



Gaston County

Gaston County
Board of Commissioners
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DHHS - Social Services Division Board Action

File #: 25-415

Commissioner Keigher - DHHS - Social Services Division (ACCESS) - Approval of the Gaston County ACCESS Transportation - Specific Procurement Policy

STAFF CONTACT

Shannon Myers - Social Services Director - 704-862-6721

BUDGET IMPACT

Required approval to continue receiving NCDOT/PTD funding.

BACKGROUND

The ACCESS Procurement Policy is a required document by NCDOT/PTD and must be approved and signed by the Board. This policy assists the department in meeting requirements to receive NCDOT funding for the program.

POLICY IMPACT

N/A

ATTACHMENTS

Gaston County ACCESS Procurement Policy

DO NOT TYPE BELOW THIS LINE

I, Donna S. Buff, Clerk to the County Commission, do hereby certify that the above is a true and correct copy of action taken by the Board of Commissioners as follows:

NO.	DATE	M1	M2	JBailey	CBrown	CCloninger	AFraley	BHovis	TKeigher	SShehan	Vote
2025-278	08/26/2025	TK	JB	A	A	A	A	A	A	A	U

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Gaston County ACCESS Central Transportation PROCUREMENT POLICY

April 1, 2025

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1. INTRODUCTION

1.1. Purpose

This policy establishes guidelines and minimum standards that Gaston County ACCESS will use in the management of its third-party contracts. This manual is intended to ensure that Gaston County ACCESS complies with Federal Transit Administration (FTA) and the North Carolina Department of Transportation's standards to ensure full and open competition and equitable treatment of all potential sources for all purchases made with funding derived from the Federal, state, and local governments. In all purchasing activity, the goal of Gaston County ACCESS is to ensure maximum open and free competition consistent with:

- 2 CFR § 200.318 – 200.327;
- FTA Circular 4220.1F "Third Party Contracting Guidance" or the latest version thereof

1.2. Applicability

This manual applies to all procurements undertaken and financed, in whole or in part, with FTA financial assistance provided to Gaston County ACCESS to support **open market procurements**. An open market solicitation is used to purchase a good or service by soliciting from any available source. Most grantee procurement activity will be undertaken on the open market. Open market procurements exclude:

- Employment Contracts;
- Real Estate Contracts; and
- Intergovernmental Agreements (IGAs)

The goal of this procurement policy is to provide an atmosphere in which all procurement transactions will be conducted in a manner providing full and open competition. Gaston County ACCESS will avoid the following situations considered to be restrictive of competition:

- Application of unreasonable requirements placed on firms in order for them to qualify to do business;
- Imposition of geographic preference standards in the selection of vendors;
- Imposition of unnecessary experience and excessive bonding requirements;
- Use of noncompetitive pricing practices between firms or between affiliated companies;
- Employment of noncompetitive awards to any person or firm on retainer contracts;
- Failure to recognize organizational conflicts of interest, which means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the Gaston County ACCESS; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;
- Use of "brand name" specifications without listing its salient characteristics and not allowing "an equal" product to be offered; and
- Any arbitrary action in the procurement process.

Gaston County ACCESS will conduct procurements in a manner that does not give in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not pre-empt North Carolina licensing laws from being considered in those disciplines that are regulated by the State of North Carolina. Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services if an appropriate number of qualified firms, given the nature and size of the project, are able to compete for the contract.

1.3. Third-Party Contracting Capacity

Federal regulations (2 CFR § 200.319(c) and FTA guidance found in FTA Circular 4220.1F, Chapter III, § 3a) require Gaston County ACCESS to have written procurement procedures. This policy is designed to meet FTA and NC DOT's requirements in this regard.

1.4. Relationship to Other Subrecipient Policies

The purpose of these purchasing policies and procedures is two-fold. First, the Subrecipient has established these policies and procedures to conform to the provisions of Federal procurement regulations that govern the Subrecipient's use of FTA and NC DOT funds. Second, these policies and procedures assure that materials, supplies, services, and equipment required for the efficient and effective operation of the transit program are procured with regard to an analysis of price, quality, quantity, terms, and delivery specifications. These policies and procedures pertain only to the Subrecipient's purchases made with FTA funds for the transit program; purchases with local funds and for purposes other than transit should follow the applicable North Carolina law.

These policies may not answer all questions related to purchasing; if any employee of Gaston County ACCESS has a question regarding these procedures, NC DOT should be contacted for clarification and guidance.

When Gaston County ACCESS undertakes any purchase utilizing FTA funds, this policy shall supersede any existing purchasing policy promulgated by the Subrecipient. When any conflict exists between this policy and the existing policies of the Subrecipient, Gaston County will follow the most restrictive policy. If any employee of Gaston County ACCESS determines that a conflict exists between these policies and state and local law, Gaston County ACCESS shall contact NC DOT and communicate the conflict.

2. CODE OF ETHICS AND CONFLICT OF INTEREST POLICY

2.1. Purpose

Federal grant management rules (2 CFR § 200.318(c)(1)) require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. This policy must address:

- Personal conflicts of interest
- Gifts; and
- Violations.

2.2. Definition of Key Terms

As used herein, the following definitions apply:

Conflict of Interest – A situation in which an employee, board member, officer, or agent has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties. A conflict of interest represents a divergence between a person covered by this policy and their private interests and their professional obligations to Gaston County ACCESS such that an independent observer might reasonably question whether the individual's professional actions or decisions are determined by considerations of personal gain, financial or otherwise.

Financial Interest – An officer, agent, board member, his or her partner, employee, or their immediate family, is considered as having a financial interest in a company if: they receive more than \$10,000 in consulting income, salaries, or equity in the company; they have more than 5 percent equity in the company; they have intellectual property rights in or receive royalties from the company; or they serve as a director, officer, partner, trustee, manager or employee of the company.

Immediate Family – Immediate family includes an employee's spouse, grandparent, parent, brother, sister, child or grandchild, and his or her partner.

2.3. Applicability

No employee, elected official, agent, or other individual under an employment contract with Gaston County ACCESS, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of those previously listed individuals has a financial or other interest in the firm selected for the award.

2.4. Gifts

Any contractor, subcontractor, or supplier who has a contract with the Subrecipient; has performed under such a contract within the past year; or anticipates bidding on such a contract in the future shall be prohibited from making gifts or providing favors to any individual defined in Section 2.2. who is charged with the duty of:

- Preparing plans, specifications, or estimates for public contracts; or
- Awarding or administering public contracts; or
- Inspecting or supervising construction.

Gaston County ACCESS also prohibits all covered individuals defined in Section 2.2. who perform the functions listed above from receiving or accepting any such gift or favor.

2.5. Employee Conflicts of Interest

2.5.1. Conflicts of Interest

It shall be a breach of ethical standards for any Gaston County ACCESS employee to participate directly or indirectly in a procurement when the employee knows:

- The employee or any member of the employee's immediate family, board member, officer, agent, his or her partner, has a financial interest pertaining to the procurement;
- A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or
- Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.

2.5.2. Discovery of Actual or Potential Conflict of Interest (Disqualification and Waiver)

Upon discovery of an actual or potential conflict of interest, an employee participating directly or indirectly in a procurement shall:

- Promptly file a written statement of disqualification with the Department of Social Services Director; and
- Withdraw from further participation in the procurement.

The employee may, at the same time, request from the Department of Social Services Director, an advisory opinion as to what further participation, if any, the employee may have in the procurement. It shall be at the sole discretion of the Department of Social Services Director to determine if the employee may have any further participation in the procurement and, if so, the extent to which the employee may participate. Any employee who fails to comply with the provisions of this paragraph may be subject to disciplinary action.

2.5.3. Employee Disclosure Requirements

A Gaston County ACCESS employee, who has reason to believe that he/she or his/her immediate family have an interest that may be affected by his/her official acts or actions as a Gaston County ACCESS employee or by the official acts or actions of Gaston County ACCESS, shall disclose the precise nature and value of such interest in a written disclosure statement to the Department of Social Services Director. The employee's disclosure statement will be reviewed by the Department of Social Services Director and the Department of Social Services Director will respond to the employee in writing with an opinion as to the propriety of said interest.

In the event that the Department of Social Services Director has reason to believe that he/she or his/her immediate family has an interest that may be affected by his/her official acts or actions as a Gaston County ACCESS employee or by the official acts or actions of Gaston County ACCESS, he/she shall disclose the precise nature and value of such interest in a written disclosure statement.

2.5.4. Confidential Information

A Gaston County ACCESS employee may not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, confidential information acquired by virtue of their position or employment with Gaston County ACCESS.

2.5.5. Solicitation Provision

Gaston County ACCESS shall insert the following provisions in all formal competitive solicitation documents for products and services:

These policies shall apply to Gaston County ACCESS employees involved in procurement. It is a breach of ethical standards for any Gaston County ACCESS employee to participate directly or indirectly in a procurement when the employee knows:

- *The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;*
- *A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement; or*
- *Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.*

In addition, any persons acting as members of an evaluation committee for any procurement shall, for the purposes of the procurement, be bound by the conditions of this Section. Throughout the bid/proposal evaluation process and subsequent contract negotiations, offerors shall not discuss or seek specific information about this procurement, including but not limited to, the contents of submissions, the evaluation process, or the contract negotiations, with members of any evaluation committee, governing board, or other Gaston County ACCESS employees other than the designated Department of Social Services Director."

2.6. Organizational Conflicts of Interest

The Department of Social Services Director and technical personnel are encouraged to work closely with the legal counsel to review all situations that appear to have the potential for an organizational conflict of interest.

Organizational conflicts of interest may result in bias and potentially provide an unfair competitive advantage to a potential offeror. An organizational conflict of interest occurs due to the type of work to be performed under a third-party contract, or because of other activities or relationships such as:

- A contractor is unable, or potentially unable, to render impartial assistance or advice to the Subrecipient;
- A contractor's objectivity in performing contract work is or might otherwise be impaired; or
- A contractor has an unfair competitive advantage.

Bias arises when a contractor is placed in a situation where there may be an incentive to distort advice or decisions. Whenever a contract is awarded that involves the rendering of advice, the question must always be asked as to whether the potential for a conflict of interest exists for the contractor rendering the advice. Gaston County ACCESS will utilize a "Conflict of Interest Disclosure Statement," in its solicitation when contracting for services of this nature.

3. Gaston County ACCESS RESPONSIBILITIES UNDER FEDERAL LAW

3.1. Third-Party Contracting Capacity

Gaston County ACCESS must maintain adequate technical capacity to carry out its FTA-assisted projects and comply with Federal rules. Gaston County ACCESS's third-party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, state, and local requirements.

3.2. Contract Administration System

Gaston County ACCESS must maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, state, and local requirements. See Section 6 of this policy for a full discussion of contract administration.

3.2.1. Written Procurement Procedures

Gaston County ACCESS must maintain and follow written procurement procedures that address:

- (a) Solicitations – Requirements for Gaston County ACCESS solicitations are addressed in Section 5.
- (b) Necessity – Requirements related to Gaston County ACCESS's need for products or services are addressed in Section 3.2.2.
- (c) Metric Usage – Requirements related to the acceptance of products and services dimensioned in the metric system of measurement are addressed in Section 3.5.2.
- (d) Environmental and Energy Efficiency Preferences – Requirements related to preference for products and services that conserve natural resources, protect the environment, and are energy efficient are addressed in Sections 3.4.3 and 3.4.4.
- (e) Procurement Methods – Descriptions of the procurement methods that Gaston County ACCESS may use are included in Section 5.
- (f) Legal Restrictions – Descriptions of Federal and state restrictions on Gaston County ACCESS's acquisitions are included in Section 5.

Third-Party Contract Provisions – Specific third-party contract provisions required for each contract and flow-down requirements to subcontracts must be included in all contracts.

- (1) Sources – Descriptions of the availability and use of various sources of products and services are addressed in Section 4.
- (2) Resolution of Third-Party Contracting Issues – Procedures related to the resolution of third-party contracting issues are included in Section 6.8.

3.2.2. Adequate Third-Party Contract Provisions

Gaston County ACCESS must include provisions in all of its third-party contracts that are adequate to form a sound and complete agreement.

3.2.3. Industry Contracts

Gaston County ACCESS shall not use an industry-developed contract or a contract that is provided by a bidder or offeror unless it has first evaluated the benefits of the contract. Gaston County ACCESS shall ensure that such contracts include all required Federal provisions but do not include terms and conditions that may be unfavorable to Gaston County ACCESS.

3.2.4. Revenue Contracts

Gaston County ACCESS may enter into a revenue contract with a third party to generate revenues in connection with a transit-related activity, or to create business opportunities utilizing an FTA-funded asset. Any such contract opportunity will follow competitive selection procedures and principles outlined herein.

3.2.5. Record Keeping

Gaston County ACCESS must prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. Gaston County ACCESS must maintain these records for five (5) years after Gaston County ACCESS and its lower-tier subrecipients, if any, have made final payment and all other pending matters are closed. Specific recordkeeping requirements include:

- (a) Written Record of Procurement History – Gaston County ACCESS must maintain and make available to NC DOT and FTA written records detailing the history of each procurement. For all procurements above the micro-purchase level, Gaston County ACCESS must maintain records relating to:
 - (1) Procurement Method – Gaston County ACCESS must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive;
 - (2) Contract Type – Gaston County ACCESS must state the reasons for selecting the contract type it used;
 - (3) Contractor Selection – Gaston County ACCESS must state its reasons for contractor selection or rejection;
 - (4) Contractor Responsibility – Gaston County ACCESS must provide a written determination of responsibility for the successful contractor;
 - (5) Cost or Price – Gaston County ACCESS must evaluate and state its justification for the contract cost or price; and
 - (6) Reasonable Documentation – Gaston County ACCESS must retain documentation commensurate with the size and complexity of the procurement.

- (7) Vendor Verification – Gaston County ACCESS must include verification of acceptance with a selected vendor/supplier/manufacture through the Federal System of Award Management (SAM) as well as State of North Carolina for each project and associated project file.
- (b) Access to Records – Gaston County ACCESS must provide FTA and NC DOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance.
- (c) Use of Technology/Electronic Commerce – Gaston County ACCESS may use an electronic commerce system to conduct third-party procurements. If Gaston County ACCESS uses an electronic commerce system, then the following requirements apply:
 - (1) Sufficient System Capacity – Gaston County ACCESS's system must have sufficient system capacity necessary to accommodate all Federal requirements for full and open competition.
 - (2) Written Procedures – Before any solicitation takes place, Gaston County ACCESS must establish adequate written procedures to ensure that all information FTA/NC DOT requires for project administration is entered into the system and can be made readily available to NC DOT as needed.

3.3. Determination of Needs

Gaston County ACCESS must maintain and follow adequate procedures for determining the types and amounts of products and services it needs to acquire. Gaston County ACCESS shall comply with the following requirements when determining the types and amounts of products and services it needs to acquire:

3.4. Eligibility

All products and services to be acquired with FTA funds must be eligible under the Federal law authorizing the FTA assistance award and any regulations thereunder. All products and services to be acquired with FTA funds must also be eligible for support within the scope of the underlying grant or cooperative agreement from which the FTA assistance to be used is derived.

3.5. Necessity

Gaston County ACCESS shall adhere to the following standards for avoiding the purchase of duplicative and/or unnecessary products and services it does not need.

3.5.1. Unnecessary Reserves

Gaston County ACCESS shall limit the acquisition of Federally-assisted property and services to the amount it needs to support its operations.

3.5.2. Acquisition for Assignment Purposes

Gaston County ACCESS shall contract only for its current and reasonably expected public transportation needs and shall not add quantities or options to third-party contracts solely to permit assignment to another party at a later date. These limits on assignments, however, do not preclude joint procurements that are entered into simultaneously by two or more parties to obtain advantages unavailable for smaller procurements.

- (a) General Prohibition – Gaston County ACCESS may contract only for its current and reasonably expected public transportation needs and may not add quantities or options to third-party contracts solely to permit assignment to another party at a later date.
- (b) Changes in the Recipient's Needs – NC DOT and FTA recognize that the quantity of property or services a recipient reasonably believes it may need at the time of contract award may change. Gaston County ACCESS's later needs might decrease due to changed circumstances or honest mistakes. In those situations, Gaston County ACCESS may assign its unneeded contract authority to another entity that would like to acquire the property or services.
- (c) Exceptions – These limits on assignments, however, do not preclude:
 - (1) Joint Procurements – Gaston County ACCESS and one or more other FTA recipients may enter into a single procurement at the same time to obtain advantages unavailable for smaller procurements.
 - (2) Participation in NC DOT Sponsored Vehicle Procurements – Gaston County ACCESS may enter into contracts developed by the State of North Carolina to acquire vehicles. See Section 4.3 of this policy for a full discussion of state government purchasing schedules and contracts.
- (d) Procurement Size – For every procurement, Gaston County ACCESS shall consider whether to consolidate or break out the procurement to obtain the most economical purchase. Per eCFR 200.321, each listed consideration should be documented in the file if possible or why not possible. Absent efforts to foster greater opportunities for Disadvantaged Business Enterprises (DBEs), small and minority firms, and women's business enterprises, Gaston County ACCESS shall not split a larger procurement merely to gain the advantage of micro-purchase or small purchase procedures.
- (e) Options – Gaston County ACCESS shall justify, as needed, all option quantities included in every solicitation and contract. An option is a unilateral right in a contract by which, for a specified time, Gaston County ACCESS may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract. If Gaston County ACCESS elects to use options in a procurement, Gaston County ACCESS

shall include option prices in the evaluation of bid prices or cost proposals. If Gaston County ACCESS fails to evaluate option prices in its award evaluation, and subsequently elects to exercise an option, it shall be treated as a sole source award.

- (f) Lease of Rolling Stock – For rolling stock and related equipment, the Fixing America’s Surface Transportation (FAST) Act removed the requirement to demonstrate the cost-effectiveness of leasing compared to purchasing described above in subsection (f). The FAST Act, however, now requires Gaston County ACCESS to submit a report to FTA within three years of executing a rolling stock lease that includes: (1) An evaluation of the overall costs and benefits of leasing rolling stock; and (2) A comparison of the expected short-term and long-term maintenance costs under a lease versus maintenance costs when buying rolling stock.
- (g) Specifications – Gaston County ACCESS's procurement specifications shall clearly describe the products or services to be procured and shall state how the proposals will be evaluated. Gaston County ACCESS's procurement specifications shall not be exclusionary, discriminatory, unreasonably restrictive, or otherwise in violation of Federal or North Carolina laws or regulations.

3.6. Contractor Responsibilities

Gaston County ACCESS, in awarding contracts, financed in whole or in part, with FTA financial assistance, shall follow the guidance in this section to evaluate contractor capabilities to perform the contract.

In addition to the Federal rules (2 CFR § 200.318(h)) that require contract awards be made only to responsible contractors, Federal transit law at 49 U.S.C. § 5325(j) limits third-party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for an award, Gaston County ACCESS must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

3.6.1. Debarment and Suspension

Debarment and suspension regulations and guidance include the following provisions.

3.6.1.1. DOT Debarment and Suspension Regulations

U.S. Department of Transportation (DOT) regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Part 1200 apply to each third party contract at any tier of \$25,000 or more, to each third party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third party contract at any tier that must be approved by an FTA official irrespective of the contract amount (2 CFR § 1200). Gaston County ACCESS shall apply DOT’s debarment and suspension requirements to itself and each third-party contractor at every tier to the extent required by DOT’s regulations that incorporate the requirements of Office of Management and Budget (OMB), “Guidelines to Agencies on Governmentwide Debarment and

Suspension (Nonprocurement)” (2 CFR § 180). Gaston County required debarment checks on all contracts no matter dollar amount.

3.6.1.2. System for Award Management

The System for Award Management (SAM) combines Federal procurement systems and will list any entity, or any of its principals, that are currently subject to an active exclusion meaning the entity is debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts using Federal Transit Administration funds.

As a best practice, Gaston County ACCESS should print the screen with the results of the SAM.gov search to include in the procurement file. Gaston County also requires back up for State of NC debarment check. Alternatively, Gaston County ACCESS may collect a debarment and suspension certification from the prospective third-party contractor or include a clause in the third-party contract requiring disclosure. FTA notes that affirmative actions, such as checking SAM.gov or including a requirement for a signed certification, are preferred. As such, it shall be the policy of Gaston County ACCESS to verify that the prospective third-party vendor is not listed as a debarred contractor on SAM.

3.6.2. Lobbying Certification and Disclosure

If a third-party contract will exceed \$100,000, before awarding the contract, Gaston County ACCESS will obtain a lobbying certification (using Byrd Anti-Lobbying Certification form), and if applicable, a lobbying disclosure from a prospective third-party contractor (see DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20, modified as necessary by 31 U.S.C. Section 1352).

3.6.3. Required Contract Clauses

In addition to the requirements outlined above, various requirements may apply to Gaston County ACCESS third-party contracts, depending upon the type of procurement and the anticipated dollar value of said contract. It is the responsibility of Gaston County ACCESS to assess each procurement and determine the applicable third-party terms and conditions that should be included in the solicitation and contract documents. Federal regulations at 2 CFR § 200, Appendix II and FTA Circular 4220.1F contain guidance on the applicability of these contract terms and conditions.

3.7. Bonding

Some procurements may require Gaston County ACCESS to require the vendor to submit a bid bond, performance bond, or payment bond (typically construction projects). When bonding is required, the following conditions will apply.

3.7.1. Thresholds

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, NC DOT may accept the bonding policy and requirements of the Subrecipient provided that

NC DOT has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

3.7.1.1. Bid Guarantee

A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

3.7.1.2. Performance Bond

A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

3.7.1.3. Payment Bond

A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. FTA has determined that payment bonds in the following amounts are adequate to protect Federal interest and will accept a local bonding policy that meets the following minimums:

- Less Than \$1 Million. Fifty percent of the contract price if the contract price is not more than \$1 million
- More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million
- More Than \$5 Million. Two and one-half million dollars if the contract price is more than \$5 million

For construction/repair starting at \$250K, Gaston County requires Payment Bond of 100% of the contract price.

3.7.2. Acceptable Sureties

Federal rules for non-governmental recipients require the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” (31 CFR § 223). For a current list of approved sureties, see the Department of the Treasury’s Listing of Approved Sureties (Department Circular 570). As FTA encourages governmental recipients to require similarly acceptable sureties, it shall be the policy of Gaston County ACCESS to such accept sureties.

3.7.3. Reduced Bonding

Gaston County ACCESS recognizes that bonding costs can be expensive. Gaston County ACCESS will accept a local bonding policy that conforms to the minimums described in Section 3.7. If bonding levels

are sought at levels less than these amounts, Gaston County ACCESS must obtain the prior approval of NC DOT/FTA. NC DOT/FTA shall approve such requests only if it determines that Gaston County ACCESS's bonding policy adequately protects the Federal interest in the project.

3.7.4. Excessive Bonding

Gaston County ACCESS will adhere to FTA's rules on excessive bonding requirements (FTA Circular 4220.1F, Chapter IV, § 2h(1)(f)). However, if Gaston County ACCESS determines it has a material risk of loss because of a failure of the prospective contractor, bonding requirements may exceed those outlined in Section 3.7.1 only with the prior approval of NC DOT/FTA.

3.8. Preference for U.S. Property—Build America, Buy America

Buy America regulations require that all iron, steel, and manufactured products used in an FTA-funded project be produced in the United States. Rolling stock is included in the category of manufactured products. Originally, the iron and steel requirements applied to all construction materials made primarily of iron or steel used in infrastructure projects.

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA or the Bipartisan Infrastructure Law), Pub. L. No. 117-58, which includes the Build America, Buy America Act (BABA). Specifically, BABA expands the coverage of Buy America preferences to all manufacturing processes for construction materials used in federally assisted infrastructure projects.

3.9. Accessibility

Facilities to be used in public transportation service must comply with 42 U.S.C. Sections 12101 *et seq.* and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR § 37; and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR § 1192 and 49 CFR § 38. Notably, DOT incorporated by reference the ATBCB's "Americans with Disabilities Act Accessibility Guidelines" (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities, and are incorporated into Appendix A to 49 CFR Part 37. DOT also added specific provisions to Appendix A modifying the ADAAG, with the result that buildings and facilities must comply with both the ADAAG and amendments thereto in Appendix A to 49 CFR Part 37.

4. SOURCES OF ACQUISITIONS

4.1. Force Account

Force account means the use of Gaston County ACCESS's own labor forces and equipment to undertake a project (typically construction, renovation, or repair). The use of force account labor is a project management function, rather than a procurement and contract administration function, except in the general sense of the Subrecipient's ability to perform work with its own forces rather than contracting with another entity to acquire the property or services it needs, and the cost implications of the recipient's decision. Gaston County ACCESS does not charge force account labor to its FTA grants.

4.2. Joint Procurements

Gaston County ACCESS may participate in joint procurements whereby Gaston County ACCESS and one or more other entities agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of products or services. The following requirements apply to Gaston County ACCESS's participation in joint procurements:

- Solicitation documents may not be drafted to accommodate the needs of other parties that may later want to participate in the benefits of the contract.
- Gaston County ACCESS is responsible for ensuring that the joint procurement solicitation and contract comply with all Federal requirements and that the solicitation document and contract include all required clauses and certifications.

4.3. State or Local Government Purchasing Schedules or Purchasing Contracts

4.3.1. Definition

FTA uses the term "state or local government purchasing schedule" to mean an arrangement that a State or local government has established with several or many vendors in which those vendors agree to provide essentially an option to the State or local government, and its subordinate government entities, to acquire specific property or services in the future at established prices. These arrangements are somewhat similar to the General Services Administration's (GSA) Cooperative Purchasing Program available for Federal Government use.

4.3.2. Small Quantity Conditions for Rolling Stock

For Section 5339-funded procurements, Gaston County ACCESS will use the innovative procurement tools authorized under section 3019 of the FAST Act to the extent practicable. If Gaston County ACCESS conducts a stand-alone procurement (i.e., not part of a state contract or joint/cooperative procurement) for fewer than five buses, it must prepare a written justification for not using an authorized "innovative procurement tool" pursuant to 49 USC § 5339(a)(10)(B).

4.3.3. Applicability of Federal Provisions

When obtaining property or services in this manner, Gaston County ACCESS must ensure all Federal requirements, required clauses, and certifications (including Buy America) are properly followed and included, whether in the master intergovernmental contract or the recipient's purchase document. While NC DOT takes all precautions to ensure that such provisions are in the original solicitation and contract documents, it is ultimately Gaston County ACCESS's responsibility to ensure such documents and certifications are obtained.

If such requirements, clauses, and certifications were not included in the original purchase solicitation and contracts, Gaston County would have to solicit competition ourselves. When this method is used, Gaston County ACCESS shall obtain Buy America certification before entering into the purchase order. This method cannot be used to circumvent FTA's Buy America requirements.

4.3.4. Federal Supply Schedules

Purchases by Gaston County ACCESS from Federal Supply Schedules established by the U.S. General Services Administration (GSA) are limited to the purchase of information technology (IT) products and products and services to facilitate recovery from a major disaster. The following requirements apply to Gaston County ACCESS purchases from GSA schedules:

- Gaston County ACCESS is authorized to use GSA schedules for purchases of products and services to facilitate recovery from a major disaster that is declared by the President of the United States. Upon declaration of a major disaster by the President, Gaston County ACCESS may purchase products and services from GSA schedules both in advance and in the aftermath of the emergency event. Gaston County ACCESS shall be responsible for ensuring that the products and services acquired will only be used for recovery.
- Gaston County ACCESS must ensure that all Federal requirements, required clauses, and certifications are properly followed and included, whether in the master intergovernmental contract or Gaston County ACCESS's purchase document.
- Gaston County ACCESS is required to evaluate the reasonableness of prices obtained from GSA schedules. GSA schedule pricing may not be used as a sole or single source for procurement. Gaston County ACCESS may only use GSA schedule pricing as one of the multiple pricing sources solicited in accordance with its requirements for small purchases described in Section 5.

4.3.5. Existing Contracts

Gaston County ACCESS may use existing contract rights as an acquisition source. An "existing contract" means a contract that, when formed, was intended to be limited to the original parties thereto.

4.3.5.1. Permissible Actions

Within the conditions set forth below, Gaston County ACCESS may use existing contract rights held by another recipient of FTA assistance:

(a) Exercise of Options – Gaston County ACCESS may use contract options held by another recipient of FTA assistance with the following limitations:

- (1) Consistency with the Underlying Contract – Gaston County ACCESS must ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.
- (2) Price – Gaston County ACCESS may not exercise an option unless it has determined that the option price is better than prices available in the open market, or that when it intends to exercise the option, the option is more advantageous.
- (3) Awards Treated as Sole Source Procurements – The following actions constitute sole source awards:
 - i. Failure to Evaluate Options Before Awarding the Underlying Contract – If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.
 - ii. Negotiating a Lower Option Price – Exercising an option after Gaston County ACCESS has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured.

(b) Assignment of Contract Rights (“Piggybacking”) – Piggybacking is prohibited.

4.3.5.2. Impermissible Actions

Gaston County ACCESS may not use Federal assistance to finance:

- (a) Improper Contract Expansion – A contract has been improperly expanded when it includes a larger scope, greater quantities, or options beyond the recipient’s reasonably anticipated needs. A contract has also been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity:
- (b) Cardinal Changes – A significant change in contract work that causes a major deviation from the original purpose of the work or the intended method of achievement, or causes a revision of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract, is a cardinal change or “tag-on”. A change within the scope of the contract is not a cardinal change or “tag-on”.

4.4. The Open Market

Gaston County ACCESS will acquire most of the property and services it needs through procurements in the open market using procedures described in Section 5 of this Manual.

5. PROCEDURES FOR OPEN MARKET PROCUREMENTS

5.1. Solicitation of Competitive Price Quotes, Bids or Proposals

Compliance with the solicitation procedures described in Section 5.4 below will fulfill FTA requirements for “full and open competition.”

5.2. Receipt and Evaluation of Unsolicited Proposals

Gaston County ACCESS may enter into contracts based on an unsolicited proposal when authorized by applicable State law or regulation. Receipt of an unsolicited proposal does not, by itself, justify a contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, Gaston County ACCESS must seek competition. To satisfy the requirement for full and open competition, Gaston County ACCESS must take the following actions before entering into a contract resulting from an unsolicited proposal:

- Publicize its receipt of the unsolicited proposal;
- Publicize an adequate description of the products or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought;
- Publicize its interest in acquiring the products or services described in the proposal;
- Provide an adequate opportunity for interested parties to comment or submit competing proposals; and
- Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

If it is impossible to describe the products or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the products or services sought, Gaston County ACCESS may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offeror to provide the specific products or services proposed.

5.3. Prequalification

Gaston County ACCESS may prequalify bidders, offerors, and products for procurement purposes; however, Gaston County ACCESS is not required to do so. The decision of whether to require prequalification for eligibility to participate in procurement shall be made separately for every procurement and shall be approved by the Department of Social Services Director.

If Gaston County ACCESS opts to prequalify bidders, offerors, and products for procurement purposes, the following conditions apply:

- Gaston County ACCESS must ensure that all prequalification lists it uses are current;
- Gaston County ACCESS must ensure that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition; and

- Gaston County ACCESS must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). Gaston County ACCESS is not required to hold a particular solicitation open to accommodate a potential supplier that submits products for approval before or during that solicitation nor must Gaston County ACCESS expedite or shorten prequalification evaluations of bidders, offerors, or products presented for review during the solicitation period.

5.4. Solicitation Requirements and Restrictions

Every procurement solicitation that Gaston County ACCESS issues above the micro-purchase level (currently established in Federal guidance at \$10,000, Gaston County ACCESS considers \$5,000 the limit for micro-purchases), must include the following information and be advertised in a manner that ensures adequate and open competition.

5.4.1. Description of the Property or Services

The solicitation and the contract awarded thereunder must include a clear and accurate description of Gaston County ACCESS's technical requirements for the products or services to be acquired in a manner that provides for full and open competition.

5.4.1.1. Descriptive Elements

Gaston County ACCESS will prepare descriptions of property, goods, or services in terms of functions to be performed or level of performance required, including the range of acceptable characteristics or minimum acceptable standards. Detailed product specifications should be avoided if at all possible; however, there is no prohibition against their use when appropriate.

5.4.1.2. Quantities

Additional quantities or options above Gaston County ACCESS's needs at the time of acquisition may not be added to contracts solely to allow the assignment of those quantities or options at a later date.

5.4.1.3. Brand Name or Equal

When it is impractical or uneconomical to provide a clear and accurate description of the technical requirements of the property to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of a specific type of property. The salient characteristics of the named brand that bidders or offerors must provide must be identified.

5.4.1.4. Prohibited Practices

Solicitations with requirements that contain features that unduly restrict competition may not be used. Gaston County ACCESS shall not:

- Impose unreasonable business requirements for bidders or offerors.

- Impose unnecessary experience requirements for bidders and offerors.
- Use prequalification procedures that conflict with the prequalification standards described in Section 5.3.
- Make a noncompetitive award to any person or firm on a retainer contract with Gaston County ACCESS if that award is not for the property or services specified for delivery under the retainer contract.
- Impose unreasonable restrictive bonding requirements on bidders and offerors in excess of FTA and state requirements.
- Specify only a “brand name” product without allowing offers of an “equal” product, or allowing an “equal” product without listing the salient characteristics that the “equal” product must meet to be acceptable for award.
- Specify in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. The only exception expressly mandated or encouraged by Federal law that may be applicable to Gaston County ACCESS is the procurement of Architectural and Engineering (A&E) Services. Geographic location may be a selection criterion in the procurement of A&E services if an appropriate number of qualified firms are eligible to compete for the contract given the nature and size of the project.
- Engage in practices that result in organizational conflicts of interest. An organizational conflict of interest occurs when any of the following circumstances arise:
 - Lack of Impartiality or Impaired Objectivity – When the bidder or offeror is unable, or potentially unable, to provide impartial and objective assistance or advice to Gaston County ACCESS Transit due to other activities, relationships, contracts, or circumstances.
 - Unequal Access to Information – When the bidder or offeror has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
 - Biased Ground Rules – When during the conduct of an earlier procurement, the bidder or offeror has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
- Support or acquiesce in noncompetitive pricing practices between firms or between affiliated companies.
- Take any arbitrary action in the procurement process.

5.4.2. Evaluation Factors

All solicitations issued by Gaston County ACCESS shall identify all factors to be used in evaluating bids or proposals. At the discretion of the Department of Social Services Director, the relative order of importance and/or weights may be communicated to prospective offerors.

5.4.3. Permissible Contract Types

Gaston County ACCESS shall state the type of contract that will be awarded in all solicitation documents. The following types of contracts will typically be executed with the successful vendor:

5.4.3.1. Firm Fixed Price

A firm fixed price contract includes a price that remains fixed irrespective of the contractor's cost experience in performing the contract. A firm fixed price contract may include an economic price adjustment provision, incentives, or both.

5.4.3.2. Cost Reimbursement

A cost-reimbursement contract provides for payment of the contractor's allowable incurred costs, to the extent prescribed in the contract. Allowable costs may include incentives if the recipient believes they can prove helpful. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract. This is only an option for the proposal process (RFP). RFP is only allowed for Services at \$250K when we document bidding is not suitable.

5.4.4. Prohibitive or Restricted Contract Types

The following contract types are prohibited or restricted:

5.4.4.1. Cost Plus Percentage of Cost

Cost plus Percentage of Cost type contracts are prohibited.

5.4.4.2. Time and Materials

Time and Materials type contracts may be used only after a written determination is made that no other contract type is suitable. In addition, the contract between Gaston County ACCESS and the Contractor must specify a ceiling price that the Contractor may not exceed except at its own risk. eCFR indicates this method requires a high degree of oversight.

5.4.5. Other Federal Requirements Affecting the Property or Services to be Acquired

The solicitation and resulting contract must identify those Federal requirements that will affect contract scope and performance.

5.4.6. Other Federal Requirements Affecting the Bidder or Offeror and the Contractor

The solicitation and resulting contract must identify all Federal requirements that a bidder or offeror must fulfill before and during contract performance.

5.4.7. Reservation of Right to Award to Other Than the Low Bidder or Offeror

The solicitation must specifically reserve Gaston County ACCESS the right to award a contract to other than the low bidder or offeror. If the solicitation documents do not specify this right, Gaston County ACCESS will be obligated to award the contract to the low bidder.

5.4.8. Reservation of Right to Reject All Bids or Offers

The solicitation must specifically reserve Gaston County ACCESS's right to reject all bids or offers.

5.5. Methods of Procurement

Gaston County ACCESS shall use competitive procedures appropriate for the acquisition undertaken. The procedures used must comply with North Carolina and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of 2 CFR § 200.318 – 200.326, supplemented by FTA policies that address the needs of FTA recipients.

5.5.1. Informal Procurements: Micro-Purchases

5.5.1.1. Definition

Micro-purchases are those purchases of products and services that cost \$10,000 or less, as defined by 2 CFR §200.67 (or current threshold established by Federal Acquisition Regulations (FAR)); for purposes of this policy, Gaston County ACCESS will use \$4,999.99 as the threshold for relatively simple purchases as a means to expedite the completion of its lowest-dollar small purchase transactions and minimize the associated administrative burden and cost. Purchases \$5,000-\$9,999 require purchase contracts and three written quotes.

5.5.1.2. Approval Authority

Micro-purchases must be approved in writing by one of the following Gaston County ACCESS employees:

- Transportation Program Administrator
- Department of Social Services Director or designee

5.5.1.3. Competition

Gaston County ACCESS may acquire products and services valued at less than \$4,999.99 without obtaining competitive quotations. Micro-purchases should be distributed equitably among qualified suppliers. For products and services between \$5,000-\$9,999 Gaston County ACCESS is required to solicit 3 written quotes.

Micro-purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding \$2,000, even though the recipient uses micro-purchase procurement procedures. Davis-Bacon is required starting at \$2,000 if the statute establishing the grant included Davis-Bacon requirement.

5.5.1.4. Prohibited Divisions

The size or dollar value of procurements may not be divided or reduced merely to come within the micro-purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms, and women's business enterprises in Gaston County ACCESS's Federally-assisted procurements. Even if divided as allowed for these firms, the bid threshold is still determined by the overall cost before dividing.

5.5.1.5. Documentation

Every micro-purchase must be accompanied by a written determination that the price is fair and reasonable and a description of how that determination was made.

5.5.2. Informal Procurements: Small Purchases

5.5.2.1. Definition

FTA defines small purchases are those purchases of products and services that cost greater than \$10,000 but not more than \$250,000. For purposes of this policy, Gaston County ACCESS will consider small purchases those that cost greater than \$9,999.99 but not more than \$89,999.99.

5.5.2.2. Approval Authority

Small purchases must be approved in writing by one of the following Gaston County ACCESS employees:

- Transportation Program Administrator
- Department of Social Services Director or designee
- Services \$30,000- \$89,999 require County Manager approval through contract process.

5.5.2.3. Required Competition

Price or rate quotations must be obtained from an adequate number of qualified sources (i.e., at least two). It is the responsibility of Gaston County ACCESS to ensure that an adequate number of quotations, bids are received.

5.5.2.4. Prohibited Divisions

The size or dollar value of procurements may not be divided or reduced merely to come within the small purchase limit. The only allowable exception to this restriction is for the express purpose of fostering greater participation of DBEs, small and minority firms, and women's business enterprises in Gaston County ACCESS's Federally-assisted procurements. Even if divided as allowed for these firms, the bid threshold is still determined by the overall cost before dividing.

5.5.2.5. Documentation

Every small purchase must be documented in the grantee's written procurement history file. The level of documentation is stipulated in Section 6.7.1.

For small purchases, price quotations need to be written. Must solicit at least 3 written quotes. Can be via email, screenshot of website, etc.

5.5.2.6. Special Considerations

Gaston County ACCESS may acquire products and services directly from State contract vendors in lieu of competitively procuring such products and services itself through the small purchase method of procurement for contracts under \$10,000. For contracts \$10,000 or greater, Gaston County ACCESS requires state documentation to demonstrate that state bid per local government UG requirement and state contract contains federal contract provisions..

Gaston County ACCESS reserves the right to use formal purchase methods, even if small purchase thresholds are met, if the Department of Social Services Director believes it is in the best interests of the Gaston County ACCESS to do so.

5.5.3. Formal Procurements- Purchases and Services (not including Construction)

5.5.3.1. Definition

Formal purchases are those purchases of products and services that cost greater than the current Federal threshold of \$90,000. For purposes of this policy, Gaston County ACCESS will use formal procedures for all purchases and services over \$89,999.99 with \$90,000.00 and above requiring Sealed Bid method and services starting at \$250,000.00 and above by Competitive Proposal only if documented how bidding is not suitable for the service.

5.5.3.2. Approval Authority

Large purchases must be approved in writing by the following Gaston County ACCESS employees or officials:

- Transportation Administrator
- Department of Social Services Director or designee
- BOC approval at \$90,000 or above for purchases and services

5.5.3.3. Formal Procurement Methods

There are two primary methods of procurement for large purchases of products and services:

- Sealed Bid method; and
- Competitive Proposal method (only can be considered for services starting at \$250,000)

5.5.3.4. Required Competition

Formal sealed proposals must be publicly advertised but newspaper is not required as long as method of advertisement will solicit proposals from an adequate number of qualified firms.

For formal purchases by the sealed bid method of procurement, two or more responsible bidders must be willing and able to compete effectively for the business.

For formal services by the competitive proposal method of procurement, two or more offerors must be willing and able to submit an offer or proposal.

5.5.3.5. Required Documentation

Every formal purchase must, at a minimum, be supported by a written independent cost estimate, formal bids or proposals, a written cost or price analysis as appropriate, a written justification and detailed rationale for contractor selection (including application of evaluation criteria), and a written determination of the responsibility of the contractor. Additional documentation requirements are dependent upon the formal procurement method that is utilized to make the purchase.

5.5.3.6. Special Considerations

Gaston County ACCESS may acquire products and services via state contract in lieu of competitively procuring such products and services itself through the sealed bid and competitive proposal methods of procurement. State contract only allowed if the State can document that they bid per the local government requirements per UG. It is recommended that written approval is required from grantor to purchase from state contract.

5.5.3.7. Procedural Methods for Sealed Bids

The sealed bid method of procurement is a formal method in which bids are publicly solicited and a firm fixed price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the Invitation for Bids (IFB), is lowest in price. The vehicle through which bids are solicited is an IFB. The IFB document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a bid, and the forms on which bids must be submitted.

- (a) The sealed bid method of procurement is the preferred method for acquiring products and services that cost greater than \$89,999.99. The sealed bid method of procurement may also be used for small purchases if it is determined to be appropriate. The sealed bid method of procurement is appropriate if the following conditions apply:
 - (1) Precise Specifications – A complete, adequate, precise, and realistic specification or purchase description is available.
 - (2) Adequate Sources – Two or more responsible bidders are willing and able to compete effectively for the business.
 - (3) Fixed Price Contract – The procurement generally lends itself to a firm fixed-price contract.
 - (4) Price Determinative – The successful bidder can be selected on the basis of price and those price-related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken.

Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.

- (5) Discussions Unnecessary – Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as the award of the contract will be made based on lowest responsive responsible bidder.

- (b) Requirements for Sealed Bids – The following requirements apply to the sealed bid method of procurement. Cost or price analysis is required before soliciting bids:

- (1) Publicity – The Invitation for Bids must be publicly advertised.
 - i. Formal bids must be publicly advertised in a newspaper one time with at least 7 days between advertisement date and bid opening. Electronic advertisement in addition to or instead of is authorized by Gaston County Resolution 2019.036 authorizes in addition to newspaper, or as alternative when deemed most effective and efficient). The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing the right to reject any or all bids only for “sound documented reasons”.
 - ii. Notice of bidding opportunities may be provided in other ways in addition, but not as a substitute, to a published notice. The methods may include, but not necessarily be limited to:
 1. Direct notice, based on compiled vendor lists or from prequalification lists, sent to prospective offerors;
 2. Use of advertisement by electronic means; or
 3. By advertising on affirmative steps resources.
- (2) Adequate Sources – Bids must be solicited from an adequate number of known suppliers.
- (3) Adequate Specifications – The Invitation for Bids, including any specifications and pertinent attachments, must describe the property or services sought in sufficient detail that a prospective bidder will be able to submit a proper bid.
- (4) Sufficient Time – Bidders must be allowed sufficient time to prepare bids before the date of bid opening.
- (5) Public Opening – All sealed bids must be publicly opened at the time and place prescribed in the Invitation for Bids. Must have 2 bids in order to open. If two bids are not available, must readvertise.
- (6) Fixed Price Contract – A firm fixed price contract must be awarded in writing to the lowest responsive and responsible bidder unless the Invitation for Bids specifically allows for the award of a fixed price incentive contract or the inclusion of an economic price adjustment provision. Contract requires Board of Commissioners approval.
- (7) Rejection of Bids – Any or all bids may be rejected if there is a sound, documented business reason.

5.5.3.8. Competitive Proposals

The competitive proposal method of procurement is a formal method in which written proposals are publicly solicited and a contract is awarded to the responsible offeror whose proposal, taking into consideration price and other factors, is considered to be the most advantageous to Gaston County ACCESS or that is considered to be the “best value” to Gaston County ACCESS. The vehicle through which proposals are solicited is Request for Proposals (RFP). The RFP document contains technical specifications for the product or service to be purchased, a description of the procedures for submitting a proposal, criteria to be used in the Gaston County ACCESS’s evaluation of proposals, and the forms on which proposals must be submitted, if applicable.

(a) When Appropriate – The competitive proposal method is appropriate for the acquisition of services that cost greater than \$249,999.99 only when the nature of the procurement does not lend itself to sealed bidding and Gaston County ACCESS expects that more than one source will be willing and able to submit a proposal. The competitive proposal method of procurement may not be used for the procurement of construction services. County Manager approval is required for Services starting at \$30K, accomplished in contract execution process. The competitive proposal method of procurement is appropriate when any of the following circumstances are present, but only for services starting at \$250,000:

- (1) Type of Specifications – The products or services to be acquired are described in a performance or functional specification, or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing contract award on factors other than price alone are present.
- (2) Price Alone Not Determinative – Due to the nature of the procurement, contract award need not be based exclusively on price or price-related factors, but all evaluation criteria must be listed in RFP.

(b) Requirements for Competitive Proposals – The following requirements apply to the competitive proposal method of procurement:

- (1) Publicity – The Request for Proposals must be publicly advertised.
- (2) Evaluation Factors – All evaluation factors and their relative importance must be specified in the solicitation.
- (3) Adequate Sources – Proposals must be solicited from an adequate number of qualified sources.
- (4) Evaluation Method – A specific method must be established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
- (5) Price and Other Factors – An award must be made to the responsible offeror whose proposal is most advantageous to Gaston County ACCESS or that represents the “best value” to Gaston County ACCESS with price and other factors considered.
- (6) Best Value – Gaston County ACCESS may award a contract to the offeror whose proposal provides the greatest value to Gaston County ACCESS. To

do so, the solicitation must inform potential offerors that the award will be made on a “best value” basis and identify what factors will form the basis for the award. Gaston County ACCESS must base its determination of which proposal represents the “best value” on an analysis of the tradeoff of qualitative technical factors and price or cost factors.

5.5.3.9. Two-Step Procurements

Gaston County ACCESS may use two-step procurement procedures in both sealed bid and competitive proposal procurements, provided the opportunity for full and open competition is retained.

- (a) Review of Technical Qualifications and Approach – The first step is a review of the prospective contractors’ technical approach to Gaston County ACCESS’s request and their technical qualifications to carry out that approach followed by the establishment of a competitive range consisting of prospective contractors that demonstrate a technically satisfactory approach and have satisfactory qualifications.
- (b) Review of Bids and Proposals Submitted by Qualified Prospective Contractors – The second step consists of soliciting and reviewing complete bids or proposals, including price, submitted by each prospective contractor determined to be qualified. Absent exceptional circumstances, bids or proposals must be solicited from at least three qualified prospective contractors.

5.5.3.10. Architectural and Engineering (A&E) Services and Other Services

FTA’s enabling legislation at 49 U.S.C. § 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the “Brooks Act,” 40 U.S.C. § 1101 through 1104, to acquire A&E services.

- (a) Qualifications-Based Procurement Procedures Required – Gaston County ACCESS must use qualifications-based procurement procedures to acquire architectural and engineering (A&E) services as well as certain other services that are directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property. In addition to A&E services, other services that must be procured by qualifications-based procurement procedures include:
 - Program management;
 - Construction management;
 - Feasibility studies;
 - Preliminary engineering;
 - Design, architectural, engineering;
 - Surveying, mapping

The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.

- (b) Qualifications-Based Procurement Procedures Prohibited – Unless FTA determines otherwise in writing, qualifications-based procurement procedures may not be used to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. Qualifications-based procurement procedures may not be used for actual construction, alteration, or repair of real property.
- (c) Qualifications-Based Procurement Procedures – The following procedures apply to qualifications-based procurements:
 - (1) Qualifications – Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.
 - (2) Price – Price is excluded as an evaluation factor.
 - (3) Most Qualified – Price negotiations are first conducted with only the most qualified offeror.
 - (4) Next Most Qualified - Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.

5.5.3.11 Construction and Repair Contracts

- (a). Costing less than \$10,000 (Micro-Purchase threshold is \$10,000 as defined by 2 C.F.R. 200.67 as of 6/21/18) *Level is split due to Gaston County Policy and Procedures being more restrictive.*

Construction and Repair Contracts costing up to \$4,999 shall be procured using the Uniform Guidance "micro-purchase" procedure (2 C.F.R. § 200.320(a)) as follows:

- (1) The contract may be awarded without soliciting pricing or bids if the price of the goods or services is considered to be fair and reasonable.
- (2) To the extent practicable, contracts must be distributed among qualified suppliers.
- (3) Initiate a Purchase Order unless nature of service or purchase, or vendor terms/conditions, require a Contract in addition to Purchase Order (consult with Legal).

Construction and Repair Contracts costing \$5,000 up to \$9,999 shall be procured per Gaston County Purchasing Policy and Procedures:

- 1. The contract may be awarded after soliciting three written quotes per County Purchasing Procedures.
- 2. Bidding exception of utilizing State contracts and Group Purchasing Alliances is allowed at this "micro-purchasing" level (but not at higher levels).
- 3. To the extent practicable, purchases must be distributed among qualified suppliers.
- 4. Award the contract to the lowest responsive, responsible bidder.

5. Initiate a Purchase Order unless nature of service or purchase, or vendor terms/conditions, requires a Contract in addition to Purchase Order (consult with Legal).

6. Document procedures.

(b). Construction and Repair Contracts costing \$10,000 to \$249,999 shall be procured using the Uniform Guidance "small purchase" procedure (2 C.F.R. § 200.320(b)) as follows:

(1) Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.

(2) Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321 (such as posting bid on HUB site).

(3) Obtain written quotes from an "adequate number" of qualified sources (a federal grantor agency might issue guidance interpreting "adequate number," so the requesting department should review the terms and conditions of the grant award documents to confirm whether specific guidance has been issued). Note that *most restrictive rule applies*, so at least 3 quotes must be solicited to meet Gaston County requirements, but obtain at least the quantity required by Grantor.

(4) Award the contract on a fixed-price or not-to-exceed basis.

(5) Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required; however, note that for Construction and Repair of \$30,000 to \$249,999, County Policy requires award approval by the County Manager (this can be accomplished through the contract execution process).

(6) Contract must be in writing with UG provisions (contract followed by PO).

(7) Document procedures.

(c). Construction and Repair

Contracts costing \$250,000 up to \$499,999 shall be procured using the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) as follows:

(1) Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).

(2) Complete specifications must be made available to all bidders.

(3) Publicly advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids (formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid). The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained. Although the newspaper is not a required method, you can advertise in the newspaper if desired.

(4) Solicit from adequate number of known suppliers.

(5) Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321 (such as posting bid on HUB site).

(6) A 5% bid guarantee (bid bond or certified check) is required of all bidders (a bid that doesn't contain the bid guarantee cannot be counted toward the required number of bids).

(7) Performance and payment bonds of 100% of the contract price are required of the winning bidder.

(8) *For Construction or Repair contracts involving a Building costing \$300,000 and above, refer to additional requirements in Section I below.*

(9) All bids must be submitted sealed.

(10) A minimum of 2 bids must be received in order to open all bids.

- (11) Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement.
- (12) Award the contract on a firm fixed-price basis.
- (13) Award the contract to the lowest responsive, responsible bidder. Governing board approval is not required; however, County Policy requires County Manager approval (this can be accomplished through the contract execution process). Any and all bids may be rejected only for "sound documented reasons."
- (14) Contract must be in writing with UG provisions (contract followed by PO).
- (15) Document procedures.
- (16) If less than 2 bids are received, re-advertisement is necessary. Recommend advertising at State IPS site to broaden reach. If upon re-advertisement only one bid is received, the bid can be accepted and opened (unless Grant Award differs).

(d). Construction and Repair Contracts costing \$500,000 and above shall be procured using a combination of the most restrictive requirements of the Uniform Guidance "sealed bid" procedure (2 C.F.R. § 200.320(c)) and state formal bidding procedures (G.S. 143-129) as follows:

- (1) Cost or price analysis is required prior to soliciting bids (this cost estimate should be provided by the project designer).
- (2) Complete specifications must be made available to all bidders.
- (3) Public Advertisement - Formally advertise the bid in a newspaper of general circulation one time with at least seven full days between the date of the advertisement and the date of the public bid opening. Electronic-only advertising must be authorized by the governing board (Resolution 2019-036 authorizes in addition to newspaper, or as alternative when deemed most effective and efficient). The advertisement must state the date, time, and location of the public bid opening, indicate where specifications may be obtained, and reserve to the governing board the right to reject any or all bids only for "sound documented reasons."
- (4) Solicit from adequate number of known suppliers.
- (5) Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321 (such as posting bid on HUB site).
- (6) A 5% bid guarantee (bid bond or certified check) is required of all bidders (a bid that does not include the bid guarantee cannot be counted toward the 3-bid minimum requirement).
- (7) Performance and payment bonds of 100% of the contract price are required of the winning bidder.
- (8) *For Construction or Repair contracts involving a Building costing \$300,000 and above, refer to additional requirements in Section I below.*
- (9) All bids must be submitted sealed and in paper form.
- (10) A minimum of 3 bids must be received in order to open all bids.
- (11) Open the bids at the public bid opening on the date, time, and at the location noticed in the public advertisement.
- (12) Award the contract on a firm fixed-price basis.
- (13) Award the contract to the lowest responsive, responsible bidder. Governing board approval is required and cannot be delegated. The governing board may reject and all bids only for "sound documented reasons."
- (14) Contract must be in writing with UG provisions (contract followed by PO).
- (15) Document procedures.

(16) If less than 3 bids are received, re-advertisement is necessary. Recommend advertising at State IPS site to broaden reach. If upon re-advertisement less than 3 bids are received, the bid(s) can be accepted and opened (unless Grant Award differs).

Construction or Repair Contracts involving a Building costing \$300,000 and above
Must comply with the following *additional requirements* under state law:

- (1) Formal HUB (historically underutilized business) participation required under G.S. 143-128.2, including local government outreach efforts and bidder good faith efforts, shall apply.
- (2) Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143-128(a).
- (3) The project shall be bid using a statutorily authorized bidding method (separate-prime, single-prime, or dual bidding) as required under G.S. 143-129(a1).

5.6. Noncompetitive Procurements

Normally, Gaston County ACCESS must provide for full and open competition when soliciting bids or proposals. Federal regulations at 2 CFR § 200.320(f)(1) – (5), however, acknowledge that under certain circumstances, a recipient may conduct procurements without providing for full and open competition.

5.6.1. When Appropriate

Noncompetitive procurement procedures may only be used when the procurement is inappropriate for small purchase procedures, sealed bids, or competitive proposals, and at least one of the following circumstances are present:

5.6.1.1. Competition Adequacy

After soliciting several sources and receiving an inadequate response, Gaston County ACCESS shall review its specifications to determine if they are unduly restrictive or if changes can be made to encourage the submission of more price quotes, bids, or proposals. If Gaston County ACCESS determines that the specifications are not unduly restrictive and changes cannot be made to encourage greater competition, Gaston County ACCESS may determine the original competition adequate and complete the purchase from among the sources that submitted a price quote, bid, or proposal. A cost analysis must be performed in lieu of a price analysis when this situation occurs.

5.6.1.2. Sole Source

When Gaston County ACCESS requires products or services available from only one responsible source, and no other products or services will satisfy its requirements, Gaston County ACCESS may make a sole source award. In addition, when Gaston County ACCESS requires an existing contractor to make a change to its contract that is beyond the scope of that contract, Gaston County ACCESS will consider the change a sole source award that must be justified. Sole source awards are only appropriate when one of the following conditions apply:

- (a) Unique Capability or Availability – The products or services are available from only one source if one of the conditions described below is present:
- (1) Unique or Innovative Concept – The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to Gaston County ACCESS only from one source and has not in the past been available to Gaston County ACCESS from another source.
 - (2) Patents or Restricted Data Rights – Patent or data rights restrictions preclude competition.
 - (3) Substantial Duplication Costs – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
 - (4) Unacceptable Delay – In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components thereof, when it is likely that award to another contractor would result in unacceptable delays in fulfilling Gaston County ACCESS's needs.
- (b) Unusual and Compelling Urgency – Gaston County ACCESS may limit the number of sources from which it solicits bids or proposals when Gaston County ACCESS has such an unusual and urgent need for the products or services that Gaston County ACCESS would be seriously injured unless it were permitted to limit the solicitation. Gaston County ACCESS may also limit the solicitation when the public exigency or emergency will not permit a delay resulting from competitive solicitation for the products or services.
- (c) Authorized by NC DOT – Gaston County ACCESS may request permission from NC DOT to allow it to use noncompetitive proposals for a particular procurement.
- (d) When Prohibited – Less than full and open competition is not justified based on:
- (1) Failure to Plan – Gaston County ACCESS's lack of advance planning, resulting in limited competition, is not justification for a sole source or single bid award.
 - (2) Limited Availability of Federal Assistance – Concerns about the amount of Federal assistance available to support the procurement;
- (e) Procurement Procedures – The following requirements apply when Gaston County ACCESS completes a procurement utilizing less than full and open competition:
- (1) Potential Sources – Gaston County ACCESS must solicit offers from as many potential sources as is practicable under the circumstances.
 - (2) Sole Source Justification – Gaston County ACCESS must justify all sole source procurements in writing. Sole source procurement justifications must describe the reasons why a sole source procurement is appropriate, state which of the

authorized justifications listed in Section 5.6.1.2 are applicable, include a cost analysis, and be signed by the Department of Social Services Director. If Gaston County ACCESS decides to solicit an offer from only one source, Gaston County ACCESS must justify its decision in writing. The written justification must include the same elements as a sole source justification except that it must state which of the authorized justifications listed in Section 5.6.1.2 are applicable to the sole source purchase.

- (3) Cost Analysis – Gaston County ACCESS must prepare or obtain a cost analysis verifying the proposed cost data, the projections of the data, and the evaluation of the costs and profits. A price analysis shall not be adequate to justify a sole source purchase.
- (4) Board of Commissioner Approval- Sole source requires BOC and grantor approval for any contracts above \$10,000.

- (f) Exception for Procurement Activities Using Non-FTA Funds – When it is determined by the Department of Social Services Director to be in the best interest of Gaston County ACCESS, Gaston County UG Purchasing and Procurement Policy should be followed.

5.6.1.3. Single Bid or Proposal

- (a) Single Bid or Proposal – Upon receiving a single bid or proposal in response to a solicitation, Gaston County ACCESS should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal.

- (1) Adequate Competition – Competition is adequate when the reasons for a single response were caused by conditions beyond Gaston County ACCESS's control. After documenting the determination of adequate competition in the procurement file, the procurement process may continue with the single response.
- (2) Inadequate Competition – Competition is inadequate when the reasons for a single response were caused by conditions within Gaston County ACCESS's control. In such situations, Gaston County ACCESS must correct all deficiencies in the procurement process that caused competition to be inadequate (e.g., unduly restrictive specification, inadequate advertisement/ dissemination) and then reissue the solicitation.
- (3) Single Bid or Proposal Cannot Apply Under the Following Circumstances- these situations require a minimum of 2 bids to open:
 - a. Purchases and Services of \$90,000 and above.
 - b. Construction and Repair for \$250,000 to \$499,999.
 - c. Construction and Repair for \$500,000 and above.

5.7. Evaluation Requirements

The following standards shall apply to all evaluations of bids or proposals conducted by Gaston County ACCESS.

5.7.1. General

When evaluating proposals received in response to a solicitation, Gaston County ACCESS shall consider all evaluation factors specified in the solicitation documents and shall evaluate the bids or offers proposals only on the evaluation factors included in those solicitation documents. Gaston County ACCESS may not modify its evaluation factors after bids or proposals have been received without re-opening the solicitation. Evaluation criteria cannot be used in bids. In bids, the lowest responsive, responsible bidder must be selected. Can only use evaluation criteria for service contracts of \$250,000 or greater if bidding is not suitable.

5.7.2. Options

The following standards shall apply when awarding contracts that include options:

5.7.2.1. Evaluation Required

In general, Gaston County ACCESS must evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded. The price associated with exercising the option needs to be defined at the outset, either as a specific price, percentage increase of the base price, or some other calculable method. If the options were not evaluated as part of the award, the exercise of the options is considered a sole-source procurement.

5.7.2.2. Evaluation Not Required

Gaston County ACCESS need not evaluate bids or offers for any option quantities when Gaston County ACCESS does not intend to exercise those options after the contract is awarded.

5.7.2.3. Evaluators

In addition to evaluators with experience in technical or public policy matters related to the procurement, other evaluators may also include auditors and financial experts to the extent that the Transportation Administrator determines would be necessary or helpful. If Gaston County ACCESS lacks qualified personnel within its organization, it may solicit evaluators from other transit organizations or may contract for evaluation services. If it does so, the procurement procedures in this policy will apply to those contracts and to those contractors selected to perform evaluation functions on behalf of the recipient.

5.8. Contract Award Requirements

The following standards shall apply to all contract award decisions made by Gaston County ACCESS:

5.8.1. Award to Other Than the Lowest Bidder or Offeror

Gaston County ACCESS may award a contract to other than the lowest bidder if the award furthers an objective consistent with the purposes of 49 U.S.C. Chapter 53, including improved long-term operating efficiency and lower long-term costs. Gaston County ACCESS may also award a contract to other than the offeror whose price proposal is lowest for service contracts of \$250,000 or greater, when stated in the evaluation factors of the solicitation. In both cases, Gaston County ACCESS must include a statement in its solicitation document reserving the right to award the contract to other than the low bidder or offeror.

5.8.1.1. Award Only to a Responsible Bidder or Offeror

Gaston County ACCESS may only award contracts to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract and who demonstrate that its proposed subcontractors also qualify as responsible. Gaston County ACCESS must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources when making a determination of contractor responsibility. Gaston County ACCESS must also ensure that the contractor is not listed as a debarred or suspended contractor on the System for Award Management (SAM) or the State of North Carolina debarred vendor list, at the time of contract award. Entities that are listed as debarred or suspended contractors on SAM may not be determined to be responsible contractors by Gaston County ACCESS. For every procurement action above the micro-purchase level, Gaston County ACCESS must make a written determination of the responsibility of the contractor and include such determination in the applicable contract file (See Section 3.6).

To designate a prospective contractor “responsible” as required by 49 U.S.C. § 5325, Gaston County ACCESS, at a minimum, must determine and ensure that the prospective contractor satisfies the following criteria described herein. In addition to being otherwise qualified and eligible to receive the contract award under applicable laws and regulations, a responsible contractor:

- (a) Integrity and Ethics – Has a satisfactory record of integrity and business ethics, in compliance with 49 U.S.C. Section 5325(j)(2)(A).
- (b) Debarment and Suspension – Is neither debarred nor suspended from Federal programs under DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR Parts 180 and 1200, or under the FAR at 48 CFR Chapter 1, Part 9.4.
- (c) Affirmative Action and DBE – Is in compliance with the Common Grant Rules’ affirmative action and FTA’s Disadvantaged Business Enterprise requirements.
- (d) Public Policy – Is in compliance with the public policies of the Federal Government, as required by 49 U.S.C. § Section 5325(j)(2)(B).
- (e) Administrative and Technical Capacity – Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them, in compliance with 49 U.S.C. Section 5325(j)(2)(D).

- (f) Licensing and Taxes – Is in compliance with applicable licensing and tax laws and regulations.
- (g) Financial Resources – Has, or can obtain, sufficient financial resources to perform the contract, as required by 49 U.S.C. Section 5325(j)(2)(D).
- (h) Production Capability – Has, or can obtain, the necessary production, construction, and technical equipment and facilities.
- (i) Timeliness – Is able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments.
- (j) Performance Record – Is able to provide a:
 - (1) Current Performance – Satisfactory current performance record; and
 - (2) Past Performance – Satisfactory past performance given its records of long-time performance or performance with a predecessor entity, including:
 - i. Sufficient Resources. Key personnel with adequate experience, a parent firm with adequate resources and experience, and key subcontractors with adequate experience and past performance,
 - ii. Adequate Past Experience. Experience in carrying out similar work with particular attention to management approach, staffing, timeliness, technical success, budgetary controls, and other specialized considerations as described in the recipient's solicitation, and
 - iii. Any Past Deficiencies Not the Fault of the Bidder or Offeror. A prospective bidder or offeror that is or recently has been seriously deficient in contract performance is presumed to be non-responsible unless the recipient determines that the circumstances were properly beyond the bidder or offeror's control, or unless the bidder or offeror has taken appropriate corrective action. Past failure to apply sufficient tenacity, perseverance, and effort to perform acceptably is strong evidence of non-responsibility. Failure to meet the quality requirements of a contract is a significant factor to consider in determining satisfactory performance. NC DOT expects Gaston County ACCESS to consider the number of the bidder or offeror's contracts involved and the extent of deficient performance in each contract when making this determination.

5.8.1.2. Rejection of Bids and Proposals

Gaston County ACCESS may reject all bids or proposals submitted in response to an Invitation for Bids or Request for Proposals. Gaston County ACCESS must include a statement in its solicitation document reserving the right to reject all bids or proposals. Where bids require BOC approval, BOC is responsible for rejecting bids.

- (a) Extent and Limits of Contract Award – The selection of a contractor to participate in one aspect of a project does not, by itself, constitute a sole source selection of the contractor's wholly owned affiliates to perform other work in connection with the project.

5.9. Independent Cost Estimate and Cost and Price Analysis

5.9.1. Independent Cost Estimate

For every procurement above the Simplified Acquisition Threshold, Gaston County ACCESS shall make a written independent estimate of cost prior to receiving price quotes, bids, or proposals.

5.9.2. Cost or Price Analysis

Gaston County ACCESS shall perform a cost or price analysis in connection with every procurement over \$250,000 and for all contract modifications.

5.9.2.1. Price Analysis

If Gaston County ACCESS determines that competition was adequate, a written price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.

5.9.2.2. Cost Analysis

Gaston County ACCESS must perform or obtain a cost analysis when:

- (a) A price analysis will not provide sufficient information to determine the reasonableness of the contract cost.
- (b) When the offeror submits elements of the estimated cost.
- (c) When only a sole source is available, even if the procurement is a contract modification.
- (d) In the event of a change order.

6. CONTRACT ADMINISTRATION REQUIREMENTS AND CONSIDERATIONS

6.1. Gaston County ACCESS Staff Responsibilities

Prior to the execution of third party contracts, Gaston County ACCESS shall designate a Project Manager to serve as Gaston County ACCESS's principal contact with the contractor and as the primary administrator of the contract. The designated Project Manager for each contract shall have responsibility for directing and overseeing the work performed by the contractor; reviewing and approving deliverables and invoices from the contractor; determining percentage of contract completion for progress payments (if applicable); making recommendations on the exercise of contract options (if applicable); recommending contract changes; preparing justifications for contract changes; performing independent cost estimates and cost or price analyses for contract changes; making recommendations on approval or rejection of subcontractors; assisting with the resolution of contract disputes; making recommendations on contract termination or other contractor disciplinary actions; maintaining complete contract files; and other contract administration duties that may be necessary. The Project Manager will typically be the Transportation Administrator.

6.2. Administrative Restrictions on the Acquisition of Property and Services

The following Federal laws and regulations impose administrative requirements, many of which will affect specific third-party procurements.

6.2.1. Legal Eligibility

The property or services acquired must be eligible for support under the restrictions accompanying the Federal statute authorizing the Federal assistance to be used.

6.2.2. Scope of the Project

The property or services acquired must be eligible for support within the scope of the underlying grant or cooperative agreement from which the Federal assistance to be used is derived.

6.2.3. Period of Performance

Gaston County ACCESS will use sound business judgment and be judicious in establishing and extending a contract's period of performance.

6.2.3.1. General Standards

The period of performance generally should not exceed the time necessary to accomplish the purpose of the contract. Gaston County ACCESS will also consider competition, pricing, fairness, and public perception. Gaston County ACCESS's procurement files will document its rationale for determining the performance period designated for each contract.

6.2.3.2. Time Extensions

Consistent with the general tone of FTA Circular 4220.1F, contract time extensions shall be considered in light of whether they are permissible changes or impermissible cardinal changes. Once Gaston County ACCESS awards a third-party contract, an extension of the contract term length that amounts to a cardinal change will require a sole source justification.

6.2.3.3. Authority to Extend

The Transportation Administrator for the contract shall recommend all contract time; prior to making a recommendation for a contract time extension. Transportation Administrator shall prepare a written justification and cost analysis (if applicable) for the contract time extension and shall negotiate the appropriate contract modification with the contractor.

6.3. Contract Modifications and Change Orders

A contract modification is any written change in the terms of the contract. Gaston County ACCESS is responsible for issuing, evaluating, and making necessary decisions involving any change to its third-party contracts, and any change orders or modifications it may issue.

Change orders may be limited in scope; generally, all changes will be consistent with the scope of the contract. It is the responsibility of Gaston County ACCESS to evaluate the change order and determine if the change is consistent with the scope of the original contract. If determined to be outside the scope of the original contract, then Gaston County ACCESS shall consider the change to be a cardinal change in the scope of work. These changes shall be considered to be a sole source award and be subject to the requirements set forth in this policy for sole source awards.

There are different modifications, as follows:

6.3.1. Bilateral Contract Modification

A bilateral contract modification represents a contract change that must be signed by both parties and is sometimes referred to as a supplemental agreement. This type of modification is used to:

- Make negotiated equitable adjustments to the contract price, delivery schedule, or other contract terms resulting from the issuance of a change order
- Define letter contracts
- Reflect other agreements of the parties modifying the terms of the contract

6.3.2. Unilateral Contract Modification

A unilateral contract modification only requires authorization by Gaston County ACCESS. Such changes are used to make administrative changes, issue change orders, make changes authorized by clauses other than a bilateral modification, or issue termination notices.

6.3.3. Change Orders for Construction Projects

Gaston County ACCESS shall provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications.

6.3.4. Authority

Contract modifications/ change order of any dollar amount or that modifies the agreement in any way must route through County's execution process including Attorney approval as to form, Finance pre-audit and execution by County Manager or his/her designee.

6.3.5. Necessity to Perform Cost or Price Analysis

If a contract modification is construed to meet the definition of a "cardinal change" in the scope of work, Gaston County ACCESS is obligated to conduct a cost or price analysis in conjunction with the contract modification.

6.4. Federal Cost Principles

Federal rules require project costs to conform to applicable Federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient.

OMB guidance for grants and agreements, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR § 200, applies to project costs incurred Gaston County ACCESS.

6.5. Payment Provisions

Gaston County ACCESS will follow the provisions of this section when using FTA funds to support its third-party contracts.

6.5.1. Financial Support for the Project

Costs may only be incurred by Gaston County ACCESS if NC DOT has awarded a financial assistance contract to Gaston County ACCESS.

6.5.1.1. Progress Payments

Progress payments are payments for contract work that has not been completed. Gaston County ACCESS may use NC DOT assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested.

6.5.1.2. Adequate Security for Progress Payments

Adequate security for progress payments may include taking title, obtaining a letter of credit, or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. Gaston County ACCESS should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

6.5.1.3. Adequate Documentation

Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made.

6.5.1.4. Percentage of Completion Method

Federal rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. Gaston County ACCESS, however, may not make progress payments for other than construction contracts based on this percentage method.

6.6. Protections Against Performance Difficulties

Gaston County ACCESS shall include provisions in its third-party contracts that will reduce potential problems that might occur during contract performance, as follows:

6.6.1. Changes

Gaston County ACCESS shall include provisions that address changes and changed conditions in all third-party contracts except for routine supply contracts.

6.6.2. Remedies

Gaston County ACCESS shall include provisions that address remedies in its third-party contracts. Provisions related to remedies may include provisions for:

6.6.2.1. Liquidated Damages

Gaston County ACCESS may use liquidated damages if Gaston County ACCESS reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. Rate and measurement standards must be calculated to reasonably reflect Gaston County ACCESS's costs should the standards not be met and must be specified in the solicitation and contract. The assessment for damages may be established at a specific rate per day for each day beyond the contract's delivery date or performance period. A

measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The contract file must include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account.

6.6.2.2. Violation or Breach

Third-party contracts exceeding \$250,000 must include administrative, contractual, or legal remedies for violations or breaches of the contract by the third-party contractor.

6.6.2.3. Suspension of Work

Gaston County ACCESS may include provisions pertaining to suspension of work in its third-party contracts.

6.6.2.4. Termination

Termination for cause and termination for convenience provisions must be included in third party contracts exceeding \$10,000.

6.7. Contents of Complete Contract Files

The following documents shall comprise the contents of a complete contract file for procurements above the micro-purchase level:

6.7.1. Written Record of Procurement History

Gaston County ACCESS shall maintain written records detailing the history of the procurement, including records relating to:

6.7.1.1. Procurement Method

Gaston County ACCESS must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive.

6.7.1.2. Contract Type

Gaston County ACCESS must state the reasons for selecting the contract type it used.

6.7.1.3. Contractor Selection

Gaston County ACCESS must state its reasons for contractor selection or rejection, including written justification and evaluation documents.

6.7.1.4. Contractor Responsibility

Gaston County ACCESS must provide a written determination of responsibility for the successful contractor.

6.7.1.5. Cost or Price

Gaston County ACCESS must evaluate and state its justification for the contract cost or price, including the independent cost estimate and cost or price analysis.

6.7.1.6. Reasonable Documentation

Gaston County ACCESS must retain documentation commensurate with the size and complexity of the procurement, including documents related to solicitation, receipt and evaluation of offers, and contract award, negotiation, and execution.

6.8. Access to Records

Federal rules (49 U.S.C. § 5325(g)) provide FTA and NC DOT officials, the Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

6.9. Contract Administration and Close-Out Documents

Gaston County ACCESS shall maintain written records detailing the performance and close-out of the contract, including records relating to:

6.9.1. Contractor Performance

Gaston County ACCESS must maintain documents related to contractor adherence to budget and schedule, compliance with contract terms and conditions, DBE participation, progress reports, disputes, and disciplinary actions.

6.9.2. Contract Deliverables

Gaston County ACCESS must maintain copies of all contract deliverables and records relating to approval, rejection, and requested modifications of contract deliverables.

6.9.3. Contract Changes

Gaston County ACCESS must maintain copies of all contract modifications, including documentation related to the determination of need, written justification and rationale, cost analysis, negotiation, and execution.

6.9.4. Contract Payments

Gaston County ACCESS must retain documentation of invoices, approval of payments, requests for modifications to invoices, determination of the percentage of contract completion for partial payments (if applicable), and ownership of title to partial work products.

6.9.5. Contract Close-Out

Gaston County ACCESS must retain documentation related to contractor performance and evaluation, approval of final deliverables and payments, transfer of title to complete work products to Gaston County ACCESS, and contract audit and final reconciliation.

6.10. Protest Procedures

6.10.1. Statement of Policy

Gaston County ACCESS is responsible for resolving all contractual and administrative issues, including protests of evaluations and contract awards, arising out of its third-party procurements using good administrative practices and sound business judgment.

In general, NC DOT will not substitute its judgment for that of Gaston County ACCESS unless the matter is primarily a Federal concern. Nevertheless, NC DOT and FTA can become involved in Gaston County ACCESS's administrative decisions when a Gaston County ACCESS protest decision is appealed to NC DOT.

Gaston County ACCESS shall give timely notification to NC DOT when it receives a third-party procurement protest and will keep FTA informed about the status of any such protest. Gaston County ACCESS shall disclose all information about any third-party procurement protest to NC DOT upon request.

Gaston County ACCESS's procedure for addressing third-party procurement protests is described in Paragraph 6.10.2 below.

6.10.2. Gaston County ACCESS Staff Responsibilities

The following staff responsibilities shall be assigned in all protests:

- Transportation Administrator – Responsibilities include: ensuring that the Gaston County ACCESS Protest Procedure is included in all solicitation documents; and providing information to and assisting the legal counsel with the resolution of protests.
- Legal counsel – Responsibilities include: reviewing all procurement protests; and advising and assisting the Subrecipient as needed with the resolution of all procurement protests.

6.10.3. Solicitation Provision

Gaston County ACCESS shall insert the following provision in all solicitation documents:

6.10.3.1. Pre-Proposal Protests

All protests concerning solicitation specifications, criteria, and/or procedures shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Transportation Administrator as specified below not later than ten (10) business days prior to the deadline for submission of bids/proposals.

The Transportation Administrator may, within his or her discretion, postpone the deadline for submission of bids/proposals, but in any case, shall provide a written response to all protests not later than five (5) business days prior to the deadline for submission of bids/proposals. If the deadline for submission of bids/proposals is postponed by the Transportation Administrator as the result of a protest the postponement will be announced through an addendum to the solicitation.

The decision by the Department of Social Services Director shall be the final agency decision on the matter but shall be subject to judicial review as set forth by FTA below.

6.10.3.2. Pre-Award Protests

With respect to protests made after the deadline for submission of bids/proposals but before contract award by Gaston County ACCESS, protests shall be limited to those protests alleging a violation of Federal or State law, a challenge to the bids/proposals evaluation and award process, Gaston County ACCESS's failure to have or follow its protest procedures or its failure to review a complaint or protest. Such protests shall be submitted in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Transportation Administrator as specified below not later than five (5) business days after the Recommendation for Contract Award announcement by Gaston County ACCESS.

The Transportation Administrator may, within his or her discretion, postpone the award of the contract, but in any case, shall provide a written response to all protests not later than three (3) business days prior to the date that Gaston County ACCESS shall announce the contract award.

The decision by the Department of Social Services Director shall be the final agency decision on the matter but shall be subject to judicial review as set forth or review by NC DOT as specified below.

6.10.4. Requirements for Protests

All protests must be submitted to Gaston County ACCESS in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail), with sufficient documentation, evidence, and legal authority to demonstrate that the Protestor is entitled to the relief requested. The protest must be certified as being true and correct to the best knowledge and

information of the Protestor, and be signed by the Protestor. The protest must also include a mailing address to which a response should be sent.

Protests received after the deadlines for receipt of protests specified above are subject to denial without any requirement for review or action by Gaston County ACCESS.

All protests must be directed in writing (defined as being sent or received via letter or facsimile on official firm/agency letterhead or by electronic mail) to the Transportation Administrator at the address shown in the solicitation documents.

6.10.5. Protest Response

The Transportation Administrator shall issue written responses to all protests received by the required protest response dates. All protest responses shall be transmitted by first-class U.S. Postal Service to the address indicated in the protest letter.

For convenience, Gaston County ACCESS will also send a copy of the response to a protest to the Protester by facsimile and/or electronic mail if a facsimile number and/or electronic mail address are indicated in the protest letter. The protest response transmitted by the U.S. Postal Service shall be the official Gaston County ACCESS response to the protest and Gaston County ACCESS will not be responsible for the failure of the Protester to receive the protest response by either facsimile or electronic mail.

6.10.6. Review of Protests by NC DOT

All protests involving contracts financed with Federal assistance shall be disclosed to NC DOT. Protesters shall exhaust all administrative remedies with Gaston County ACCESS prior to pursuing protests with NC DOT. NC DOT limits its reviews of protests to: a grantee's failure to have or follow its protest procedures; a grantee's failure to review a complaint or protest when presented an opportunity to do so; or violations of Federal law or regulation. Appeals to NC DOT must be received within five (5) working days of the date the Protester has received actual or constructive notice of Gaston County ACCESS final decision or within five (5) working days of the date the Protester has identified other grounds for appeal to NC DOT.