

PROCUREMENT & THIRD PARTY CONTRACTING

Procurement and third-party contracting activities are primarily the responsibility of the local project. The procurement and contract standards set forth in this chapter shall apply to the procurement of all goods and services the subrecipient will purchase under the project contract. Subrecipients should follow established local procedures and applicable state or federal standards in accordance with the North Carolina Consolidated Procurement Code (as amended).

Subrecipients 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 leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Procurements shall include all applicable federal requirements identified in the certifications and assurances from the Federal Transit Administration. These assurances should be reviewed and incorporated into subrecipient proposals and awards, and purchases.

Statutory and Regulatory Requirements

- Grantees are responsible for using applicable Federal mandated clauses and certifications for each procurement funded with Federal funds that is over the amount of \$10,000.
 - All Clauses are located in 301-1 Federal Procurement Support Documentation
- These requirements are contained in the FTA Master Agreement, which can be found at <https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>
- FTA 4220 (as amended)
 - Sets forth requirements that all grantees and subgrantees of States (including nonprofits and regional transit authorities) must adhere to in the solicitation, award, and administration of third-party contracts
 - Makes requirements more consistent with applicable laws and regulations, particularly the Common Grant Rules
- 49 CFR Parts 18 and 19
 - The “Grant Common Rule” establishes uniform administrative requirements for Federal grants and agreements
 - Sets forth procedures for procurement of supplies and other expendable property, equipment, real property, and other services with Federal funds
- Additional guidance can be found in [FTA Best Practices Procurement](#).
- North Carolina General Statutes 143 Article 8
 - The General Statutes contain the main competitive bidding requirements for the purchase of apparatus, supplies, materials, or equipment and construction and repair work
 - Statutes apply to the “expenditure of public money” for these types of purchases
 - Statutes apply to all local government entities
 - Statutes apply to nonprofit grantees for projects funded with State funds or State matching funds
 - Changes in the threshold amounts were effective January 1, 2002 and the construction formal bid threshold was increased effective July 1, 2007.
- North Carolina General Statutes 64 Article 2
 - This Statute, E-Verify required for Public Contracting
 - HB 786 imposed E-Verify requirements on contractors that enter into certain contracts with local governments. All City and County contracts regardless of type and value. This includes all contracts not competitively bid, including service contracts. All formal purchases and construction/repair contracts.
 - E-Verify requirement applies to subcontractors as well as contractors.

Procurement Policy

- All NCDOT grantees must incorporate the required procurement standards set forth in FTA Circular 4220 (as amended) for all third party contracts
- State-funded procurements must also incorporate these standards, with the exception of Federal mandated clauses and certifications
- Each grant applicant, in the annual certification and assurances, must certify that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220 4220 (as amended) and other implementing requirements FTA may issue
- Master Agreement issued annually by FTA lists many but not all FTA and other Federal requirements applicable to FTA grantees (additional guidance can be found in the FTA Best Practices Procurement Manual)
- FTA defers to the States, to maximum extent possible, to establish standards – rather than setting national standards

Procurement Standards

Conformance with State and Local Law

- Grantees and sub-grantees may use their own procurement procedures that reflect applicable State and Local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards in FTA C 4220 4220 (as amended)
- NCDOT IMD grantees will follow the Federal requirements, unless the State/Local requirements are more restrictive

Economical Purchases

- Unnecessary/Duplicative Purchases - Grantees procedures must include provisions for review of proposed procurements to avoid purchase of unnecessary or duplicative items
- De-aggregate Pricing - Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase
- Alternative Cost - Where appropriate, an analysis will be made of lease vs. purchase alternatives or other analyses to determine the most economical approach
- Governmental Agreements - Use available State purchasing agreements for procurement of common goods and services
- Joint Purchases - Enter into joint procurements with other grantees
- Assign contractual rights to purchase goods and services to other grantees
- Surplus Property - Grantees are encouraged to use Federal/State excess and surplus property in lieu of purchasing new equipment and property, whenever such use is feasible and reduces project costs
- Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the lowest overall cost. Grantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

Contract Administration

- Grantees must maintain a contract administration system that ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders
- To accomplish this, grantees should have established methods to ensure conformance with the terms, conditions, and specifications of the contract and to ensure adequate and timely follow up of all purchases.
- Grantees must establish methods to ensure:
 - Contractor conformance with the contract price
 - Contractor conformance with the delivery and/or completion dates
 - Compliance with the specifications of product or construction requirements
 - Payment of any required security or performance deposits by contractor
 - Compliance with rules and regulations for contracts of the funding source
 - Document whether contractors have meet the terms, conditions, and specifications of the contract

Standards of Conduct

- Grantees must maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts
- No employee, officer, agent, immediate family member, or Board member of the grantee shall participate in the selection, award, or administration of a contract supported by Federal/State funds if a conflict of interest, real or apparent, would be involved

Written Procurement Selection Procedures

Grantees must have written selection procedures to ensure that all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the product or service to be procured
- Technical requirements will not contain features that unduly restrict competition
- 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. Specific features of the brand name which must be met by offerors must be clearly stated.
- Identify all requirements that offerors must fulfill and all factors to be used in evaluating bids or proposals

Important Note: Procurement of approved purchases of multiple same products/services awarded as part of a request on a single application cannot be separated out. This process will be viewed as a circumvention of the process and a violation of the procurement regulations and N.C. G. S. 143-133. This states that a contract may not be divided for the purposes of evading the provisions of this article (referencing Article 8). For example, if an applicant is approved to purchase three mobile radios and a base station, they must all be bid together.

Full and Open Competition

Grantees must ensure that their procurement procedures and practices do not restrict competition.

Situations that restrict competition include:

- Unreasonable requirements placed on firms in order for them to qualify
- Unnecessary experience and excessive bonding requirements
- Noncompetitive pricing practices between firms or between affiliated companies
- Noncompetitive awards to any person or firm on retainer contracts
- Organizational conflicts of interest
- Specifying only a “brand name” product

Pre-qualification Criteria

- Grantees must ensure that 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
- Grantees will not preclude potential bidders from qualifying during the solicitation period

Prohibition Against Geographic Preferences

- Grantees must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences
- Exception – geographic location may be a selection criteria in procurements for architectural and engineering (A&E) services – provided its application leaves an appropriate number of qualified firms

Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

a. Subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). (i) For the purpose of public safety, security of

government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). (ii) Telecommunications or video surveillance services provided by such entities or using such equipment. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Responsible Procurement Awards

Grantees must make awards to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Grantees should take the following into consideration; Contractor integrity, Compliance with public policy, Record of past performance and Financial and technical resources. In addition, the FTA’s procurement circular requires that the recipient determine that a responsible contractor is used for all purchases above the micro-purchase threshold (currently \$3,500). See FTA C 4220 (as amended), Ch. IV, Paragraph 2.a. (1) for further guidance. Examples of methods for documenting how responsibility is determined are below. Note that many states have their own legal requirements regarding responsibility determinations; recipients should ensure that any responsibility determinations are consistent with applicable state law.

Sample 1:

DETERMINATION OF RESPONSIBILITY
SOLICITATION NO: _____ TITLE: _____

The offer submitted by _____ has been reviewed and the offeror has been determined to be a responsible Contractor based upon the following:

_____ Offeror has sufficient staff/resources (both project team and support staff and backup resources) to do the work.

Determined by: _____, Title: _____
(Attach supporting memorandum, organization charts, etc.)

_____ Offeror has sufficient financial resources to complete the work.

Determined by: _____, Title: _____
(Attach supporting memorandum, financial statements, bank references, etc.)

_____ Offeror has a proven track record of completing work on time and within budget.

Determined by: _____, Title: _____
(Attach supporting memorandum, references, etc.)

_____ Offeror can provide the required bonds (if applicable).

Determined by: _____, Title: _____
(Attach supporting memorandum, confirmation of bonding capacity, etc.)

_____ Offeror is not debarred/suspended at federal or (if available) state level

Determined by: _____, Title: _____
(Attach supporting memorandum, SAM screenshot, state screenshot, etc.)

Based upon the above information, I have determined that _____ is a responsible contractor for this procurement.

Signature _____
Title _____ Date _____

Sample 2:

Responsibility Determination Form

PO/Solicitation #: _____
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.

- 1. Appropriate financial, equipment, facility, and personnel Yes No
- 2. Ability to meet the delivery schedule Yes No
- 3. Satisfactory period of performance Yes No
- 4. Receipt of all necessary data from supplier Yes No

This vendor has been deemed responsible and does not appear on the declined or suspended list as shown in the attached. (SAM.gov) By signing below, Project Manager attests the awarded vendor meets the requirements of the Scope of Work.

Project Manager Date

Procurement Date

Independent Cost Estimate (ICE)

Before issuing a solicitation, recipients must develop an independent cost estimate or ICE of the proper price and cost levels for the products or services to be purchased. Some recipients use the ICE as a basis for the Engineer’s or Project Sponsor’s estimate of the contract value which is advertised in the solicitation. The ICE can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of such items as drawings, specifications, and prior data, such as cost data from prior procurements. The pre-solicitation ICE should inform the post-bid cost and price analysis. The ICE can assist in determining the reasonableness or unreasonableness of price and/or the estimated costs to perform the work. If the recipient intends to require a breakdown of estimated costs, the in-house independent cost estimate should be broken down into the various cost elements. See FTA C 4220 (as amended), Ch. VI for further guidance.

Contract Cost and Price Analysis

In general, the purpose of a cost or price analysis is to ensure the recipient does not pay unreasonably high prices to third party contractors. Prices, however, that are unreasonably low can also be detrimental to an agency’s program if they prove to be an indication that the offeror has made a mistake or doesn’t understand the work to be performed. It is important for recipients to do a cost analysis or price analysis for every procurement action in excess of the Simplified Acquisition Threshold in order to determine how realistic the costs are, and for recipients not to permit a “buy in” (an unrealistically low estimated contract cost and fee) that will eventually result in a substantial cost overrun.

For Sealed Bid Procurements, a determination of the reasonableness of the price must be documented. FTA’s requirement is that every procurement action must include a cost or price analysis to determine the reasonableness of the proposed contract price. The starting point for this cost or price analysis should be the independent cost estimate or ICE, which is prepared prior to advertisement of the contract. Significant differences between the independent cost estimate and the low bid need to be discussed.

For Negotiated Procurements, A Cost/Price Analysis as discussed in Section 4.6 (Cost and Price Analysis). In all instances, the contract file must reflect evidence of a cost or price analysis having been completed. The recipient may wish to prepare a separate Cost/ Price Analysis memorandum analyzing the costs or prices proposed against: (a) the independent cost estimate prepared prior to solicitation; (b) specific company information in the proposals,

such as the particular technical approach being offered; and (c) any other pertinent information such as a technical evaluation of the cost proposal, an advisory audit of the offeror's cost proposal, or a comparison of prices offered with prior procurements. If the contract being awarded is a cost-reimbursement type, the Cost/ Price Analysis needs to address the realism of the various cost elements proposed. Where the costs are unrealistically low, an adjustment should be made to reflect what the agency believes the effort will actually cost given the offeror's specific technical approach as well as its direct and indirect cost rates. This cost realism assessment must be carefully considered when determining which offeror's proposal represents the best value for the procuring agency. All too often contractors are unrealistically optimistic in estimating costs in competitive cost-type situations (known as "buying in"). The result is that the lowest proposed/estimated cost is not necessarily the most advantageous choice for the procuring agency.

Notification of Federal Participation

- To the extent required by Federal law, the State of North Carolina agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project that it will identify the FTA grant source by listing the Catalog of Federal Domestic Assistance Number of the program. The following FTA grant programs will be eligible to participate in this bid, 20.505, 20.507, 20.500, 20.513, 20.509, 20.516, and 20.521. Federal funding assistance up to eighty (80%) percent may be provided.

Written Protest Procedures

- Grantees must have written protest procedures to handle and resolve disputes relating to their procurements
- Grantees should notify NCDOT if a protest involves an FTA compliance issue, since NCDOT must inform FTA within 5 working days

Records Documentation and Retention

Grantees must maintain records detailing the history of each procurement for five (5) years following final payment by the department for the project. Include the following at a minimum:

- The fully executed agreement shall be referenced for record retention requirements if a formal bid was solicited.
- Copies of the bid quotes shall be referenced if the bid was informal.
- Rational for the method of procurement
- Selection of contract type
- Reasons for contractor selection or rejection
- Basis for the contract price

NOTE: The section on "Methods of Procurement" identifies what must be documented at each threshold level.

Contract Term Limitation

- Contracts for rolling stock or replacement parts may not exceed 5 years inclusive of options
- All other contracts (supply, service, leases of real property, revenue, construction, etc.) may be for longer periods. Grantees should consider competition, pricing, fairness, and public perception.
- Once a contract has been awarded, an extension of contract term length that amounts to an out of scope change will require a sole source justification

Tag-ons (Not Allowed)

Definition: 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 requirement of competition

Piggybacking

Definition: An assignment of existing contract rights to purchase supplies and equipment

Allowable with the following requirements:

- Only Invitation for Bid (IFB) items are eligible
 - Must be within 12 months of contract award
 - The solicitation document and resultant contract contain an assignability clause
 - A minimum and maximum quantity is stated
 - All FTA contract requirements were included in the solicitation and contract
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E-Commerce (NCDOT/IMD interpretation)

- E-Commerce activity is best defined as the processing of business transactions over the web
- While most grantees may not use a typical “E-Commerce” procurement system, such as the State uses, many order supplies over the Internet or use electronic banking
- Grantees who utilize any electronic methods for soliciting offers, ordering products, or transferring funds must have written procedures and must ensure the requirements for full and open competition are met

Contract Provisions

All contracts must contain contractual provisions or conditions that allow for:

- Legal remedies in instances where contractors violate or breach contract terms (contracts > \$90,000)
- Termination for the cause and for convenience by the grantee including the manner by which it will be effected and the basis for settlement (contracts > \$10,000)

Liquidated Damages

Grantee may use liquidated damages if it may be reasonable to expect delays

- Damages shall be a specific rate per day for each day of overrun
- Liquidated damages recovered shall be credited to the project account

IMD Review Policy

Reminder: IMD must review and approve all drawings, designs, and/or description of work required prior to solicitation of construction, renovation, or facility improvement projects.

Reminder: IMD must review and approve new/adapted specifications prior to solicitation of new-type rolling stock. This requirement does not apply to the following:

- Minivans-Standard Type
- Conversion and Lift Vans
- Light Transit Vehicles (Cutaway-type Bus)

REQUIRED pre-award approval by IMD of the following Purchases

- New-Type Rolling Stock (see exceptions listed above) ≥ \$30,000
 - Any construction project ≥ \$30,000
 - Any “brand name” product or sole source purchase ≥ \$10,000
 - Any award to other than apparent lowest bidder ≥ \$10,000
 - 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
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Methods of Procurement

Level 1: Micro-Purchases (less than \$10,000)

- May be made without obtaining price quotes
- 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
- 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
- Document approval by authorized person before purchase

Level 2: Price Quotes (\$10,000 - \$29,999)

- Solicit at least 3 bidders (telephone quotes are acceptable)
- If Federal funds are used, applicable Federal requirements and certifications must be included in the solicitation
- Minimum documentation required:
 - Document quotes received (at least 2 quotes should be received)
 - Document which vendor was selected – if vendor with lowest price is not selected, include basis/reason for selection (delivery date, better warranty/service, etc.); prior IMD approval is required.
 - Document approval by authorized person before purchase
 - Procurement History Form may be used to document
 - Complete Procurement Checklist and submit to IMD with reimbursement request

Level 3: Informal Bids (\$30,000 - \$89,999)

Reminder: IMD must review and approve new/adapted specifications prior to solicitation of new-type rolling stock. This requirement does not apply to the following:

- Minivans (standard type)
- Conversion and Lift Vans
- Light Transit Vehicles (Cutaway-type Bus)

Reminder: IMD must review and approve all drawings, designs, and/or description of work required prior to solicitation of construction, renovation, or facility improvement projects

Procedural Requirements

- Solicit written quotes from at least 3 bidders
- Applicable Federal requirements and certifications must be included with solicitation (if funded in part with Federal funds)
- IMD requires pre-award approval of the following.
 - New-type Rolling Stock* (This requirement does not apply to the following)
 - Minivans (standard type)
 - Conversion and Lift Vans
 - Light Transit Vehicles (Cutaway-type Bus)
 - Any construction project* ≥ \$30,000
 - Any “brand name” product or sole source purchase* ≥ \$10,000
- Pre-award documentation
 - Submit Procurement Checklist
 - Procurement History Form
 - and all other documentation to IMD prior to purchase/award

Minimum Documentation Required

- Minority Business Enterprise (MBE) good faith efforts must be documented
- Document quotes solicited and quotes received (at least 2 quotes should be received)
- Document which vendor was selected – if vendor with lowest price is not selected, include basis/reason for selection and justification (delivery date, better warranty/service, etc.); prior IMD approval is required.
- 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 IMD
- Submit Procurement Checklists to IMD with reimbursement request for all other procurements ≥ \$30,000.

Level 4: Formal Bids (IFB) (Sealed) (IMD pre-award approval required on all procurements)

State Funds ONLY

- \$90,000 – Equipment/Supplies/Services
- \$500,000 – Construction

Federal and State Funds

- \$90,000 – Equipment/Supplies/Services
- \$150,000 - Construction

Reminder: Please reference previously stated IMD Review Policy

Procedural Requirements

- Publish advertisement (electronic ad may be used) for the bid, at least once, 7 days prior to opening
- All bids must be sealed and opened at stated time and 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 solicitation (if funded in part with Federal funds)

Additional Requirements for Construction Procurements

- Minimum of 3 sealed bids must be received. If less than 3 bids are received, agency must advertise for bids again; and if as a result of such second advertisement, less than 3 competitive bids are received from reputable and qualified contractors, the agency may open bid, and award to the lowest responsible bidder, even if only one bid is received.
- Bid guarantee bond (5% of bid price)
- Performance and payment bonds (100% of contract price for contracts exceeding \$300,000)
- MBE/DBE verifiable goals for construction procurements > \$10,000
 - If the construction project is funded with only state funds, the State Construction Guidelines for MBE will be followed for vertical construction and a 10% goal will be the set MBE goal for each state funded construction project.
 - If the construction project is funded in part with federal funds, then a project specific DBE goal will be set for that particular construction project.
- Document bids received by completing Procurement History Form and Procurement Checklist for Formal Bids
- Submit checklist, tabulation, and related documentation to IMD for prior approval before entering into a contract or commencing with construction related work
- Award shall be made to the lowest, responsible bidder(s)

NOTE: If recommendation is other than low bid, written justification must be submitted along with above checklist and related documentation

Reminder: IMD 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

- Any or all bids may be rejected if there is sound documented business reason
- Contract award will be made in writing to the lowest responsive and responsible bidder
- When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs will be considered in determining which bid is lowest
- Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken

Minimum Documentation Required

- Written documentation to support that each requirement was met
- Minority Business Enterprise (MBE) or Disadvantage Business Enterprise (DBE) good faith efforts must be recorded
 - Solicit minority participation in contracts for the erection, construction, alteration or repair of any building
 - A 10% goal is mandated by NCGS when State grant funds are used
 - A project specific goal will be set for federally funded construction projects
 - Documented efforts must be reported to NCDOT
- Documented approval from IMD

- Document approval by authorized person before purchase/award

Competitive Procurement - Request for Proposal (RFP)

- Normally conducted with more than one source submitting an offer (proposal)
- Either fixed price or cost reimbursement type contract
- Generally used when conditions are not appropriate for use of sealed bids
- Contracts for Information Technology may be entered into under a request for proposal procedure

PROCESS REQUIREMENTS
<ul style="list-style-type: none">▪ RFP will be publicized. All evaluation factors will be identified along with their relative importance
<ul style="list-style-type: none">▪ Proposals will be solicited from an adequate number (3 is recommended) of qualified sources
<ul style="list-style-type: none">▪ Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees
<ul style="list-style-type: none">▪ 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

NOTE: "Best value" is based on determination of which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor.

Procurement of Architectural and Engineering Services (A&E) – Request for Qualifications (RFQ)

Must use qualifications-based competitive proposal (Brooks Act) procedures for all A&E services, unless the project fee is less than \$50,000, then procurement procedures may be exempted with local board approval (N.C.G.S. 143.64.32).

Qualifications based on competitive proposal procedures require that:

- An offeror's qualifications be evaluated
- Price must be excluded as an evaluation factor
- Negotiations be conducted with only the most qualified offeror
- 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

Qualifications based Competitive Proposals must be used for these Services
<ul style="list-style-type: none">▪ Program management
<ul style="list-style-type: none">▪ Construction management
<ul style="list-style-type: none">▪ Feasibility studies (Note-facility needs assessments must include site selection and NEPA document)
<ul style="list-style-type: none">▪ Preliminary engineering, design, architectural, engineering, surveying, mapping, and related services

NOTE: If any Federal funds are used, all applicable Federal requirements and certifications must be included in the solicitation. Written documentation must be maintained to support each step of the procurement process

Noncompetitive Procurement - (Sole Source)

Definition: Solicitation of a proposal from only one source

- After solicitation of a number of sources, competition is determined inadequate
- A contract change outside the scope of original contract is also considered a sole source procurement

Noncompetitive or Sole Source (Qualifying Conditions)
<ul style="list-style-type: none"> ▪ 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 ▪ Item is an associated capital maintenance item and is purchased directly from original manufacturer. <ul style="list-style-type: none"> ▪ The manufacturer or supplier is the only source for item ▪ The price is no higher than usual price paid

Noncompetitive or Sole Source (Reimbursement Criteria)
<ul style="list-style-type: none"> ▪ 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 ▪ IMD’s Assistant Director for Administrative Services must pre-approve all sole source procurements ≥ \$10,000 ▪ Written documentation must be maintained to support each step in the procurement process

Contract Options

- Grantees may include options in contracts. An option is an unilateral right in a contract by which, for a specified time, a grantee 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 a grantee chooses to use options, the requirements below apply:
 - 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 been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.

Exercise of Options

- A grantee 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 the grantee has 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

Reminder: Public transit-related requirements may be incorporated into local procedures or transit system may draft separate procedures

Nonprofit Procurement Procedures

No Written Procedures

To assist all nonprofit agencies in the development or revision of their written procurement procedures, the division will provide a sample procurement policy and implementation procedures that meet the requirements for nonprofit subrecipient procurement procedures. The sample policy can be revised, as necessary (must still meet minimum procurement requirements). The nonprofit agency must obtain governing body approval and submit the approved procedures, including a certified copy of the minutes of the governing board meeting at which the procedures were adopted, to the Integrated Mobility Division for approval. The division will notify the nonprofit subrecipient of written approval or disapproval. If the policy does not meet the procurement procedures for nonprofit subrecipients, the policy will be returned to the grantee with revisions necessary to comply with the procurement procedures noted.

Written Procedure

Nonprofit subrecipients that have existing written procurement procedures must ensure that they meet the requirements for nonprofit subrecipient procurement procedures. If not, the procedures must be revised to meet the requirements and receive governing body approval of the revisions. The approved procedures, including a certified copy of the minutes of the governing board meeting at which the revised procedures were adopted, are submitted to the Integrated Mobility Division for approval. The division will notify the nonprofit subrecipient of written approval or disapproval. If the policy does not meet the procurement procedures for nonprofit subrecipients, the policy will be returned to the grantee with revisions necessary to comply with the procurement procedures noted.

Section 5311, 5310, 5316 and 5317 Procurement Checklist

Each procurement conducted by Section 5311, 5310, 5316 and 5317 subrecipients must be in compliance with applicable Federal and State laws, rules, regulations and local procurement procedures. The procurement checklists are intended to assist the subrecipient in conducting a proper procurement, provide documentation that all applicable requirements were followed and expedite the procurement approval process, if required, and subrecipient reimbursement. The checklists incorporate the State’s local government procurement requirements as stated in NC General Statute 143-129, the Federal Transit Administration’s requirements as stated in Circular 4220 (as amended), the FTA Master Agreement and guidance in the Federal Transit Administration’s [Best Practices Manual](#).

Quick Reference Summary Table

Level	Procurement Method	Amounts	Type	Bid Procedure
1	Local Guidelines	Up to \$9,999	All	Use local procedures
2	Price Quotes	\$10,000-\$30,000	All	Solicit at least three quotes (phone quotes are acceptable)
3	Informal Bid	\$30,000-\$89,999	Non-Construction	Solicit written quotes from at least three bidders
		\$30,000-\$99,999	Construction Federal	
		\$30,000-\$499,999	Construction State	
4	Formal Bid (sealed)	\$90,000 and over	Non-Construction	Advertised solicitation
		\$500,000 and over	Construction State	
		\$150,000 and over	Construction (federal)	

Compliance with Federal and State procurement requirements in addition to the Bus (Pre-Award and Post-Delivery Reviews), Buy America, Suspension and Debarment, Lobbying and Americans with Disabilities Act requirements are monitored through the use of the procurement checklists.

Subrecipients must submit the appropriate completed procurement checklist for prior approval or with the request for reimbursement that is submitted to the Integrated Mobility Division. Attach a copy of the executed certifications for applicable Federal requirements for informal quotes and formal bids to the checklist. Requests for reimbursement that are received without the required attachments will be returned to the grantee unpaid.

The grantee’s authorized official or the individual delegated authority to submit requests for reimbursement signs the certification statement at the bottom of the procurement checklist form for each procurement. Integrated Mobility Division staff review the completed form and appropriate attachments to ensure that all requirements were met. IMD approval is only provided for formal bids and for informal quotes when purchasing some types of rolling stock or completing construction/renovation projects. Subrecipients must receive written approval from the division prior to awarding the contract.

The request for reimbursement form and procurement checklist will be returned to the subrecipient if the required information is not provided or is incomplete. Instructions will be provided to advise the subrecipient of corrective action that must be taken for the division to reimburse the subrecipient for eligible project costs.

The checklist and all supporting documentation are to be retained by the subrecipient for at least five (5) years following closeout of the project by the department.

Lobbying

Lobbying is defined as influencing or attempting to influence an officer or employee of any Federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining a federal grant, cooperative agreement, or any other federal award.

State agencies and subrecipients must impose lobbying restrictions on their third-party contractors and must obtain certifications. Specific contracts, grants or cooperative agreements are actions covered by the restrictions on lobbying.

Where third party contractors are involved, subrecipients must obtain a signed certification of compliance from the contractor. If contractors received more than \$100,000 in federal funds and used non-federal funds to support lobbying, subrecipients must obtain the completed Standard Form-LLL from the contractor and submit it to DMT

Debarment and Suspension

To prevent fraud, waste and abuse in federal transactions, persons or entities that, by defined events or behavior, potentially threaten the integrity of federally administered programs are excluded from participation in FTA-assisted programs.

NCDOT will not enter into any third-party contract or grant agreement with any party included in the “US General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs.” This pertains to all FTA sponsored program funds. Listing of excluded parties can be located at: <https://www.sam.gov/>. The state listing of those parties disbarred or suspended can be located at: <http://www.doa.state.nc.us/PandC/actions.asp>

IMD subrecipients receiving more than \$25,000 through a project from NCDOT must certify they are not debarred or suspended from any Federal agency. This is accomplished through the application process and the annual certifications and assurances. All subrecipients also must ensure that their third-party contractors receiving more than \$25,000 are not debarred or suspended from doing business with the federal government. Thus, subrecipients must search both the debarment/suspension federal website.

Subrecipient responsibilities:

- Sign a certification of compliance pertaining to debarment and suspension.
- Verify that a third-party contractor is not disqualified by a Federal agency.
- Obtain a signed certification and add a clause or condition to the contract or subcontract regarding debarment and suspension.

Buy America Provisions/Pre-Award and Post-Delivery Audits/New Model Bus Testing

Buy America Provisions

These provisions are federal “domestic content” regulations. Buy America affects vehicle and equipment purchases and construction contracts valued at \$100,000 or more. It provides, with exceptions, that federal funds may not be obligated for transportation projects unless the steel and manufactured products used in them are produced in the United States.

Pre-Award and Post-Delivery Audits

Procurements for vehicles must be in accordance with “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases” (49 CFR Part 633; Federal Register March 31, 1992). The rule requires that any subrecipient who purchases rolling stock certify to the NCDOT that it has conducted a pre-award and post-delivery audit to ensure compliance with its bid specifications, Buy America requirements and Federal Motor Vehicle Safety Standards.

Documentation for Post-Delivery Buy America Certification

A recipient's Post-Delivery Audit Report summarizes the process the recipient used to verify the manufacturer's compliance with the Buy America requirements. At the conclusion of the audit, the recipient must maintain a file for FTA reviews that includes:

- A copy of the Post-Delivery Audit Report.
- The recipient's Post-Delivery Buy America Certificate.
- The post-delivery purchaser's requirement certification.
- A manufacturer's FMVSS certification, when appropriate.
- The manufacturer's certificate of compliance or non-compliance with Buy America rolling stock requirements.

The manufacturer provides the following documents for the Post-Delivery Buy America Certification:

- A detailed list of components and subcomponents which includes the manufacturer/supplier and country of origin.
- Cost of each component and corresponding subcomponents.
- Both domestic and foreign content, in dollars or as a percentage.
- The final assembly location.
- Description of all work performed at the final assembly location; and
- Cost of the work performed at the final assembly location.

Although the manufacturer can provide its domestic content worksheet in terms of percentages rather than dollars, the recipient or its auditor needs to review supporting actual cost documents in order to verify compliance. The manufacturer must be able to support all the costs depicted in the domestic content worksheet and final assembly scope of work. The Post-Delivery Audit Report should not include confidential data provided to the recipient or an auditor but should summarize the data reviewed to support the conclusions in the report.

Visual inspection and road testing are required when purchasing unmodified vans, cars, or 20 or fewer buses. Resident inspection is required when purchasing more than 20 buses or modified vans from a single manufacturer.

New Model Bus Testing

New bus models must be tested at the FTA sponsored test facility in Altoona, PA before federal funds can be expended to purchase them. The FTA rule exempts certain vehicles from testing (usually sedans and non-modified vans). The primary purpose of the testing program is to determine the strengths and weaknesses inherent in the particular model for typical operating conditions. Ideally, subrecipients use the bus-testing report as one of the criteria used to select the vehicle for purchase.

Subrecipients purchasing equipment with federal funds are required to receive the Altoona/STURAA bus test report for each vehicle purchased and include it in procurement files if the test is required. The vendor, prior to subrecipients signing off, should provide the report on post-delivery certification forms and acceptance of the vehicle(s) from the vendor. A third party contractor must provide a signed bust testing certification with vehicle bid proposal along with the Altoona bus test report.

APPENDIX D
PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER -- MATRICES

A. THIRD PARTY CONTRACT PROVISIONS

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

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(30) 11-2-2022)
All FTA Assisted Third Party Contracts and Subcontracts		
No Federal Government Obligations to Third Parties (Use of Disclaimer)		§ 3(l)
False or Fraudulent Statements or Claims – Civil and Criminal Fraud		§ 4.e
Access to Third Party Contract Records		§ 16.s
Changes to Federal Requirements		§ 3.j.(1)
Equal Employment Opportunity (except special DOL construction clause)		§ 12
Disadvantaged Business Enterprises (DBEs)	Contract awarded on the basis of a bid/proposal offering to use DBEs.	§ 12.e
Incorporation of FTA Terms	Per FTA C 4220 (as amended)	§ 16.d
Prompt Payment		49 CFR 26.29
Prohibition on Certain Telecommunications Equipment		2 CFR 200.216 FAR 52.204-24
Seat Belt Use		§ 34.(a)
Distracted Driving		§ 34.(b)
Federal Tax Liability and Recent Felony Convictions		§ 4.(g)(1)(i)
Trafficking in Persons		§ 4.(f)
Awards Exceeding \$10,000		
Terminations		§ 11 and § 16.d.(2)
Debarment and Suspension	Awards exceeding \$25,000	§ 4.h
Notice to FTA and U.S. DOT Inspector General of waste, fraud, abuse...	Awards exceeding \$25,000	§ 39(b)
Lobbying	Awards exceeding \$100,000	§ 4.c and § 16.d(8)
Awards Exceeding the Simplified Acquisition Threshold (\$250,000)		
Resolution of Disputes, Breaches, or Other Litigation		§ 39
Awards Exceeding \$150,000 by Statute		
Clean Air	42 U.S.C. 7401-7671q.	§ 16.d.(7)
Clean Water	33 U.S.C 1251-1387	§ 16.d.(7)
Buy America	When tangible property or construction will be acquired. The threshold for applicability is no longer tied to the simplified acquisition threshold. It is statutorily fixed in 49 U.S.C. §5323(j)(13).	§ 15.a and b

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER — MATRICES**- THIRD PARTY CONTRACT PROVISIONS (Continued)**

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

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(30) 11-2-2022)
Transport of Property or Persons		
Cargo Preference	When acquiring property suitable for shipment by ocean vessel.	§ 15.c
Fly America	When property or persons are transported by air between U.S. and foreign destinations, or between foreign locations.	§ 15.d
Construction Activities		
Construction Employee Protections – Davis-Bacon Act	For contracts exceeding \$2,000.	§ 16.d.(4)
Construction Employee Protections – Contract Work Hours & Safety Standards Act	For contracts exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 16.d.(5)
Construction Employee Protections – Sec. 1 Copeland Anti-Kickback Act – Sec. 2 Copeland Anti-Kickback Act	All contracts All construction contracts exceeding \$2,000.	§ 16.d.(4)
Special EEO Provision for Construction	All construction contracts	§ 16.d.(3)
Bonding for Construction Activities Exceeding \$250,000	5% bid guarantee bond. 100% performance and payment bond.	§ 16.n
Seismic Safety	Construction contracts for new buildings or for existing buildings.	§ 23.b
Veterans Preference	All construction contracts	16.u
Non-construction Activities		
Nonconstruction Employee Protection – Contract Work Hours & Safety Standards Act	For all turnkey, rolling stock, and operational contracts (except transportation services contracts and open market contracts) exceeding \$100,000. OMB Office of Federal Financial Management has not adopted the FAR clause 2.101 \$150,000 simplified acquisition threshold standard.	§ 24.b
Transit Operations		
Transit Employee Protective Arrangements		§ 24.d
Charter Bus Operations		§ 28
School Bus Operations		§ 29
Drug Use and Testing	Safety sensitive functions.	§ 35.b
Alcohol Misuse and Testing	Safety sensitive functions.	§ 35.b

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES**A. THIRD PARTY CONTRACT PROVISIONS (Continued)**

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

PROVISION	COMMENTS	MASTER AGREEMENT REFERENCE (based on FA MA(30) 11-2-2022)
Planning, Research, Development, and Demonstration Projects		
Patent Rights		§ 17
Rights in Data and Copyrights		§ 18
Special Notification Requirements for States		
Special Notification Requirement for States	.	§ 37
Miscellaneous Special Requirements		
Energy Conservation	All Contracts	§ 26
Recycled Products	Contracts when procuring \$10,000 or more per year of items designated by EPA.	§ 16.d.(10)
Prohibition on Certain Telecommunications Equipment	All Contracts	2 CFR 200 Appendix II 2 CFR 200.216
Conformance with National ITS Architecture	Contracts and solicitations for ITS projects.	§ 16.1
ADA Access	Contracts for rolling stock or facilities construction/renovation.	§ 12.h
Assignability Clause	Procurements through assignments (“piggybacking”).	§ 16.a, which incorporates FTA circular 4220.1

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES**B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS**

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

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	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
Termination	>\$10,000	>\$10,000	>\$10,000 -	>\$10,000 -	>\$10,000 -
Equal Employment Opportunity except Special DOL EEO clause for construction projects)	All	All	All	All	All
Special DOL EEO clause for construction projects				>\$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			>\$150,000	>\$150,000	>\$150,000
Resolution of Disputes, Breaches, or Other Litigation	>\$250,000	>\$250,000	>\$250,000	>\$250,000	>\$250,000
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			Transport by ocean vessel.	Transport by ocean vessel.	Transport by ocean vessel.
Fly America	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.	Foreign air transp. /travel.
Notice to FTA and U.S. DOT Inspector General of Information Related to Fraud, Waste, etc.	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs	\$25,000 or More. Prime and Subs
Prompt Payment	All	All	All	All	All

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES**B. APPLICABILITY OF THIRD PARTY CONTRACT PROVISIONS (Continued)**

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

TYPE OF PROCUREMENT					
PROVISION	Professional Services/A&E	Operations/ Management	Rolling Stock Purchase	Construction	Materials & Supplies
Davis-Bacon Act				>\$2,000 (also ferries).	
Veterans Preference				>\$150,000	
Contract Work Hours and Safety Standards Act		>\$250,000 (transportation services excepted).	>\$250,000	>\$250,000 (also ferries).	
Copeland Anti-Kickback Act Section 1 Section 2				All > \$2,000 (also ferries).	
Bonding				>\$250,000	
Seismic Safety	A&E for new buildings & additions.			New buildings & additions.	
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	R & D				
Rights in Data and Copyrights	R & D				
Energy Conservation	All	All	All	All	All
Recycled Products		EPA-selected items \$10,000 or more annually.		EPA-selected items \$10,000 or more annually.	EPA-selected items \$10,000 or more annually.
Seat Belt Use	All	All	All	All	All
Distracted Driving	All	All	All	All	All
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.
Prohibition on Certain Telecommunications Equipment	All	All	All	All	All
Federal Tax Liability and Recent Felony Convictions	All	All	All	All	All
Trafficking in Persons	All	All	All	All	All

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES**C. CERTIFICATIONS, REPORTS, AND FORMS**

CERTIFICATIONS, REPORTS, AND FORMS	COMMENTS	REGULATORY REFERENCE
Bus Testing Certification	All procurements of new model transit buses and vans and existing models being modified with major changes.	49 CFR Part 665
TVM Certifications	All rolling stock procurements.	49 CFR Part 26
Buy America Certification	Procurements of steel, iron, manufactured products and construction materials exceeding \$150,000.	49 CFR Part 661
Preaward Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Preaward Buy America Certification	Rolling stock procurements exceeding \$150,000.	49 CFR Part 663
Preaward Purchaser's Requirement	All rolling stock procurements.	49 CFR Part 663
Post Delivery Review	FTA Annual Certification for any rolling stock procurement.	49 CFR Part 663
Post Delivery Buy America Certification	Rolling stock procurements exceeding \$150,000.	49 CFR Part 663
Post Delivery Purchaser's Requirement	All rolling stock procurements to the extent required by Federal law and regulations.	49 CFR Part 663
On-Site Inspector's Report	Rolling Stock except for procurements of: - 10 or fewer vehicles; - 20 or fewer vehicles serving rural (other than urbanized) areas or urbanized areas or 200,000 people or fewer; - any amount of primary manufactured standard production and unmodified vans that after visual inspection and road testing meet the contract specifications.	49 CFR Part 663
Federal Motor Vehicle Safety Standards – Pre Award and Post Delivery Reviews	Motor vehicle procurements (49 CFR 571).	49 CFR Part 663
Lobbying	Procurements exceeding \$100,000.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.
Standard Form LLL and Quarterly Updates (when required)	Procurements exceeding \$100,000 where contractor engages in lobbying activities.	49 CFR Part 20 OMB Office of Federal Financial Management has not adopted FAR 2.101 \$150,000 simplified acquisition threshold standard.

PROVISIONS, CERTIFICATIONS, REPORTS, FORMS, AND OTHER—MATRICES**D. OTHER MATTERS**

OTHER MATTERS	COMMENTS	STATUTORY OR REGULATORY REFERENCES
Contract Administration System		2 CFR § 200.318(b)
Record of Procurement History		2 CFR § 200.318(i)
Protest Procedures		2 CFR § 200.318(k)
Selection Procedures		2 CFR § 200.320 b.
Cost/Price Analysis		2 CFR § 200.324
Justification for Noncompetitive Awards	If Applicable.	2 CFR § 200.320 c.
No Excessive Bonding Requirements		2 CFR § 200.319(b) (2)
No Exclusionary Specifications		2 CFR § 200.319(d) (1)
No Geographic Preferences	Except for A&E Services	42 CFR § 200.319 c.