Clean Air Act (42 U.S.C. 7401-7671q.)
Federal Water Pollution Control Act (33 U.S.C. 1251-1387)

Contracts > \$250k

Address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.



4. Design Phase

School Planning Review is required per G.S. 115C-521(c):

DPI Capital Project Submittal Procedures:

<https://www.dpi.nc.gov/districts-schools/district-operations/school-planning/design-review>

DPI Facility Design Guidelines:

<https://files.nc.gov/dpi/documents/schoolplanning/facility-design-guidelines.pdf>

DPI School Planning:

- School Planning professionals conduct design reviews for new schools, additions, and renovations.
- Design reviews encompass code compliance, life safety, longevity, durability, economy, and efficiency of building construction systems.
- Design review conferences are available at each design phase
- After design phase review DPI will issue a Certificate of Review



4. Design Phase

Projects Needing DPI Design Review

Types of Projects Reviewed	Types of Projects Not Reviewed
All New Construction, Renovations, Additions	
New athletic fields, grandstands, press box, field houses, concession stands, dugouts, etc.	
New and Relocated Modular classroom units, ramps, steps, walkways, etc. including foundations	
Repair or replacement of structural systems	
New dropped (lay-in) ceiling in existing schools	
Replacing Windows and/or Doors	
Hazardous material abatement in existing buildings where building systems are affected	
Upgrade or replacement of fire alarm system	
Demolition of existing school building	<i>Demolition of buildings other than school buildings</i>
Reroofing, over-roofing	<i>Roof patching or maintenance.</i>
Relocating partitions; adding or deleting doors	<i>Any repair or maintenance, such as replacing flooring, patching walls, repainting, etc.</i>
New Parking or Drives	<i>Repairing asphalt, potholes, etc. or resurfacing existing</i>
Improvements required by ADA	<i>Additions of simple ramps, etc. or signage</i>
Change-out of plumbing fixtures or change in type of fixtures	<i>Plumbing replacements in-kind; replace faucets or other minor components</i>
New domestic water heating system, or upgrade	<i>Water heater replacement with same type and size.</i>
New HVAC systems; new boilers; new chillers; changes in type of system; demo and replacement of air distribution system, etc.	<i>HVAC equipment replacement in-kind; small air handling or condensing units (5 ton or less); air diffusers and grills; fan, heaters, etc.</i>
Upgrade or redesign HVAC control system	<i>Replacement of HVAC control components</i>
New energy conservation system	<i>Repair of existing insulation</i>
Complete replacement of exist HVAC or plumbing piping systems; extension of existing system	<i>Repair of existing piping</i>
Major components of Power Distribution System	<i>Adding electrical outlets to existing systems</i>
New lighting systems (interior or exterior)	<i>Replacing or adding lighting fixtures to existing systems</i>
New Installations or Major changes to Technology systems, security systems, CCTV, etc. including complete replacement of systems or in cases where life systems are affected.	<i>Minor Renovations to technology systems (tel/data, intercom, security, CATV etc.)</i>
New system affecting health, or welfare of students or personnel such as fire suppression, emergency power generation, etc.	<i>Replacement of isolated safety components with new elements meeting code and similar to those currently in service.</i>



4. Design Phase

Comply with State and Local Safety and Health Standards

Design must allow access by the handicapped

Consider Energy Conservation

Avoid Flood Hazards

AHRAE HVAC Standards



4. Design Phase

North Carolina
Specific
Requirements

A Registered Architect and/or Registered Engineer shall prepare drawings and specifications per G.S. 133-1 through 133-4.1

Certain School Projects may require NC DOI Code Review per G.S. 58-31-40 (fire code)

More information on NC Requirements:
[Legislative References | NC DPI](#)



5. Build/Construction Phase



Maintain Contractor Oversight and maintain competent architectural and engineering supervision and inspection at the construction site (Similar requirements in NCGS)



Must ensure construction can be completed in a reasonable time



6. Post Construction

Interest expenses are not allowed

Include buildings and land in the list of capital assets/equipment log

Log should maintain detailed property records

Adequate Maintenance Plan

Real property must be insured in same manner as other property



6. Post Construction

PSU must have sufficient operational funds to operate and maintain the facility once the construction is complete

Title Remains with sub-recipient

Sub-recipient is the trustee of the property for the beneficiaries of the approved project or program

Property must be used for its intended purpose or contact NC DPI on instructions for disposition actions based on Uniform Guidance

Please send your question via email. An FAQ will be prepared in response.

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Prepared for 2/8/22

