



# Gaston County

Gaston County  
Board of Commissioners  
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## DHHS - ACCESS Division Board Action

File #: 19-210

Commissioner Chad Brown - DHHS (ACCESS Division) - Approval of the Gaston County ACCESS Transportation-Specific Procurement Policy (*No Funding Impacted Herein*)

### STAFF CONTACT

Cheree Wilson - Central Transportation (ACCESS) - 704-862-3220

### BUDGET IMPACT

Required approval to continue receiving NCDOT/PTD funding.

### BUDGET ORDINANCE IMPACT

N/A

### 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	CBrown	JBrown	AFrale	BHovis	TKelgher	TPhilbeck	RWerley	Vote
2019-177	06/25/2019	TK	AF	AB	A	A	A	A	AB	A	U

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# GASTON COUNTY DHHS-ACCESS PROCUREMENT POLICY

5/28/19 Updated Draft

## INTRODUCTION

The purchasing and contracting policies of the Gaston County ACCESS Department are not based upon a single statutory reference but rather are adopted to form compliance with a variety of statutory and policy provisions found in Federal and State laws and regulations and standing Orders and Resolutions of the Gaston County Board of Commissioners. These policies have been drafted to conform to the requirements in *49 CFR 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*; *OMB A-102, Grants and Cooperative Agreements with State and Local Governments*; *OMB A-87, Cost Principles for State, Local, and Indian Tribal Governments*; *Federal Transit Administration (FTA) Circular 4220.1F, Third Party Contracting Requirements*; and *North Carolina General Statutes*.

The policies contained herein are intended to establish a baseline for compliance with Federal and State law and Board policy. It is the responsibility of the ACCESS Transportation Coordinator, Gaston County DHHS, and Gaston County Management to determine the disposition of any issue not specifically addressed herein or otherwise prescribed in law or regulation.

Gaston County ACCESS Department is committed to maintaining high standards of performance based upon fair, ethical and professional business practices and welcomes recommendations for improvements to conformance, quality, and efficiency standards. Any such recommendations should be submitted in writing to the Gaston County ACCESS Department.

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# **1 Responsibility and Authority**

## **Reference:**

The County Manager or his/her designee has the authority for the Gaston County ACCESS Department to enter into grant agreements with the North Carolina Department of Transportation (NCDOT) and to purchase property and services and to enter into third-party contracts on behalf of Gaston County ACCESS. Grant applications submitted to NCDOT must include an authorizing resolution adopted by the Gaston County Board of Commissioners and identify the position title of the authorized official. The authorized official may delegate his/her authority to sign grant applications/ agreements and may delegate other authorities to his/her staff, as he/she deems necessary. Any authorities delegated by the authorized official in regards to approval of grant reimbursement requests, grant budget revision/amendment requests, or grant project period of performance extension requests must be submitted in writing to NCDOT. Any authorities delegated by the authorized official, as applicable, are indicated in the following subsection(s). Responsibility for the preparation of internal policies and procedures consistent with the provision of this manual remains with the Gaston County ACCESS Department.

### **1.1 EXCEPTIONS TO DELEGATED AUTHORITIES.**

Delegated authority is subject to the condition that certain of these transactions be submitted to the DHHS Director, Purchasing Manager, and County Manager for review and prior approval.

#### **INFORMAL BID - For the purchase of “Apparatus, Supplies, materials, and Equipment”**

1. Approval of informal purchases involving the expenditure of more than \$3,500 but less than \$90,000 may be made by the Purchasing Manager after approval by the DHHS Director. Uniform Guidance requires M/WBE solicitation for \$10,000
2. Purchases involving the expenditure of more than \$90,000 are considered formal purchases and must follow the formal purchasing policy and procedure.

#### **INFORMAL BIDS - BUILDING CONSTRUCTION OR REPAIR CONTRACTS**

The Department Head recommends lowest responsive, responsible bidder to BOC for expenditures of more than \$300,000. Any expenditures less than \$300,000 are sent to the County Manager for approval.

#### **USED EQUIPMENT PURCHASES**

Approval of “used” purchases involving any expenditure amount is made by the Purchasing Manager after approval by the DHHS Director.

#### **BOARD OF COMMISSIONERS APPROVAL – WHEN REQUIRED**

It is the County’s policy to obtain approval of the Board of Commissioners on the following:

1. Bids of \$90,000.00 or more for the purchase of apparatus, supplies, materials, and equipment, except as allowed by Statute 143-129.
2. Bids of \$300,000.00 or more for construction or repair work.
3. Sole source purchases at the informal and formal levels with grantor approval per Uniform Guidance standards.
4. Piggybacking is not allowed.
5. Bids or Proposals for services costing \$90,000.00 or more – award may require formal approval.

## **2 Fundamental Policy**

### **2.1 Written Procurement Procedures.**

Written procurement procedures are a requirement of 49 CFR 18 and FTA C 4220.1F. These procedures have been written to reflect applicable Federal, State and local laws and regulations and the requirements and standards identified in FTA C 4220.1F. NCDOT requires its grantees to use FTA procurement standards for purchases funded with Federal and/or State funds. When using Federal and State funds, the more restrictive requirements will be used, whether they are Federal, State, or local. When using State funds only, the Federal certifications and mandatory Federal contract clauses are not required. After adoption by the Board of Commissioners, these procedures will be reviewed annually by Gaston County ACCESS Transportation Coordinator and updated as required.

### **2.2 Responsibility for Settlement of Contract Issues/Disputes.**

Gaston County Government/ ACCESS Department, alone, without recourse to the Federal-/State-funding agency, will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of its procurements. These issues include, but are not limited to, source evaluation, protests of awards, disputes, and claims or other matters of a contractual nature. The Federal/State government will not substitute its judgment for that of this Agency, unless the matter is primarily a Federal/State concern. Violations of the law will be referred to the local, State, or Federal authority having proper jurisdiction.

### **2.3 Written Protest Procedures.**

The Agency shall have written protest procedures to handle and resolve disputes relating to its procurements and shall in all instances disclose information regarding protests to the FTA and to keep FTA informed about the status of the protest. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the Agency before pursuing a protest with the State and/or Federal government.

Reviews of protests by the State-funding agency will be limited to:

- (1) The Agency's failure to have or follow its protest procedures, or its failure to review a complaint or protest;
- (2) Violations of Federal/State law or regulation.

An appeal to the State must be received by the State-funding agency within three (3) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to the State. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to FTA. Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities. The Agency will abide by the following procedures.



- 2.3.1 Authority. Gaston County Government/ ACCESS Transportation has final authority to resolve protests, disputes, and complaints arising from the solicitation, award, or performance of a contract. In all instances where a legal representative of the bidder, vendor, or contractor has initiated correspondence or formal action, the County Manager or his designee shall contact State-awarding agency (i.e., NCDOT or other agency, as applicable) prior to taking any action. Solicitation documents must contain provisions for the resolution of protests and disputes.
- 2.3.2 Protest of Requirements Prior to Award. The solicitation document shall provide potential bidders with the opportunity to take exception to specifications and/or requirements. Protests of requirements received after the time identified in the solicitation document shall be considered untimely and shall be rejected.
- 2.3.3 Protest of Award. If, prior to award of contract, a protest is received in writing and filed on the grounds that the award is not in conformance with the provisions of the solicitation document, the contract or award shall not be awarded until the protest has been withdrawn or a decision has been reached by the Agency. Complaints lodged by a bidder prior to award may be resolved informally. However, in the event that the matter is not resolved, bidders shall be advised of the timeframe for submitting a full and complete formal statement of the grounds for the protest within the timeframes specified in the solicitation document.
- 2.3.4 Decisions. The County Manager or his designee shall review the merits and timeliness of the protest and ensure that a decision in writing is submitted within a reasonable period of time following receipt of the protest. The Agency shall issue a decision in writing or otherwise furnish to the bidder the decision in such a manner as to ensure receipt. The decision of the Agency is final.
- 2.3.5 Disputes Subsequent to Award. Disputes subsequent to award may include, but not be limited to, contention over terms, pricing, payment, scope and/or deliverables. A dispute resolution and escalation clause, describing resolution procedures and the appropriate parties to which the matter may be escalated, shall be included in solicitation documents and contracts, as applicable. The following are sample clauses for inclusion in solicitation documents and contracts:
- Disputes. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the County Manager or his designee. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of the Agency. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of the Agency shall be binding upon the Contractor and the Contractor shall abide by the decision.

- Performance During Dispute. Unless otherwise directed by the Agency, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

## **2.4 Standards of Conduct.**

The Agency shall maintain a written code of standards of conduct (or conflict of interest policy) governing the performance of their employees engaged in the award and administration of contracts. All employees, officers, and board members will review this policy annually and the agency will document the review thereof. These standards will be relayed to all members in writing and the agency will obtain each member's signature to acknowledge his/her review, understanding, and acceptance of the policy. See Exhibit 1 for conflict of interest policy.

## **2.5 Ethics Policy (Draft)**

The state has issued an Ethics Policy that is to be incorporated into every policy, procedure, solicitation and contract. This flows down from the Department of Transportation to all grantees.

1) "By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor ( i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee (or Grantee) of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency (such as vendors under with a State Term Contract); or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, all third party contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

See Exhibit 1 for Ethics Policy Declaration.

## **2.6 Competition.**

- 2.6.1 All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
- 2.6.2 Unreasonable requirements will not be placed on firms in order for them to qualify to do business.
- 2.6.3 The Agency will be alert to organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage.
- 2.6.4 The Agency will be alert to noncompetitive practices, such as noncompetitive pricing practices, among contractors that may restrict or eliminate competition.
- 2.6.5 Unnecessary experience and excessive bonding requirements will not be placed on firms.
- 2.6.6 Contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals or those on retainer contracts will be excluded from competing for such procurements.
- 2.6.7 Except in cases where a product of a specified brand name is the only product that can properly meet the needs of a requester, the drafting or application of specifications or bid requirements that directly or indirectly limit the bidding to a single brand is prohibited. A "brand name or equal" is a competitive process that allows bidders to propose equivalent items. The Agency will not specify only a "brand name" product instead of allowing "an equal" product to be offered without listing its salient characteristics. Refer to FTA C 4220.1F, VI, 2a(3) or Best Practices Procurement Manual (BPPM) for further information on preparation of specifications including examples with specific language.
- 2.6.8 The agency shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed 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 preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application presents an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- 2.6.9 All lists of pre-qualified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, the Agency will not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date. Additionally, to the maximum extent possible, every effort shall be made to use Disadvantaged Business Enterprises and Minority-/Women-Owned Businesses in acquiring goods and services.

2.6.10 Revenue contracts will be awarded utilizing competitive selection procedures and principles. Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an asset funded with public transportation funds. The Agency will be responsible for determining what level of competition is appropriate for a particular contract. A competitive selection process would normally only be needed where there are several potential competitors for a limited opportunity—a competitive process would be required to allow all interested parties an equal chance.

2.6.11 For all architectural, engineering, surveying, construction management at risk services, design-build services, and public-private partnership construction services, The Agency must use qualifications-based competitive proposal, Request for Qualifications (RFQ), in accordance with the Brooks Act procedures. If the estimated fee is less than \$50,000, the state's mini-Brooks Act may be used. Qualifications-based competitive proposal procedures must be used for procurement of program management, construction management, feasibility (engineering) studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

(1) The Agency must follow applicable statutes, N.C.G.S. 143-64.31-34 and FTA requirements set forth in 4220.1F, to retain a qualified registered architect or professional engineer.

- Geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- Good faith effort to use minority-owned firms. DBE Contractors must be certified and registered on the NCDOT Directory:  
**<http://apps.dot.state.nc.us/vendor/directory>**
- Selection shall be based on qualifications and competence.
- Price negotiation is conducted with the most qualified offeror.
- NCDOT Public Transportation Division must review and approve selection (projects funded with public transportation funds).

(2) Exemption from request for qualifications (RFQ) and formal procedures for securing A&E Services, N.C.G.S. 143-64.32(a).

- If professional fee is estimated less than \$50,000, procedures listed at item (1) above may be waived in writing by the Gaston County Board of Commissioners.

- If professional fee is estimated to be less than \$10,000, the County Manager or his designee may waive, in writing, the procedures listed at item (1) above, per Gaston County Resolution 2012-061.
  
- A/E firms may be contacted directly.
  - One or more may be evaluated for qualifications
  - Negotiated contract
  - NCDOT Public Transportation Division involvement in selection and negotiation required (projects funded with public transportation funds).

## **2.7 The Agency will ensure that:**

- 2.7.1 A review of proposed procurements is accomplished in order to avoid the purchase of unnecessary or duplicative items. Consideration will be given to consolidating or breaking out procurements to obtain a more economical purchase. However, procurements will not be divided in an effort to evade competition unless it benefits M/WBE.
- 2.7.2 Existing state agreements for procurement of common goods and services may be utilized whenever possible, as applicable. When obtaining goods or services in this manner, all federal requirements, required clauses, and certifications (including Buy America) must be properly followed, executed and included in the grantee's purchase document. The vehicle contracts awarded by PTD for the purchase of transit vehicles already include all federal requirements.
- 2.7.3 Existing agency, local, or intergovernmental agreements for procurement of common goods and services are not eligible if federal funds are being used. FTA has taken the position that grantees may not add Federal clauses and certifications to previously awarded locally-funded contracts.
- 2.7.4 Joint efforts are encouraged to procure goods and services with local governmental entities, other grantees, whenever feasible and practical. If federal funds will be used when obtaining goods or services in this manner, all federal requirements, required clauses, and certifications must be properly followed and included in the resulting joint solicitation and contract documents.
- 2.7.5 Piggybacking is defined as an assignment of existing contract rights to purchase supplies and equipment. **Piggybacking is not allowed by Uniform Guidance standards.**
- 2.7.6 In lieu of purchasing new equipment and property, the utilization of Federal/State excess and surplus property will be considered, whenever such use is feasible and reduces project costs.
- 2.7.7 Value engineering clauses are included in contracts for construction projects, as appropriate.
- 2.7.8 Analysis is made of lease versus purchase alternatives and/or any other appropriate analysis to determine the most economical and practical procurement. If lease to purchase option is chosen, UG thresholds are to be followed.
- 2.7.9 The type of procurement instruments used (e.g. fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be appropriate for the particular procurement.
- 2.7.10 Prior to utilizing any electronic (E-Commerce) methods for soliciting offers, ordering products, or transferring funds, the Agency must have written procedures and must ensure the requirements for full and open competition are met. E-Commerce activity is best defined as the processing of business transactions over the Web. This includes use of

an electronic procurement system (such as the state uses) and a broad range of other options such as ordering supplies over the Internet, using the Internet to publicize requests for bids and accept bids online, and using electronic banking. The Board of Commissioners approved advertising on county website in lieu of newspaper.

- 2.7.11 Contracts are made only with responsible contractors who possess potential ability to perform successfully under terms and conditions of the contract. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Contracts will not be awarded to parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities in accordance with the Federal debarment and suspension rule, 2 CFR Part 1200. This now applies to procurements over \$25,000. Grantees are required to comply, and assure the compliance of each third party contractor at any tier, with the debarment and suspension rule. FTA and NCDOT recommend that grantees use a certification form for projects over \$25,000, which are funded in part with Federal and/or State funds. Grantees can obtain a sample certification form from PTD. Grantees must also check a potential contractor's debarment/suspension status at the following web site: <https://www.sam.gov/> and the state's Purchase and Contract's web site: <http://www.pandc.nc.gov/actions.asp> . In addition, any contracts over \$1000 are subject to Iran Divestment Certification. Effective 10/1/17, Local governments will monitor NC Treasurer's IDA list to ensure that we do not contract with agencies on that list. Some form of cost or price analysis is made and documented in the procurement files in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Agency must make independent estimates before receiving bids or proposals. Any purchases of \$90,000 and above require agency to follow Uniform Guidance standards.

- (1) Cost Analysis. A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, (e.g., under professional, consulting, and architectural and engineering services contracts, etc.).

A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

- (2) Price Analysis. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.
- (3) Profit. The Agency will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the

contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- (4) Federal Cost Principles. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. This applies to State-funded projects as well.
- (5) Cost Plus Percentage of Cost Prohibited. The cost plus a percentage of cost and percentage of construction cost methods of contracting will not be used.

2.7.12 Records are maintained by Gaston County ACCESS that detail the history of each procurement. At a minimum, these records must include:

- The rationale for the method of procurement;
- Selection of contract type;
- Reasons for contractor selection or rejection; and
- The basis for the contract price.

The section on Methods of Procurement includes the documentation requirements for each threshold funding level.

2.7.13 Procurement documents and records are retained for at least five (5) years after project completion and are available to Federal and State awarding agencies, on request.

2.7.14 A system for contract administration is maintained to ensure contractor conformance with the terms, conditions and specifications of contracts or purchase orders and to ensure adequate and timely follow-up of all purchases. Consideration will be given to the type of contract and the specific requirements of each. As a general guide, the following will be monitored and documented:

- (1) Contractor conformance with the contract price.
- (2) Contractor conformance with the delivery and/or completion dates.
- (3) Compliance with the specifications of product or construction requirements.
- (4) Payment of any required security or performance deposits by the contractor.
- (5) Compliance with rules and regulations for contracts of the funding source.



- (6) Document whether contractors have met the terms, conditions and specifications of the contract.

2.7.15 Solicitations for goods and services provide for all of the following:

- (1) Clear and accurate description of the technical requirements of the item/service being procured.
  - Description must not contain features that unduly restrict competition.
  - Description, whenever practicable, will be in the form of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
  - Detailed product specifications should be avoided if at all possible.
  - A “brand name or equal” description may be used as a means to define the performance or other salient characteristics of a procurement.
- (2) Requirements that bidders must fulfill and all other factors to be used in evaluating bids or proposals.
- (3) Acceptance of products and services dimensioned in the metric system of measurement, to the extent practicable.
- (4) Preference for products and services that conserve natural resources and protect the environment and are energy efficient.
- (5) Positive efforts are made to utilize Minority-owned Businesses.
  - When only state funds are used, the solicitation must include Minority Business Enterprise (MBE) firms and/or Women Business Enterprise (WBE) firms.
  - If the project is funded in part with federal funds, Disadvantaged Business Enterprise (DBE) firms must be solicited. UG requires agency to solicit MBE and WBE firms for any purchases \$5,000 and above.
  - DBE project specific goals will be set for federally funded Construction Projects.
  - Ensure DBEs are used to the fullest extent practicable.
  - Make information on forthcoming opportunities available to encourage and facilitate participation by DBEs.
  - Consider in contract process whether firms competing for larger contracts intend to subcontract with DBEs.

- Encourage contracting with consortiums of DBEs when contract is too large for individual DBE.
- Use services/assistance of such organizations as Small Business Administration, local chamber of commerce, etc., in solicitation and utilization of DBEs.
- Document efforts and actions taken to utilize DBEs.

2.7.16 Time and material type contracts are used only:

- (1) After a determination that no other type of contract is suitable; and
- (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

### 3 Methods of Procurement

The procurement method to use will be determined by the estimated cost of the product/service being procured. The following funding threshold levels are based on Federal, State, and local laws and regulations.

#### 3.1 < \$3,500(*Micro-Purchases*)

- May be made without obtaining price quotes; however, quotes are encouraged and should be obtained when feasible.
  - Local procurement guidelines must be followed
  - Equitable distribution among qualified suppliers
  - No splitting of procurements to avoid competition
- Davis-Bacon Act applies to construction > \$2,000 (**if funded in part with federal funds**)
- Purchases must be approved by the ACCESS Transportation Coordinator. The approval authority (see Section 1) must ensure required procurement procedures were followed, funds are available, and that the procurement history file has been properly documented.
- Minimum documentation required:
  - How price was determined to be fair and reasonable (comparison of catalog/online prices, etc.) and which vendor was selected
  - Procurement History Form may be used to document
  - Vendor does not have to comply with Federal requirements, except if Federal funds are used for construction. The Davis-Bacon Act applies to costs of \$2,000 or more and requirement must be included with solicitation (quote/bid)
  - Document approval by authorized person before purchase

#### 3.2 \$3,501- \$29,999 (*Price Quotes*)

- PTD must review new/adapted specifications prior to solicitation of new-type rolling stock. This requirement does not apply to the following:
  - Minivans
  - Conversion and Lift Vans
  - Center Aisle Vans and Standard Vans
  - Solicit at least 3 vendors/suppliers (may be telephone quotes, in person, fax, email, or in writing). Written quotes are required beginning at \$5,000.
  - Telephone quotes can be used when only state funds are involved and when the quote is less than \$5,000.

- If Federal funds are used, applicable Federal UG requirements must be included in the solicitation
  - When federal requirements must be included with the solicitation, the solicitation will typically need to be sent out by fax, email or in person, requiring a written response.
  - The complete set of federal requirements for all types of procurements can be found on PTD's web site, which are updated on an annual basis.  
**<http://www.ncdot.gov/nctransit/resources/default.html>**
- Purchases must be approved by ACCESS Transportation Coordinator. The approval authority (see Section 1) must ensure required procurement procedures were followed, funds are available, and that the procurement history file has been properly documented
- A requisition for Purchase Order is required for all purchases of \$5,000 and up..
- PTD requires pre-award approval of the following. Submit Procurement Checklist, Procurement History Form, <https://connect.ncdot.gov/business/Transit/Pages/Transit-Financial-Management-Resources.aspx>, and all other documentation to PTD prior to purchase/ award of:<sup>1</sup>
  - New-type rolling stock. This requirement does not apply to Minivans, Conversion and Lift Vans, Center Aisle Vans and Standard Vans
  - Any "brand name" product or sole source purchase  $\geq$  \$3,500
  - Single quote or bid received for purchases  $\geq$  \$3,500
  - Any contract to other than apparent lowest bidder  $\geq$  \$3,500
- Minimum documentation required:
  - Document quotes received (a minimum of 3 quotes must be received)
  - Quotes should be recent, solicited within the last 90 days. Vendor may offer a limited time on quotation. Be sure quotes are valid.
  - Minority firms must be solicited and documented
  - Document which vendor was selected--if vendor with lowest price is not selected, include basis/reason for selection (delivery date; better warranty/service; etc.); Pre-award approval by PTD required if not low bidder
  - Document approval by authorized person before purchase
  - Procurement History Form may be used to document
  - Complete Procurement Checklist and submit to PTD with reimbursement request<sup>2</sup>
  - Procurement Checklist must be submitted to PTD for prior approval on all purchases over \$3,501.

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<sup>1</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and **all** State funded projects.

<sup>2</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and **all** State funded projects.

### 3.3 \$30,000 - \$89,999 (Informal Bids)

- PTD must review new/adapted specifications prior to solicitation of new-type rolling stock and ALL construction related procurements. : “New-Type” Rolling Stock excludes vehicles available on PTD contracts:
  - Minivans
  - Conversion and Lift Vans
  - Center Aisle Vans and Standard Vans
  - Light Transit Vehicles (Cutaway-type Bus)
- PTD must review drawings, designs, and/or description of work required **prior to solicitation** of construction, renovation, or facility improvement projects.<sup>3</sup> **This includes the purchase or construction of bus shelters.**
- Solicit written quotes from at least 3 bidders or suppliers, including M/WBE for any purchases \$10,000 and over.
- Applicable Federal requirements and certifications must be included with solicitation, if funded in part with Federal funds.
  - The complete set of federal requirements for all types of procurements can be found on PTD’s web site, which are updated on an annual basis.  
**<http://www.ncdot.gov/nctransit/resources/default.html>**
- Purchases must be approved by the Purchasing Manager after approval by the DHHS Director, except sole-source purchases, which require approval from the Gaston County Board of Commissioners and Grantor (per UG). The approval authority or his designee (see Section 1) must ensure required procurement procedures were followed, funds are available, and that the procurement history file has been properly documented.
- PTD requires **pre-award approval** of the following. Submit Procurement Checklist, Procurement History Form, <https://connect.ncdot.gov/business/Transit/Pages/Transit-Financial-Management-Resources.aspx>, and all other documentation to PTD prior to purchase/ award of:<sup>4</sup>
  - 
  - All procurements > \$30,000. Submit Procurement Checklist (History form may be included), and any related documentation for review.
- Minimum documentation required:
  - Minority-owned Business good faith efforts must be documented. Project specific goals may set for certain projects (construction projects with federal funds will need to have DBE goal set at DOT).
  - Document quotes solicited and quotes received (minimum of 2 quotes must be received)

<sup>3</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and **all** State funded projects.

<sup>4</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and **all** State funded projects.

- Quotes should be recent, solicited within the last 90 days. Vendor may offer a limited time on quotation. Be sure quotes are valid.
- Document which vendor was selected--if vendor with lowest price is not selected, include basis/reason for selection -- (delivery date; better warranty/service; etc.) and justification; Pre-award approval by PTD required if not low bidder
- Procurement History Form may be used to document/track but must maintain written documentation to support that each requirement was met
- Document approval by authorized person before purchase/ award, including any pre-award approval by PTD
- Submit Procurement Checklist to PTD with reimbursement request<sup>5</sup>

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<sup>5</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and all State funded projects.

### 3.4 Formal (Sealed) Bids

The formal (sealed) bidding process must be used when:

Funding source is:	& Procurement is for:	Projected & Cost is:
State/Local Funds <b><u>ONLY</u></b> :	Apparatus, Supplies, Materials, & Equipment	≥ \$ 90,000
	Construction	≥ \$500,000
Federal <b><u>AND</u></b> State/Local Funds:	Apparatus, Supplies, Materials, & Equipment (requires cost or price analysis)	≥ \$ 90,000
	Construction (requires adequate number of quotes plus M/WBE)	<u>\$10,000-</u> <u>\$249,999</u>
	Construction (requires cost or price analysis formal bid process)	<u>\$250,000-</u> <u>\$499,999</u>

- PTD must review all specifications prior to solicitation of equipment, supplies, apparatuses and new-type rolling stock.<sup>6</sup> This requirement does not apply to the following:
  - Minivans
  - Conversion and Lift Vans
  - Center Aisle Vans and Standard Vans
  - Light Transit Vehicles (Cutaway-type Bus)
- PTD must review drawings, designs, and/or description of work required prior to solicitation of construction, renovation, or facility improvement projects.<sup>7</sup> **This includes the purchase or construction of bus shelters.**
- Public advertisement (electronic ad may be used) for the bid, at least once, 7 days prior to opening
  - Project shall identify source of funding in advertisement, such as “Project will be funded in part with federal funding”, or “Project will be funded with state and federal funding”.

<sup>6</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and **all** State funded projects.

<sup>7</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and **all** State funded projects.

- The State's Purchase and Contract Division's Interactive Purchasing System (IPS) is an additional source for advertising bids. All public entities have this as a resource for placing their bids on this web site. This posting can provide opportunities to vendors across the state.
- All bids must be sealed and opened at stated time & place
- At least 3 suppliers/contractors must be solicited (in addition to ad, at least 3 must be notified)
- Applicable Federal requirements and certifications must be included with the bid, if funded in part with Federal funds.
  - The complete set of federal requirements for all types of procurements can be found on PTD's web site, which are updated on an annual basis. <http://www.ncdot.gov/nctransit/resources/default.html>
- Additional requirements for construction procurements:
  - Minimum of 3 sealed bids must be received. If less than 3 bids are received, cannot open bids. Agency must advertise for bids again; and if as a result of the second advertisement, less than 3 competitive bids are received from reputable and qualified contractors, the agency may contract with the lowest responsible bidder, even if only one bid is received. PTD must review all bids prior to award.
  - Bid guarantee bond (5% of bid price)
  - Performance and payment bonds (100% of contract price)
  - MBE/WBE/DBE participation
    - Project specific DBE goal will be assigned for federally funded projects.
    - If only state funds are used for construction, the MBE/WBE goal will be the state's mandated 10% goal. Required steps must be taken to satisfy the MBE requirements in accordance with (G.S. 143-128.2(f)).
- Document advertisement for bids and document the number of bids solicited and number of bids received by completing Procurement History Form and Procurement Checklist for Formal Bids.
- Purchases must be approved by the Board of Commissioners or its designee. The approval authority or his designee (see Section 1) must ensure required procurement procedures were followed, funds are available, and that the procurement history file has been properly documented.
- PTD requires pre-award approval for **ALL** formal bid items. Submit Procurement Checklist, Procurement History Form, and all other documentation to PTD prior to the purchase/ award of contract.<sup>8</sup>

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<sup>8</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and all State funded projects.



- Award shall be made to the lowest responsive and responsible bidder(s). If recommendation is other than low bid, justification must be submitted along with above checklist and related documentation
  - PTD must also pre-approve any contract modification that would change the scope of a contract or increase the contract amount up to or over the formal (sealed) bid threshold of \$90,000<sup>9</sup>
- Any or all bids may be rejected if there is a sound documented business reason
  - Contract award will be made in writing to the lowest responsive and responsible bidder
  - Bid responsiveness involves the question of whether the bid, as submitted, represents an unequivocal offer to do exactly what the Agency has specified, so that acceptance of the bid will bind the contractor to meet the Agency's requirements in all material aspects. Any and all bids judged to be non-responsive must be rejected. Examples of bids typically considered non-responsive include:
    - The bid fails to conform to material requirements;
    - The bid does not conform to applicable specifications (unless the invitation allowed alternates);
    - The bid fails to conform to delivery schedule or permissible alternates;
    - The bid imposes conditions that would modify the requirements of the invitation or limit the bidder's liability to the entity;
    - There is a condition of the bid which affects the substance of the bid (i.e., affects price, quantity, quality, or delivery of the items offered) or works an injustice on other bidders;
    - The bid contains prices for line items that are materially unbalanced, i.e., figures in the bid conflict with the total bid price;
    - date;
    - The bidder fails to furnish a bid bond or guaranty in accordance with the requirements of the invitation; or
    - Failure to submit Buy America Certification (required if over \$150,000, excluding service only contracts or software only purchases) or Transit Vehicle Manufacturer Certification with applicable rolling stock procurements. The submittal of both Buy America compliant and non-compliant Certifications in the same bid constitutes a non-responsive bid and the bid must be rejected. There are no remedies for these federal certification mistakes.
    - When there are lower bids than the bid being accepted for award, the award decision document must give the reasons for rejecting the lower bids. When there are equal low bids, the documentation must describe how the tie was broken.
  - When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs may be considered in determining the award of the bid
  - Payment discounts may be considered in awarding the bid when prior experience indicates that such discounts are usually taken

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<sup>9</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and all State funded projects.

- Minority-owned Business documentation required (Construction projects):
  - Minority Subcontractor form completed for DBE or MBE/WBE; total dollar amount indicated for each and then totaled at bottom.
  - Verification that DBEs or MBE/WBEs are certified on appropriate listings and have met goal.
  - Verification that bidder has submitted required forms for MBE/WBE for state funded project. Written documentation to support that each requirement was met.
  - Minority-owned Business good faith efforts must be recorded and documented if DBE goal or MBE/WBE goal was not met.
  - Documentation of good faith efforts (DBE/MBE/WBE) must be reviewed locally for completeness and then reviewed and approved by PTD prior to award of Contractor.
  - State Funded Projects Only - Documented efforts must be reported to the State Construction Office for MBE/WBE goal met or not met (County/City Procurement Office's responsibility)
  - NCDOT will be notified of DBE goal met or not met from PTD
  - Document approval by authorized person before purchase/award
  
- Minority-owned Business documentation required (All other procurements, including equipment, supplies, and services):
  - All solicitations must indicate that bids are open to all Minority Owned Businesses and that DBE/MBE/WBE Contractors or Subcontractors are encouraged to participate in the bid. A link to the appropriate web site should be listed in the advertisement or solicitation.
  - There are no goals set for federal or state funded projects for these types of procurements; however, every effort must be made to solicit from minority vendors.
  - A Minority Subcontractor form may be included with bids for state funded projects.
  - There is specific DBE language that must be included in bids with federal funds. PTD must be contacted for the latest and most up-to-date DOT language and forms to use in the bid.
  - After opening bids, the Subcontractor form listing DBEs or MBE/WBEs must be verified that they are certified and qualified to be counted toward the "state's goal or the DOT's DBE goal. Verified information must be included with documentation to PTD for review.
  - If the Vendor or Contractor has indicated "zero" on the appropriate Subcontractor form, then they are offering no DBE/MBE/WBE for this bid. Include this with your documentation to PTD for review.
  - NCDOT will be notified of Minority participation from PTD
  - Document approval by authorized person before purchase/award

### **3.5 Competitive Proposal/Request for Proposal (RFP)**

The competitive proposal/request for proposal method of procurement is normally conducted with more than one source submitting an offer, i.e., proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. **Note that certain restrictions apply under North Carolina law for use of the RFP method and these restrictions and exceptions are discussed in sections 3.5.1 and 3.5.2 below.**

A request for proposals (RFP) typically includes all of the elements of an invitation for bids (IFB). The required feature that principally distinguishes the RFP from an IFB is the listing of evaluation factors. These evaluation factors typically include:

- Responsibility factors such as financial, human, and physical capacity to perform; and
- Technical factors such as the degree to which the proposer is expected (based on information submitted and available) to achieve the performance objectives, to provide the quality expected, and on the relative qualifications of the proposer's personnel.

Many RFPs go beyond listing these factors in order of importance, and also describe the evaluation process in detail—listing weights for each factor, illustrating the scoring method, and specifying the procedure for weighing price into the selection.

The purposes for disclosing of the evaluation process are so that:

- Offerors can more accurately respond to your needs rather than solely rely on the technical specifications alone;
- Proposers will be able to clearly present the information you need to conduct your evaluation; and
- The appearance of favoritism or unethical practice in offeror selection will be diminished.

The competitive proposal process involves a subjective evaluation process and discussions that are typically confidential. RFPs are typically publicized in newspapers and/or trade journals, and are issued to qualified mailing lists maintained in a manner similar to IFB lists.

- All RFPs must be reviewed by PTD prior to advertisement and solicitation. After evaluation of proposals, PTD shall review documentation of evaluation and recommended proposal prior to award.

3.5.1 Competitive Proposal/Request for Proposal (RFP) Method **may not** be used in lieu of an IFB for:

- Construction/repair work; or
- Purchase of apparatus, supplies, materials or equipment. (See 3.5.2 regarding information technology goods as services)
- **Exception:** A regional public transportation authority (RPTA), as defined in NCGS 160A, Article 26, or a regional transportation authority (RTA), as defined in NCGS 160A, Article 27, may use the competitive proposal method for the **acquisition/purchase or lease of any apparatus, supplies, material, or equipment.**

**Note—this only applies to RPTAs and RTAs created and governed by Article 26 or 27 of G.S. 160A. Furthermore, RPTAs and RTAs are not required to use the RFP method and should consider other available/allowable procurement methods and choose the most appropriate method.**

- If **RPTAs** or **RTAs** (governed by Article 26 or 27 of G.S. 160A) use this procurement method, the following minimum requirements [G.S. 143-129(h)] apply:
  - This method of procurement is generally used when conditions are not appropriate for the use of sealed bids;
  - Procurement is normally conducted with more than one source submitting an offer or proposal;
  - Either a fixed price or cost reimbursement type contract is awarded;
  - Requests for proposals shall be publicized;
  - All evaluation factors shall be identified along with their relative importance;
  - Proposals shall be solicited from an adequate number of qualified sources;
  - RPTAs/RTAs shall have a method in place for conducting technical evaluations of proposals received and selecting awardees, with the goal of promoting fairness and competition without requiring strict adherence to specifications or price in determining the most advantageous proposal;
  - If Federal funds are used, applicable Federal requirements and certifications must be included in the solicitation
  - The award may be based upon initial proposals without further discussion or negotiation or, in the discretion of the evaluators, discussions or negotiations may

be conducted either with all offerors or with those offerors determined to be within the competitive range, and one or more revised proposals or a best and final offer may be requested of all remaining offerors. The details and deficiencies of an offeror's proposal **may not** be disclosed to other offerors during any period of negotiation or discussion;

- The award shall be made to the responsible firm whose proposal is most advantageous to the RPTA's or the RTA's program with price and other factors considered;
- The award may require formal Board of Commissioners approval. The approval authority (see Section 1) must ensure required procurement procedures were followed, funds are available, and that the procurement history file has been properly documented; and
- The contents of the proposals shall not be public records until 14 days before the award of the contract.
- All RFPs must be reviewed by PTD prior to advertisement and solicitation. After evaluation of proposals, PTD shall review documentation of evaluation and recommended proposal prior to award.

- **Special Note:** Prior to the issuance of the requests for proposals, the RPTA/RTA board/governing body (at a regularly scheduled meeting by formal motion) shall make findings of fact that the competitive proposal (RFP) method of procuring the particular apparatus, supplies, materials, or equipment is the most appropriate acquisition method. Additionally, **before approving the contract**, the board/governing body shall by formal motion certify that the requirements of G.S. 143-129(h) have been followed.

3.5.2 Competitive Proposal/Request for Proposal (RFP) Method of solicitation may be used (in addition to or instead of any other procedure available under North Carolina law) for the procurement of **information technology goods and services** [as defined in N.C.G.S. 147-33.81(2)]. This applies to electronic data processing goods and services, telecommunications goods and services, security goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, training, including installation, and consulting or other services for design or redesign of information technology supporting business processes. The following minimum requirements [G.S. 143-129.8] apply:

- Notice of the request for proposals shall be given in accordance with G.S. 143-129(b).
- All solicitations must indicate they are open to all Minority Owned Businesses and that DBE/MBE/WBE Contractors or Subcontractors are encouraged to participate. A link to the appropriate web site should be listed in the advertisement or solicitation.

- There is specific DBE language that must be included in proposals with federal funds. PTD must be contacted for the latest and most up-to-date DOT language and forms to be used with solicitation.
  - Form must be completed and included with proposal.
- If Federal funds are used, applicable Federal requirements and certifications must be included in the solicitation
  - Contracts shall be awarded to the person or entity that submits the best overall proposal as determined by the awarding authority. Factors to be considered in awarding contracts shall be identified in the request for proposals.
  - The awarding authority may use procurement methods set forth in G.S. 143-135.9 in developing and evaluating requests for proposals.
  - The awarding authority may negotiate with any proposer in order to obtain a final contract that best meets the needs of the awarding authority.
  - Any negotiations shall not alter the contract beyond the scope of the original request for proposals in a manner that:
    - Deprives the proposers or potential proposers of a fair opportunity to compete for the contract; and
    - Would have resulted in the award of the contract to a different person or entity if the alterations had been included in the request for proposals.
  - All RFPs must be reviewed by PTD prior to advertisement and solicitation. After evaluation of proposals, PTD shall review documentation of evaluation and recommended proposal prior to award.
  - Proposals submitted shall not be subject to public inspection until a contract is awarded.
  - The award may require formal Board of Commissioners approval. The approval authority (see Section 1) must ensure required procurement procedures were followed, funds are available, and that the procurement history file has been properly documented.

3.5.3 Competitive Proposal/Request for Proposal (RFP) Method, in accordance with FTA C 4220.1F, under the guidelines of *FTA Best Practices Procurement Manual*, should be used for procurements of professional services, such as consultants for planning activities and for transit system operations/management. Note that certain restrictions apply under North Carolina law for use of the RFP method and these restrictions and exceptions are discussed in sections 3.5.1 and 3.5.2. For all architectural, engineering, surveying, construction management at risk services, design-build services, and public-private partnership construction services, the qualifications-based competitive proposal process must be used—see 3.6 below.

When the RFP method is used for procurement of **professional services**, the following minimum requirements apply:

- Normally conducted with more than one source submitting an offer (proposal);
- Either fixed price or cost reimbursement type contract will be used;
- Generally used when conditions are not appropriate for use of sealed bids;
- Requests for proposals will be publicized;
- All evaluation factors will be identified along with their relative importance;
- Proposals will be solicited from an adequate number (3 is recommended) of qualified sources;
- All solicitations must indicate they are open to all Minority Owned Businesses and that DBE/MBE/WBE Contractors or Subcontractors are encouraged to participate. A link to the appropriate web site should be listed in the advertisement or solicitation.
  - There is specific DBE language that must be included in proposals with federal funds. PTD must be contacted for the latest and most up-to-date DOT language and forms to used with solicitation.
  - Form must be completed and included with proposal.
- If Federal funds are used, applicable Federal requirements and certifications must be included in the solicitation
- A standard method must be in place for conducting technical evaluations of the proposals received and for selecting awardees;
- Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered;
- In determining which proposal is most advantageous, grantees may award to the proposer whose proposal offers the greatest business value (best value) to the agency. "Best value" is based on determination of which proposal offers the best tradeoff

between price and performance, where quality is considered an integral performance factor;

- All RFPs must be reviewed by PTD prior to advertisement and solicitation. After evaluation of proposals, PTD shall review documentation of evaluation and recommended proposal prior to award.
- Awards may require formal Board of Commissioners approval . The approval authority (see Section 1) must ensure required procurement procedures were followed, funds are available, and that the procurement history file has been properly documented.

### **3.6 Procurement of Architectural and Engineering Services (A&E) and Design/Build**

For all architectural, engineering, design, or related services the Agency must use qualifications-based competitive proposal [Request for Qualifications (RFQ) in accordance with the Brooks Act] procedures unless the fee is expected to be less than \$50,000 (refer to 3.6.2 for exemption).

3.6.1 The Agency shall follow applicable statutes, N.C.G.S. 143-64.31-34 and FTA requirements set forth in 4220.1F, to retain a qualified, registered architect or professional engineer.

Qualifications-based competitive proposal procedures require that:

- An offeror's qualifications be evaluated;
- Qualifications-based competitive proposal procedures can only be used for procurement of the following services:
  - Program management
  - Construction management
  - Feasibility studies (engineering studies)
  - Preliminary engineering, design, architectural, engineering, surveying, mapping, and related services

\*Note – Needs Assessment Studies (also referred to as Feasibility Study) do not qualify as a RFQ. It is a planning tool and is considered a RFP.

- All requests must indicate they are open to all Minority Owned Businesses and that DBE/MBE/WBE Contractors or Subcontractors are encouraged to participate. A link to the appropriate web site should be listed in the advertisement or solicitation.
  - There is specific DBE language that must be included in proposals with federal funds. PTD must be contacted for the latest and most up-to-date DOT language and forms to used with solicitation.
  - Form must be completed and included with proposal.



- If Federal funds are used, applicable Federal requirements and certifications must be included in the solicitation
- Price be excluded as an evaluation factor;
- Geographic location may be a selection criterion in procurements for A&E services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- All RFQs must be reviewed by PTD prior to advertisement and solicitation. After evaluation, but prior to negotiations, PTD shall review documentation of evaluation and recommended offeror. If approved, system may move into negotiations and award.<sup>10</sup>
- Negotiations be conducted with only the most qualified offeror; and
- Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.
- Awards may require formal Board of Commissioners approval. The approval authority or his designee(see Section 1) must ensure required procurement procedures were followed, funds are available, and that the procurement history file has been properly documented.
- Written documentation must be maintained to support each step of the procurement process

### 3.6.2 Exemption from RFQ and formal procedures for securing A & E Services, N.C.G.S. 143-64.32.

- If professional fee is estimated to be less than \$50,000, the procedures listed above may be waived, in writing, by the Gaston County Board of Commissioners.
- If professional fee is estimated to be less than \$10,000, the County Manager or his designee may waive, in writing, the procedures listed at item (1) above, per Gaston County Resolution 2012-061.
- A/E firms may be contacted directly.
  - One or more may be evaluated for qualifications
  - Negotiated contract

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<sup>10</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and all State funded projects.

- NCDOT Public Transportation Division involvement in selection and negotiation required.<sup>11</sup>
- Written documentation must be maintained to support each step of the selection process.

### **3.7 Procurement by Noncompetitive Proposal (Sole Source)**

The noncompetitive proposal method is defined as:

- Solicitation of a proposal from only one source; or
- After solicitation of a number of sources, competition is determined inadequate; or
- A contract change outside the scope of original contract is also considered a sole source procurement.

Procurement by noncompetitive proposal may be used under the following circumstances:

- If the award of a contract is infeasible under competitive procedures;
- Item is only available from a single source;
- Emergency situation will not permit a delay in the purchase of item;
- Solicitation provides only one bid, and competition is determined to be inadequate;
- A cost analysis is required
- Establish a fair and reasonable profit margin
- If federal funds are used, applicable Federal requirements and certifications must be submitted to the vendor
- Sole source requires local governing board approval beginning at \$30,000.
- PTD must pre-approve all sole source procurements  $\geq$  \$3,000<sup>12</sup>
- Written documentation must be maintained to support each step of the procurement process
- Standardization or compatibility is the overriding consideration.

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<sup>11</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and all State funded projects.

<sup>12</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and all State funded projects.

### **3.8 Contract Options (if approved by Grantor for UG)**

Options may be included in contracts. An option is a unilateral right in a contract by which, for a specified time, the purchaser may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If the choice is made to include options, the following requirements apply:

- 3.8.1 Evaluation of Options – option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
- 3.8.2 Exercise of Options – the Agency must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded. An option may not be exercised unless it is determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

## **4 Contract Provisions**

All contracts shall include provisions to define a sound and complete agreement.

In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for the following:

### **4.1 Administrative, contractual, or legal remedies**

In instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of \$3,000.)

### **4.2 Termination for cause and for convenience**

By the grantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

### **4.3 Statutory and Regulatory Requirements.**

A current but not all-inclusive and comprehensive list of statutory and regulatory requirements applicable to grantee procurements (such as Davis-Bacon Act, Disadvantaged Business Enterprise, Clean Air, and Buy America) is contained in the FTA Master Agreement (available on the FTA Web site). The Agency is responsible for evaluating these requirements for relevance and applicability to each procurement. For example, procurements over \$150,000 involving the purchase of iron, steel and manufactured goods will be subject to the "Buy America" requirements in 49 C.F.R. Part 661. Further guidance concerning these requirements and suggested wording for contract clauses may be found in FTA's Best Practices Procurement Manual. Also, a matrix of the Federal clauses required in all contracts funded in part with FTA funds can be located at the end of FTA Circular 4220.1F, Appendix D, Section A. [http://www.fta.dot.gov/documents/FTA Circular 4220 - Third Party Contracting Guidance - 7-1-10 final.pdf](http://www.fta.dot.gov/documents/FTA_Circular_4220_-_Third_Party_Contracting_Guidance_-_7-1-10_final.pdf).

4.3.1 Applicability of third-party contract clauses based on type of procurement can be located at the same web site for the FTA Circular 4220.1F, Appendix D, in Section B.

4.3.2 Required federal certifications, reports, and forms can be located at the FTA web site: [http://www.fta.dot.gov/funding/grants\\_financing\\_37.html](http://www.fta.dot.gov/funding/grants_financing_37.html)

4.3.3 PTD maintains and updates the Federal and State requirements and Special Conditions on an annual basis for various types of procurements; these are available on our web site. <http://www.ncdot.gov/nctransit/resources/default.html>

### **4.4 Payment Provisions in Third-Party Contracts.**

4.4.1 Advance Payments.

FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA. There is no prohibition on a grant recipient's use of local match funds for advance payments. However, advance payments made with local funds before a grant has been awarded, or before

the issuance of a letter of no prejudice or other pre-award authority, are ineligible for reimbursement.

#### **4.4.2 Progress Payments.**

Grantees may use progress payments provided the following requirements are followed:

- (1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.
- (2) The grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

#### **4.5 Liquidated Damages Provisions.**

A grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine.

The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the FTA permits otherwise.

#### **4.6 Contract Term Limitation.**

Recipients of Federal and State public transportation funds are not allowed to enter into any contract for rolling stock or replacement parts with a period of performance exceeding five (5) years inclusive of options. All other types of contracts (supply, service, leases of real property, revenue and construction, etc.) should be based on sound business judgment. The establishment of contract terms and the extension of contract terms will be based on the minimum time necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness and public perception. Once a contract has been awarded, an extension of the contract term length that amounts to an out of scope change will require a sole source justification.

#### **4.7 Tag-ons.**

"Tag-ons" is a term describing the adding on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others and then treating the add-on portion as though it met the requirements of competition. Tag-ons are **not permitted**.

#### **4.8 Piggybacking.**

Piggybacking is not allowable per UG requirements.

#### **4.9 Non-Appropriations.**

All contracts are subject to the Non-Appropriations policy. In the event funds are not appropriated during the term of this Agreement for the subject matter herein described, and there are no other available funds by or with which payment can be made to the Vendor, this agreement is terminated. This Agreement will be deemed terminated on the last day of the fiscal period for which appropriations were received without penalty or expense, except to the portion of payment for which funds have been appropriated and budgeted.

#### **4.10 E-verify and ADA Certification.**

All contracts must include an E-Verify Certification meeting the requirements of State of North Carolina and certification regarding compliance with all federal civil rights laws, including the applicable provisions of the Americans With Disabilities Act.

## 5 NCDOT Public Transportation Division Oversight Policy

As the State's designated agency for administering and disbursing Federal and State public transportation funds, PTD must ensure that its grantees comply with Federal and State procurement requirements. PTD notifies its grantees of Federal and State regulatory and statutory requirements, standards, policies, and procedures. Grant agreements between NCDOT and its grantees outline these basic requirements. Additionally, PTD provides technical assistance, written guidance and other resources to assist grantees in developing local procedures to comply with these requirements.

### 5.1 Grantee Self-Certification.

- 5.1.1 Direct recipients of FTA funding assistance must "self-certify" their compliance with Federal procurement requirements as part of the Annual Certification/Assurance Process. FTA monitors compliance with FTA C 4220.1F as part of its routine oversight responsibilities.
- 5.1.2 Federal Sections 5311, 5310, 5316, and 5317 applicants (sub-recipients of FTA funds), in the annual certification and assurances, must certify that their procurements and procurement systems will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA C 4220.1F, and other implementing requirements FTA may issue.

### 5.2 PTD Oversight.

Although FTA monitors compliance of direct recipients of FTA funding assistance, PTD has oversight responsibilities for Federal Sections 5310, 5311, 5316, and 5317 sub-recipients, regardless of whether the sub-recipient is also a direct recipient of FTA funding. Additionally, PTD must monitor grantees' compliance for all projects funded with State funds only. The requirements for PTD review and pre-award approval identified throughout this publication apply to all Federally fund projects and to all projects funded with State funds only, regardless of whether the grantee is also a direct recipient of FTA funding.

#### 5.2.1 Review of Third-Party Contracts

In accordance with the grant agreement with NCDOT, unless otherwise authorized in writing by the Department, the grantee is prohibited from obligating itself in any manner with any **THIRD PARTY** with respect to its rights and responsibilities under the grant agreement without **prior written concurrence of the Department**. The grantee may not assign any portion of the work to be performed under the grant agreement without prior written concurrence of the Department. PTD requires its grantees to obtain approval from PTD prior to entering into contracts with third party contractors for the operation, administration, or management of a local public transportation program funded by PTD and prior to entering into lease agreements for the lease of public transportation funded assets. PTD will review other third party contracts at the request of the grantee and the grantee must make their procurement documents available for FTA and/or NCDOT review and require the same of their third-party contractors.

- Final executed copies of the third-party agreement must be forwarded to PTD for project file within 30 days of completion.

### 5.2.2 Review and Pre-award Approval<sup>13</sup>

As part of its oversight responsibilities, PTD has established the following requirements:

- (1) PTD must review new/adapted specifications prior to solicitation of equipment, supplies, apparatuses or new-type rolling stock. This requirement does not apply to the following:
  - Equipment, supplies, or apparatuses < \$30,000
  - Minivans
  - Conversion and Lift Vans
  - Center Aisle Vans and Standard Vans
  - Light Transit Vehicles (Cutaway-type Bus)
- (2) PTD must review drawings, designs, and/or description of work required prior to solicitation of construction, renovation, facility improvement projects, or bus shelters.
  - Construction, renovations, improvements or shelters > \$30,000
- (3) PTD requires pre-award approval of the following:
  - All new-type rolling stock (see exceptions above).
  - All construction projects  $\geq$  \$30,000
  - Any “brand name” product or sole source purchase  $\geq$  \$3,000.
  - Any contract to other than apparent lowest bidder  $\geq$  \$3,000.
  - Any procurement  $\geq$  \$90,000 (formal bids).
  - Any contract modification that would change the scope of a contract or increase the contract amount up to or over the formal (sealed) bid threshold of \$90,000.

### 5.2.3 Procurement System Reviews

PTD will review grantees’ compliance with Federal and State requirements during the Compliance, Capacity and Proficiency Review and may recommend “best practices” in order to assist grantees in improving their procurement practices. Deficiencies will be documented, corrective actions will be monitored, and technical assistance will be provided to assist grantees in becoming compliant with all Federal and State requirements. Additionally, PTD provides procurement training and technical assistance at public transportation conferences, workshops, and during site visits.

### 5.2.4 Remedies for Noncompliance

Failure to comply with Federal/State procurement requirements, whether stated in a Federal/State statute or regulation, the grantees’ Agreement, an assurance, in a State plan, or elsewhere, may result in PTD (or other State-funding agency) taking one or more of the following actions:

- Temporarily withhold payments pending correction of the deficiency;
- Disallow all or part of the cost of the activity not in compliance;
- Wholly or partly suspend or terminate the current award;
- Withhold further awards for the program; or
- Take other remedies that may be legally available.

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<sup>13</sup> This applies to all Section 5311, 5310, 5316, and 5317 projects and all State funded projects.



## **6 The Purchasing Process**

The purchasing process is designed to provide a proper system of internal control over purchasing, to ensure that the proper authorizations are obtained before items are purchased, and to ensure that statutory requirements for purchasing are followed. A number of forms are generated as part of the purchasing process to document the validity of the purchases. This process and the documents used by this Agency are described in this section.

### **6.1 Purchase-Order System.**

The basic document in the purchasing system is the purchase order. A purchase order must be obtained by the Department prior to making any purchases of \$5,000 or greater. No invoice may be honored for purchases \$5,000 or greater unless it is supported by a properly signed purchase order. The purchase order should be pre-numbered for control purposes and should include complete specifications or reference to specifications, as well as shipping and invoicing instructions. Copies of the approved purchase orders will be stored electronically in Gaston County's electronic financial system MUNIS. .

- The first step in the purchase order process is for the Department Head or his/her designee to solicit written quotes from various vendors following the applicable procedure in this policy document. For purchases at the formal level, coordinate with the Purchasing Division. Where a contract is required, the contract and contract control sheet must be executed prior to purchase order issue.
- A purchase requisition (request for a purchase order) should be prepared by the department head or the designated representative requiring the purchase and then electronically released into Requisition workflow. The requisition should indicate:
  - the vendor name, address and number
  - shipping address
  - requisition number
  - any special instructions for the vendor, a contract number and/or quote number when applicable
  - quantity and purchase description, with unit and extended cost,
  - freight cost or freight estimate
  - accounting code(s),
  - date required if applicable
  - Copies of approved purchase orders will be stored electronically in Gaston County's electronic financial system MUNIS.
- If the commodity is financed with FTA funds passes through from NCDOT, the required federal clauses must be attached to the purchase order.
- The department submits the requisition and supporting paperwork (including the written quotes and DHHS Director approval) electronically to the Purchasing Division in order for a purchase order to be prepared.

- The pre-audit is done when the Purchasing Manager (Finance Director or Assistant County Manager), Financial Operations Manager, or Assistant Financial Operations Manager signs the purchase order. .
- At a minimum, one copy of the purchase order should be generated.
  - One (1) copy is for the vendor and will be sent to ordering department to forward to vendor. Ordering department downloads the Purchase Order and issues to Vendor.
  - Payment is now processed by the department and released electronically with documentation for Finance to review and pay.

## **6.2 Procurement Cards and Agency Credit/Debit Cards.**

### **6.2.1 Procurement Cards.**

Procurement cards (also known as purchasing cards) enable a unit to make small purchases more quickly and efficiently by minimizing paperwork and processing time. Similar to VISA and MasterCard formats, procurement cards can be processed by vendors just like personal charge cards. Rather than making multiple small payments to many vendors, the organization writes one check to the card provider. Vendors receive payment within a few days of the transaction without extra paperwork. Posting information and transaction detail can be entered by the cardholder when monthly statements are reviewed prior to payment, thereby significantly reducing data entry tasks in accounts payable. Inventories can be reduced or eliminated, since items are now purchased when needed. As with any type of purchasing procedure, adequate controls must be established to ensure that public funds are expended properly. These include built-in transactional limits for any one card, cardholder education, pre-audit certification, and supervisory review procedures. Purchases can be limited by amount per transaction, total per time period, number of purchases per time period, Merchant Category Codes, etc. Each card can be encoded with specific controls unique to the cardholder's job responsibilities. These controls also can be enacted on individual, divisional, or departmental lines. Cardholder education includes informing card users of all procedures, regulations, etc. and the consequences of improper use. It is strongly recommended that cardholders sign acknowledgements that they have read and understand these rules prior to receipt of a card. Cardholders should also be trained to verify and code monthly statements to facilitate uploading of information into the accounting system. Sales tax for refund purposes can also be coded at this point. The purchases made via procurement cards are subject to the pre-audit certification requirements. Open purchase orders can be prepared to cover estimated procurement card expenditures over a specific period of time. Typically, a set amount will be encumbered to cover purchases through procurement cards during the period. After cardholders have verified and coded their monthly statements, supervisors should review the transactions and costed receipts. After departmental approval, procurement card details can be uploaded into the accounting system and the payment can be processed. Transaction data can be analyzed to determine trends and exceptions, and used for expenditure and budgeting projections.

### **6.3 *Records.***

The purchasing records should show materials/services that have been ordered but not delivered or paid for (open purchase orders) They also should furnish supporting information for the payment of claims. Purchasing records are invaluable in making future purchases because they show prices, quantities, and vendor performance on previous orders. Also, they aid in budgeting because they contain a record of quantities of each kind of purchase required during the preceding year. The accounting records, in turn, should show amounts encumbered and amounts expended, by accounting period, for purchased items. All units are encouraged to use encumbrances and purchase orders as part of their internal control system. Sometimes a common database is used for both the purchasing and accounting records, particularly in automated systems. In automated systems, the purchasing records are integrated with the general ledger accounting system.

### **6.4 *Receiving.***

The receipt of all goods and services by the Agency should be verified by the Department prior to electronically processing the payment. For construction projects, the Architect, Professional Engineer, or Construction Management Consultant overseeing the project will issue a report certifying that construction has been completed and approved. The Agency should not approve interim billings without monitoring the progress of construction projects. Also, with regards to services, the Agency should verify that the services are being performed before approving interim invoices.

### **6.5 *Payment of Vendor's Invoices.***

The Gaston County ACCESS Transportation Coordinator should electronically process payments on a timely basis (taking full advantage of vendor discounts). Coordinator shall review documents and data needed to consider/approve vendors' invoices. These documents/data include a copy of the purchase order with expected unit prices, receiving data (if not provided directly from the receiving department), returns/allowances data, and notification of any exceptions/discrepancies between goods ordered and those received.

## 7 Exhibits

**7.1 Conflict of Interest Policy. See attached Gaston County Employees-Code of Ethics Policy, effective 8-8-2002**

## 7.2 Independent Cost Estimate

Contract Type:

Date of Estimate:

Description of Goods / Service:

Method of Obtaining the Estimate:

I have obtained the following estimate from....

- ☐ Published Price List / Past pricing (date) \_\_\_\_\_
- ☐ Engineering or technical estimate
- ☐ Independent Third Party estimate
- ☐ Other (specify) \_\_\_\_\_

Cost Estimate Details:

Through the method stated above it has been determined that the total cost of the goods/services is expected to be: \$ \_\_\_\_\_. Details are shown below.

**Cost of Standard Items**

Product	Cost (\$/ea)	Cost (\$/ea)	Notes / Data Source
	Delivered	No Freight	
A			

**Cost of Services, Repairs, or Non-Standard Items**

Item / Task:							
Materials	Other Direct Costs	Labor (rate, hours)	Labor Class	Allocated overhead	SG&A	Profit	Total
B							

**Signature of Preparer:**

The preceding cost estimate was obtained or prepared by: \_\_\_\_\_

**[For complex items or tasks, attach detailed spreadsheet(s) explaining rationale.]**

### 7.3 Responsibility Determination Form

**Bid/RFP No:** \_\_\_\_\_

**Supplier:** \_\_\_\_\_

**Date:** \_\_\_\_\_

For each of the areas described below, check that the appropriate research has been accomplished and provide a short description of the research and the results.

	Acceptable	Comment
1. Appropriate financial, equipment, facility, and personnel	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____ _____
2. Ability to meet the delivery schedule	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____ _____
3. Satisfactory period of performance	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____ _____
4. Satisfactory record of integrity, not on debarred or suspended listings	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____ _____
5. Receipt of all necessary data from supplier	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____ _____ _____ _____

## 7.4 Fair and Reasonable Price Determination

### FAIR AND REASONABLE PRICE DETERMINATION

I hereby determine the price to be fair and reasonable based on at least one of the following:

**Check one or more:**

- ☐ Found reasonable on recent purchase.
- ☐ Obtained from current price list.
- ☐ Obtained from current catalog.
- ☐ Commercial market sales price from advertisements.
- ☐ Similar in related industry.
- ☐ Personal knowledge of item procured.
- ☐ Regulated rate (utility).
- ☐ Other.

Comments:

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☐ Copy of purchase order, quotes, catalog page, price list, etc. is attached.

\_\_\_\_\_  
DHHS Director (or designee)

\_\_\_\_\_  
Date



## 7.5 SOW Template

Statement of Work Title: [Type text]

### 1.0 Project Background

- Describe the need for the goods or services, the current environment, and the Transit Agency's key objective(s) as it relates to this requirement. Provide a brief description/summary of the goods or services sought.
- Short statement of the problem to be resolved
- Expected project duration
- Transit Agency organizational units and/or key individuals involved in managing the project
- Alternative solutions or implementation strategies evaluated

a) Transit Agency requires these products and/or services due to:

b) Transit Agency is attempting to complete a project on \_\_\_\_\_ and requires supplier/contractor assistance in the:

c) The completion of this work will help Transit Agency:

Statement of Work Title: [Type text]

### 1.0 Project Background

Describe the need for the goods or services, the current environment, and the Transit Agency's key objective(s) as it relates to this requirement. Provide a brief description/summary of the goods or services sought.  
 Short statement of the problem to be resolved  
 Expected project duration  
 Transit Agency organizational units and/or key individuals involved in managing the project  
 Alternative solutions or implementation strategies evaluated

a) Transit Agency requires these products and/or services due to:

b) Transit Agency is attempting to complete a project on \_\_\_\_\_ and requires supplier/contractor assistance in the:

c) The completion of this work will help Transit Agency:

### 2.1 Results

Indicate the key end results that the project will achieve when successfully executed. Measurable performance indicators for anticipated benefits may also be listed here.

## 2.2 Anticipated Benefits

Describe what the organization will gain through completion of this project.

--

### 2.3 Business Processes Impacted

Review major changes in the way work will be conducted once the project is complete (if any).

--

## 2.4 Customers / End Users Impacted

Identify the specific individuals or groups whose work will be most affected during and after the project's execution.

--

### 3.0 Applicable Documents

List legal, regulatory, policy, security, and similar relevant documents. Include publication number, title, version, date and where the document can be obtained. If only certain portions of documents apply, state this. Indicate the definition of terms, if needed.

List any publications, manuals, and regulations that the supplier / contractor must abide by:

a) [Type text]

b) [Type text]

c) [Type text]

Definitions and Acronyms:

#### 4.0 Summary of Requirements

These are the key tasks expected of the supplier / contractor according to the Schedule and the Statement of Work.

List the key technical and functional requirements for the project. Highlight up to 20 requirements that you consider to be essential to the ultimate success of the project. Include the expected outputs / outcomes and performance standards.

Write tasks to be performed in a logical and sequential arrangement of work to the extent possible. Describe the tasks in terms of outcomes expected, such as response time, cleanliness level, equipment up-time and functionality. Use “work” words, such as:

1) Review...

2) Analyze...

3) Repair...

4) Install...

5) Construct...

All tasks should have quantifiable or observable results.

#### 5.0 Schedule and Deliverables

List all outputs / outcomes and submittals with specific due dates or time frames. Include type, quantity and delivery point (s). Include the acceptance criteria for each.

Milestone or Major Project Deliverable	Planned Completion Date

#### 6.0 Quality Assurance Plan

Explain what the Transit Agency's quality expectations are, how (and how often) deliverables or services will be monitored and evaluated, and the process to follow when the outputs / outcomes are below performance standards.

The following levels of quality are to be judged acceptable under this contract:

a) All milestones or services will be achieved and all reports will be submitted on time in accordance with Section 5.0 of this SOW.

a) All milestones, services, products or reports will meet the outcomes noted in Section 4.0 of this document.

c) Supplier / Contractor work will be monitored by Transit Agency project and Contract Management Staff.

d) Specific quality requirements for this contract are as follows:

1) On time delivery= [Type text]

2) Acceptable quality = [Type text]

3) Responsiveness = [Type text]

4) Service Level = [Type text]

## 7.6 Sole Source Justification Form

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

**Check one:**

\_\_\_\_\_ The item is available only from a single source (sole source justification is attached).

\_\_\_\_\_ The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (documented emergency condition is attached).

\_\_\_\_\_ FTA authorizes noncompetitive negotiations (letter of authorization is attached).

\_\_\_\_\_ After solicitation of a number of sources, competition is determined inadequate (record of source contacts is attached).

\_\_\_\_\_ The item is an associated capital maintenance item as defined in 49 U.S.C. §5307(a)(1) that is procured directly from the original manufacturer or supplier of the time to be replaced (price certification attached).

Comments:

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\_\_\_\_\_ Independent Estimate and Cost Analysis are attached.

\_\_\_\_\_  
DHHS Director (or designee)

\_\_\_\_\_  
Date

## 7.7 Cost Analysis Form

PAGE OF PGS

### COST ANALYSIS SUMMARY (For New Contracts Including Letter Contracts)

(See Instructions below)

SOLICITATION #	SUPPLIES AND/OR SERVICES TO BE FURNISHED
PREPARER'S NAME, DEPARTMENT, TITLE, PHONE	
DIVISION(S) AND LOCATION(S) WHERE WORK IS TO BE PERFORMED	APPROVAL SIGNATURE

### DETAIL DESCRIPTION OF COST ELEMENTS

1. DIRECT MATERIAL			Vendor A Proposal	Vendor B Proposal	Independent Estimate	Analysis
A. PURCHASED PARTS						
B. SUBCONTRACTED ITEMS						
C. OTHER - (1) RAW MATERIAL						
(2) STANDARD COMMERCIAL ITEMS						
TOTAL DIRECT MATERIAL						
2. MATERIAL OVERHEAD (RATE % x \$ BASE *)						
3. DIRECT LABOR	ESTIMATED HOURS	RATE/HOUR	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
TOTAL DIRECT LABOR						
4. LABOR OVERHEAD			Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
OH Rate						
X BASE (labor total above)						
TOTAL LABOR OVERHEAD						
5. OTHER DIRECT COSTS			Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
A. SPECIAL TOOLING/EQUIPMENT						
TOTAL SPECIAL TOOLING/EQUIPMENT						
B. TRAVEL						
(1) TRANSPORTATION						
(2) PER DIEM OR SUBSISTENCE						
TOTAL TRAVEL						

DETAIL DESCRIPTION OF COST ELEMENTS (continued)	Vendor A (\$)	Vendor B (\$)	Independent Estimate	Variance
C. INDIVIDUAL CONSULTANT SERVICES				
TOTAL INDIVIDUAL CONSULTANT SERVICES				
D. OTHER				
TOTAL OTHER				
E. SUBTOTAL DIRECT COST AND OVERHEAD				
6. GENERAL AND ADMINISTRATIVE (G&A) RATE %				
X \$ BASE (Use 5.E above)				
7. ROYALTIES (if any)				
8. SUBTOTAL ESTIMATED COST				
9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY				
10. SUBTOTAL ESTIMATED COST				
11. FEE OR PROFIT				
12. TOTAL ESTIMATED COST AND FEE OR PROFIT				
13. Discounts				
14. Option Costs (specify)				
15. ADJUSTED COST				

## **ANALYSIS GUIDELINES**

### **1. DIRECT MATERIAL**

A. Analyze Purchased Parts: Provide a consolidated price analysis of material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.).

B. Subcontracted Items: Analyze the total cost of subcontract effort and supporting written quotations from the prospective subcontractors

C. Other:

(1) Raw Material: Review any materials in a form or state that requires further processing. Analyze priced quantities of items required for the proposal. Consider alternatives and total cost impact.

(2) Standard Commercial Items: Analyze proposed items that the offeror will provide, in whole or in part, and review the basis for pricing. Consider whether these could be provided at lower cost from another source.

### **2. MATERIAL OVERHEAD**

Verify that this cost is not computed as part of labor overhead (item 4) or General and Administrative (G&A) (Item 6).

### **3. DIRECT LABOR**

Analyze the hourly rate and the total hours for each individual (if known) and discipline of direct labor proposed. Determine whether actual rates or escalated rates are used. If escalation is included, analyze the degree (percent) and rationale used. Compare percentage of total that labor represents for each bid.

### **4. LABOR OVERHEAD**

Analyze comparative rates and ensure these costs are not computed as part of G&A. Determine if Government Audited rates are available,

### **5. OTHER DIRECT COSTS**

A. Special Tooling/Equipment. Analyze price and necessity of specific equipment and unit prices.

B. Travel. Analyze each trip proposed and the persons (or disciplines) designated to make each trip. Compare and check costs.

C. Individual Consultant Services. Analyze the proposed contemplated consulting. Compare to independent estimate of the amount of services estimated to be required and match the consultants' quoted daily or hourly rate to known benchmarks.

D. Other Costs. Review all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment and provide bases for pricing. Scan for duplication or omissions.

**6. GENERAL AND ADMINISTRATIVE EXPENSE**

See notes on labor overhead above and check whether the base has been approved by a Government audit agency for use in proposals.

**7. ROYALTIES**

If more than \$250, analyze the following information for each separate royalty or license fee; name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part of model numbers or each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties.

**8. SUBTOTAL ESTIMATED COST**

Compare the total of all direct and indirect costs excluding Cost of Money and Fee or Profit. Note reasons for differences.

**9. CONTRACT FACILITIES CAPITAL AND COST OF MONEY**

Analyze the offerors' supporting calculations and compare to known standards.

**10. SUBTOTAL ESTIMATED COST**

This is the total of all proposed costs excluding Fee or Profit. Determine the competitive range. Question outliers.

**11. FEE OR PROFIT**

Review the total of all proposed Fees or Profit.

**12. TOTAL ESTIMATED COST AND FEE OR PROFIT**

Analyze the range of total estimated costs including Fee or Profit, and explain variance to independent estimate. Identify areas for negotiation or areas to be challenged. Explain your conclusions regarding fair and reasonable pricing.

**13. DISCOUNTS**

Review basis for Discounts and range between offers.

**ATTACH NARRATIVE COST ANALYSIS MEMO ADDRESSING ITEMS AS INSTRUCTED ABOVE.**



## 7.8 Price Analysis

**PO / Contract:** \_\_\_\_\_

The evidence compiled by a price analysis includes:

- Developing and examining data from multiple sources whenever possible that prove or strongly suggest the proposed price is fair.
- Determining when multiple data consistently indicate that a given price represents a good value for the money.
- Documenting data sufficiently to convince a third party that the analyst's conclusions are valid.

The pricing quoted on the attached sheet(s) is deemed to be fair and reasonable based on the following type of analysis:

\_\_\_\_\_ Comparison with competing suppliers' prices or catalog pricing for the same item. (Complete comparison matrix and attach supporting quotes or catalog pages.)

\_\_\_\_\_ Comparison of proposed pricing with in-house estimate for the same item. (Attach signed in-house estimate and explain factors influencing any differences found. Complete summary matrix.)

\_\_\_\_\_ Comparison of proposed pricing with historical pricing from previous purchases of the same item, coupled with market data such as Producer Price Index or Inflation Rate over the corresponding time period. (Attach data and historical price record).

\_\_\_\_\_ Analysis of price components against current published standards, such as labor rates, dollars per pound etc. to justify the price reasonableness of the whole. (Attach analysis to support conclusions drawn.)

### SUMMARY MATRIX

Item	Proposed Pricing	Average Market Price	Competitor A	Competitor B	In-House Estimate	Other

DATE: \_\_\_\_\_

PREPARED BY: \_\_\_\_\_

Attachments:

## Procurement Summary

### PROCUREMENT MEMORANDUM

Date: \_\_\_\_\_ Completed by: \_\_\_\_\_  
PO / Contract No. \_\_\_\_\_  
Source of Funding: \_\_\_\_\_

#### Method of Procurement

Micro Purchase: \_\_\_\_\_ Competitive RFP: \_\_\_\_\_ Competitive Bid: \_\_\_\_\_  
Small Purchase: \_\_\_\_\_ A&E Services: \_\_\_\_\_ Sole Source: \_\_\_\_\_

#### Justification if Non-Competitive:

\_\_\_\_\_  
\_\_\_\_\_

#### Reason for the Procurement

\_\_\_\_\_  
\_\_\_\_\_

Contract Type: \_\_\_\_\_  
Rationale for contract type: \_\_\_\_\_

Reason for Contractor selection or rejection: \_\_\_\_\_ Lowest responsive, responsible bidder: \_\_\_\_\_  
Evaluation results were: \_\_\_\_\_

#### Basis for Contract Price:

Accepted contractor's proposed pricing: \_\_\_\_\_  
Negotiated Price (attached memorandum) \_\_\_\_\_  
Other: \_\_\_\_\_

#### Cost / Price Analysis:

The price offered by the supplier was within \_\_\_\_% of the independent estimate, and variance between the offerors constituted a range of \_\_\_\_\_. The competitive range was determined to be from \$ \_\_\_\_\_  
Pricing discrepancies between the offers was attributed to \_\_\_\_\_  
Other sources/data used to affirm price reasonableness were \_\_\_\_\_  
\_\_\_\_\_

#### Summary of Responsibility and Responsiveness Checks

\_\_\_\_\_  
\_\_\_\_\_

#### Award

Date of contract award: \_\_\_\_\_  
Board Approval (Attach Meeting Minutes): \_\_\_\_\_

#### Change Orders

Identify each and summarize reason for change, dates, cost analysis, time impact, and modification number.

## 7.10 Procurement Decision Matrix

### Micro-purchase

Amount <  
\$3,500

Multiple  
Sources


### Competitive Procurement

Amount > \$3,500

Multiple Sources

Not an Emergency


### ***Small Purchase***

Amount < \$100,000

Complete and Adequate  
Specification or Description

Two or more quotes available


### ***Sealed Bid (IFBs)***

Complete and Adequate  
Specification or Description

Two or more responsible bidders  
willing to compete

Selection can be made on the  
basis of price alone

Firm Fixed Price Contract

No discussion with bidders  
required after receipt of bids


### ***Competitive Proposals (RFPs)***

Complete Specifications Not  
Feasible

Bidder Input Needed

Two or more responsible bidders  
willing to compete

Discussion needed with bidders  
after proposals

Fixed price can be set after  
discussions **OR**


### Sole Source

Approved by FTA

OEM, Custom Item **OR**

Only One Source **OR**

Competition Inadequate after  
Solicitation **OR**

Emergency/Public Exigency


### Type of Contract

Fixed price

Firm fixed unit prices

Cost plus fixed fee

Time and materials

Blanket purchase order

Indefinite Delivery Indefinite  
Quantity (IDIQ)


## 7.11 Change Order Review Checklist

Date				
Contract Number				
Contractor				
Contract Title				
Reviewer				
New Contract Total				
Change Order Number				
Dollar Value Increase				
Length of Time Extension Granted				
New Performance Period End Date				

  

Change Order Checklist	Category			Comment
	NO	D	N/A	
1. In-House Estimate Prepared				
2. Project Manager Approval				
3. AWO Scope Meeting Held				
3a. Scope of Change Adequate for Bidding				
4. Contractor Proposal Includes Impact Costs, Price				
5. Cost Analysis Conducted				
5a. If Price > 10% of ICE, Evidence of MTA President Approval				
6. Negotiation Memorandum				
7. Written Record of Change				
7a. Signed Change Order in File				
8. Evidence of Board Approval Prior Initiation of Changed Work				
9. Notice to Proceed in file				
10. Work Authorized within Contract Scope				
11. No Evidence of Arbitrary Action				
Other Comments				

## 7.13 Contract Clause Matrix

### APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS

(excluding micro-purchases, except Davis-Bacon requirements apply to contracts exceeding \$2,000)

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
No Federal Government Obligations to Third Parties (by Use of a Disclaimer)	All	All	All	All	All
False Statements or Claims Civil and Criminal Fraud	All	All	All	All	All
Access to Third Party Contract Records	All	All	All	All	All
Changes to Federal Requirements	All	All	All	All	All
Iran Divestment Act- Note that effective 10/1/17, local governments will utilize NC Treasurer's IDA list to determine agencies that are prohibited from contracting.	>\$1000	>\$1000	>\$1000	>\$1000	>\$1000
Termination	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.	>\$10,000 if 49 CFR Part 18 applies.
Civil Rights (Title VI, EEO, ADA)	>\$10,000	>\$10,000	>\$10,000	>\$10,000	>\$10,000
Disadvantaged Business Enterprises (DBEs)	All	All	All	All	All
Incorporation of FTA Terms	All	All	All	All	All
Debarment and Suspension	>\$25,000	>\$25,000	>\$25,000	>\$25,000	>\$25,000
Buy America			>\$100,000	>\$100,000	>\$100,000
Resolution of Disputes, Breaches, or Other Litigation	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Lobbying	>\$100,000	>\$100,000	>\$100,000	>\$100,000	>\$100,000
Clean Air	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000
Clean Water	>\$150,000	>\$150,000	>\$150,000	>\$150,000	>\$150,000

Cargo Preference			For property transported by ocean vessel.	For property transported by ocean vessel.	For property transported by ocean vessel.
Fly America	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.	For foreign air transport or travel.

PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchases	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (including ferry vessels)	
Contract Work Hours and Safety Standards Act		>\$100,000 (except transportation services)	>\$100,000	>\$100,000 (including ferry vessels)	
Copeland Anti-Kickback Act Section 1 Section 2				All All exceeding \$2,000 (including ferry vessels)	
Bonding				\$100,000	
Seismic Safety	A&E for New Buildings & Additions			New Buildings	
Transit Employee Protective Arrangements		Transit Operations			
Charter Service Operations		All			
School Bus Operations		All			
Drug Use and Testing		Transit Operations			
Alcohol Misuse and Testing		Transit Operations			
Patent Rights	Research & Development				
Rights in Data and Copyright Requirements	Research & Development				
Energy Conservation	All	All	All	All	All

Recycled Products		Contracts for items designated by EPA, when procuring \$10,000 or more per year		Contracts for items designated by EPA, when procuring \$10,000 or more per year	Contracts for items designated by EPA, when procuring \$10,000 or more per year
Conformance with ITS National Architecture	ITS Projects	ITS Projects	ITS Projects	ITS Projects	ITS Projects
ADA Access	A&E	All	All	All	All
Notification of Federal Participation for States	Limited to States	Limited to States	Limited to States	Limited to States	Limited to States

#### **7.14 Federal Requirements and Special Conditions.**

Attach current federal requirements:

Rolling Stock Purchases.

Operations/ Management Services

Equipment/Supplies/ Materials

Professional Services

Construction