Financial Policies - Capital Improvement

OBJECTIVE

The purpose of the Capital Improvement Program (CIP) is to systematically identify, plan, schedule, finance, track, and monitor capital projects to ensure cost-effectiveness as well as conformance to established policies, procedures, and appropriations.

The performance and continued use of capital infrastructure is essential to delivering public services. Deferring essential maintenance and/or asset replacement can negatively impact service delivery and increase the long-term costs. As such, the County will periodically assess the condition of assets and infrastructure and appropriately plan for required major maintenance and replacement needs. Efforts will be made to allocate sufficient funds in the six-year CIP and operating budgets for condition assessment, preventative and major maintenance, and repair and replacement of critical infrastructure.

POLICY

I. The CIP shall consist of all funds appropriated by the Board of County Commissioners for capital improvements either by county departments, external organizations, offices of county government, or outside agencies for which the County provides capital funding.

   a. Capital improvement projects shall be defined as construction projects, renovation projects, property acquisition, and equipment purchases that cost at least $100,000 and have a useful life of at least ten years.

      i. For the purposes of the CIP, information technology projects of at least $100,000 may be considered as capital improvement projects provided the useful life is at least five years.
      ii. For the purposes of the CIP, fleet acquisition will be evaluated and recommended in accordance with fleet replacement procedures.

   b. Minor capital outlay and equipment acquisition (less than $100,000 or a useful life of less than ten years) shall be included in the operating budget.

II. The County Manager, as the County's Budget Officer, shall annually submit a financially balanced, six-year Capital Improvement Program for review and approval by the County Commission, pursuant to the timelines established in the annual budget preparation schedule.

   a. The CIP will be updated annually as part of the annual budget process.
   b. The first year of the adopted CIP will be the capital budget for that year.
   c. Submission of the CIP shall be consistent with the requirements established by North Carolina General Statutes Chapter 159.
   d. The County Manager will develop necessary procedures and internal controls to develop and manage the implementation of the adopted CIP.

III. The County Manager will develop necessary procedures and internal controls to develop and manage the implementation of the adopted CIP.

   a. A Capital Improvement Program Message that provides a statement of CIP objectives and clearly demonstrates the program's relationship to the County's operating budget proposal and strategic and master plans.
   b. Summaries of project request and funding sources that demonstrate the six-year Capital Improvement Program is balanced.

c. Detailed capital project descriptions to include the following:

   i. Scope of the project that defines or describes the project.
   ii. Justification for the project that clearly states the need and pertinent history.
   iii. Estimated cost by project phase.
   iv. Estimated funding by project.
   v. Estimated operating budget impact by budget category.
   vi. Estimated implementation schedule that provides for the coordination of project timing, construction, and funding.
   vii. Identification of Managing Department.

d. Schedule of proposed and existing debt requirements.

IV. Staff will monitor projects in progress to ensure their timely completion or identify needed adjustments of the CIP as approved by the Board of County Commissioners.

a. The County Manager may make necessary transfers between phases and accounts within a project, however, transfers between projects, regardless of funding source, require Board of County Commissioner approvals.
b. Within ninety-days of the completion of a capital project any remaining appropriated funds for the project will revert to the fund balance of the funding source. Expenditure of excess funds may only occur by Board of County Commission action.
c. Appropriations for capital projects lapse three years after budget adoption if there is no progress on project implementation, as determined by the County Manger and recommended to Board of County Commissioners. Projects which lapse from a lack of activity may be resubmitted for inclusion in a future capital improvement program.

V. Project expenditures and related accounting shall be in accordance with Generally Accepted Accounting Principles (GAAP), Governmental Accounting Standards Board (GASB) requirements, and other bond and legal requirements.

a. Project funding shall be in accordance with the County's Debt Policies and the North Carolina General Statutes Chapter 159.
b. The County Finance Officer will evaluate project funding and expenditures to ensure compliance and appropriate accounting in accordance with applicable policies, procedures, principles, and standards.

VI. It is anticipated that new general obligation debt funded projects shall be voted by referendum.

a. It is anticipated that new general obligation debt will be funded through increased tax rate, and that voter approval of general obligation debt represents a tacit approval of the accompanying tax rate.
b. It is anticipated that new general obligation debt matures; the associated tax rate will be reduced accordingly.

Adopted by the Board of County Commissioners on November 19, 2012.

Financial Policies - Debt

Union County's Finance Director is charged with the responsibility for prudently and properly managing any and all debt incurred by Union County, (the "County"). The following policy provides the methods, procedures, policies and practices which, when exercised, ensure the sound fiscal management of the County's debt program.

SCOPE

This policy applies to all debt issued or incurred by the County. This may include general obligation bonds, certificates of obligation/participation, limited obligation bonds, revenue bonds, capital leases, private placements, installment financings, and letters of credit.

DEBT LIMITS

The net debt of the County, as defined in G.S. 159-55, is statutorily limited to 8% of the assessed valuation of the taxable property within the County. Total General Fund debt service will not exceed any limits imposed by the Local Government Commission (LGC). As a guide, formulas established by the LGC and rating agencies will be monitored and appropriately applied by the County. Debt service as a percentage of the General Fund operating budget should not exceed 15%.

The County evaluates new debt issuance as it relates to the current debt level. The amount of debt retired each year is compared to the amount of debt to be issued any given year and an analysis performed to determine the community's ability to assume and support additional debt service payments. When appropriate, the issuance of self-supporting revenue bonds and other self-supporting obligations are also considered.

An objective, analytical approach is used to make the determination of whether debt is issued. The process compares generally accepted standards of affordability to the current values for the County. Those standards may include measures such as: debt per capita, debt as a percent of assessed value, debt service payments as a percent of current revenues and/or current expenditures, and the level of overlapping net debt of all local taxing jurisdictions.

OBJECTIVES

Legal and Regulatory Compliance

The County's debt policies and procedures are designed to ensure compliance with all State and Federal Law governing debt, including but not limited to, State Law, Federal Law, Internal Revenue Service rules and regulations, Securities and Exchange Commission ("SEC") regulations, Municipal Securities Rulemaking Board ("MSRB") regulations, court rulings, and existing debt covenants.

As a result of the importance of complying with all legal and regulatory requirements, the Finance Director and the County Attorney will coordinate all activities necessary to issue debt, including but not limited to:

- selection of bond counsel;
- review of ordinances and resolutions provided by bond counsel;
- review of all documents necessary to issue debt provided by bond counsel; and
- verify compliance with the North Carolina Local Government Commission (LGC)

RESPONSIBILITY AND CONTROL

The ultimate responsibility and authority for issuing debt is approval by the County's governing body, the Union County Board of Commissioners. The Finance Director is charged with the responsibility for the appropriate management of the County's debt program. The Cash and Debt Management Analyst executes the day-to-day debt functions of the debt program following the policies and procedures as well as the guidance and recommendations of the Finance Director, the Senior Management, and Commissioners.

SELECTION OF SERVICE PROVIDERS

Financial Advisor

The Finance Director provides recommendations to Senior Management and the Board for the selection of a financial advisor for the County's debt program. The financial advisor may perform the following duties including but not limited to: presenting all available financing alternatives, comprehensive analyses for debt refinancing, recommendations for alternative financial structures, development of timing and sale of new issues, coordinating the market timing and pricing of debt securities, issuing and disseminating the bond offering documents and other disclosure requirements, coordinating with the underwriters of the bond issuance, seeking and coordinating ratings from the nationally recognized rating agencies, and providing guidance and advice about debt-related topics and the capital markets.

The recommendations to select a financial advisor will be based on the results of a formal request for proposal process. When the recommendation is made for Senior Management and Board approval, the basis for the recommendation will be submitted for review. The engagement of a financial advisor is implemented through the approval of a contract by the Union County Board of Commissioners that has a term of no more than five years.

Bond Counsel

The Finance Director coordinates with the County Attorney and Senior Management on the selection of bond counsel for any issue. When the bond counsel has been selected, they are responsible for providing opinions to investors in two specific areas: first, the bond counsel must assure investors that the securities are valid and legally binding obligations of the County; and second, the bond counsel will state whether the interest on the bonds is exempt or not from federal taxation. The bond counsel also prepares or supervises the preparation of all bond documents necessary to execute the bond issuance. The bond counsel is responsible for coordinating with the County Attorney's office, Clerk to the Board and Finance Office as well as the County's financial advisor to ensure that all tasks associated with the bond issuance are completed within prescribed timeframes.

Underwriters

In a negotiated sale (See Methods of Sale), the Finance Director, after review with Senior Management, makes recommendations concerning underwriting firms to include in the underwriting syndicate. A diverse group of securities firms will be chosen based on past performance, demonstrated ability to resell, prior municipal issuance experience and other factors. While past demonstrated performance is the primary criteria for selection, within those criteria, the participation of historically underutilized businesses (HUBs) will be strongly encouraged.

The primary function of the underwriter is to purchase securities from the County and resell them to investors. Underwriters will be selected for each issue based on the particular experience and expertise necessary for that issue. The underwriter's compensation (an "underwriter's discount") is a percentage of the amount of bonds sold and is negotiated for each issuance. When the amount of bonds to be issued exceeds twenty million dollars ($20 million) the LGC requires a Co-Manager Underwriting firm in addition to the primary Underwriting firm (Senior Managing Underwriter). Underwriter's employ their own Counsel.

Trustee

The Trustee receives funds from the County and makes payments to bondholders, maintains records of bond ownership and acts as fiduciary agent for the benefit of the bondholders in enforcing the terms of the bond contract.

Local Government Commission

All bonds issued under the authority of the Local Government Bond Act are approved by the Local Government Commission (LGC). Approval of an application as noted in N.C.G.S. 159-51 for a bond issue to the LGC is contingent on criteria established in N.C.G.S. 159-52. Such criteria require resolution of issues such as low tax collection rate (below ninety percent (90%)), receipt of a qualified audit opinion, or violations of the Local Government Budget and Fiscal Control Act.

The County is required to send notice to the Joint Legislative Committee on Local Government at least 45 days before the LGC approves the County's application for all bonds or other debt obligations issued over $1,000,000 for new projects, with the exception of schools, jails, courthouses, and administrative buildings.

No part of this policy may be construed or interpreted to supplant LGC authority or alleviate the County of any LGC requirements.

Bond Insurers / Liquidity Providers

Credit quality and marketability of securities may be enhanced through the purchase of municipal bond insurance. The County may pay a single premium and in turn the bond insurer unconditionally guarantees the payment of principal and interest to bondholders in the event of default. Prior to purchasing insurance for an issue, the County performs a cost effectiveness analysis with assistance from the financial advisor and bond counsel. Due to the County's high credit quality, the costs of insurance typically outweigh the benefits the County may derive by insuring an issue, but due consideration will be given to the possibility of insurance.

METHODS OF SALE

The County typically chooses from three different methods of selling debt securities. The methods and the description of each method are listed below:

1. Competitive Sale - Bonds are awarded in an auction-style of sale to an underwriter or syndicate of underwriters that provides the lowest True Interest Cost (TIC) bid. TIC is defined as the rate, which will discount the aggregate amount of debt service payable over the life of the bond issue to its present value on the date of delivery.

2. Negotiated Sale - The County chooses an under-writer or underwriting syndicate that is interested in reoffering a particular series of bonds to investors. The terms of the sale, including the size of the underwriter's discount, date of sale, and other factors are negotiated between the County and the Underwriter(s).

Although the method of sale is termed negotiated, individual components of the sale may be competitively bid. The components are subject to a market analysis and reviewed prior to recommendation by staff. Negotiated sales are more advantageous when there needs to be some flexibility in the sale date and market volatility is a concern. Negotiated sales are also often used when the issue is particularly large, if the sale of the debt issuance would be perceived to be more successful with pre-marketing efforts when a desired debt structure is a necessity and when market timing is a consideration.

3. Private Placement – Debt may be privately placed with a lending institution when private placement will enhance the attractiveness of the offering consistent with the receipt of the lowest true interest cost possible. The Local Government Commission must approve the use of all private placements, in accordance with NC Statute 159-153.

The County considers the following criteria when determining the appropriate method of sale for any debt issuance:

(1) Complexity of the Issue – Municipal securities with complex security features require greater marketing and buyer education efforts on the part of the underwriter, to improve the investors' willingness to purchase.

(2) Volatility of Bond Yields – If municipal markets are subject to abrupt changes in interest rates, there may need to be some flexibility in the timing of the sale to take advantage of positive market changes or to delay a sale in the face of negative market changes.

(3) Familiarity of Underwriters with the County's Credit quality – If underwriters are familiar with the County's credit quality, a lower True Interest Cost may be achieved. Awareness of the credit quality of the County has a direct impact on True Interest Cost an underwriter will bid on an issue. Therefore, where additional information in the form of presale marketing benefits the interest rate, a negotiated sale may be recommended.

(4) Size of the Issue – The County may choose to offer sizable issues as negotiated so that pre-marketing and buyer education efforts may be done to promote the bond sale.

(5) Costs of Issuance – Should the County decide to offer a small issue, it may choose a private placement in order to avoid the usual higher costs of issuance generally associated with competitive and negotiated sales.

Bid Verifications

The County awards successful bidders on the basis of the lowest "True Interest Cost".

Allowable Discounts

In most cases, the County requires bidders to purchase bonds at par. When there are no prevailing limitations, a discount is permitted when market conditions indicate a discount provides a more competitive bid and when there is flexibility to increase the par amount of the issue. If there is considerable market activity on the date of the proposed sale or other market related factor to necessitate improving the marketability of the issue, discounts may be permitted. Bidders are notified in advance of the allowance for discounts.

Term Bonds

Bidders may form term bonds based on the length of the maturity schedule. The resulting term bond structure must completely mirror the serial bond structure and must comply with the LGC requirements for weighted average maturity.

Retention

Prior to pricing a bond issue, the County will select a lead underwriter and co-managing underwriters for the underwriting syndicate. Each member of the syndicate will then be assigned an "account liability" for purposes of determining the amount of the unsold bonds that will be allocated to each member of the syndicate. The total account liabilities will add up to 100 percent and the lead underwriter will typically have a larger liability than the co-managing underwriters.

Management Fee

A management fee may be awarded to compensate the underwriters for providing assistance in structuring of the transaction, review of documents, coordination of the working group, efforts to obtain credit enhancement and other tasks. The management fee is typically allocated in the same allocation as the account liabilities.

BOND RATING AGENCY APPLICATION

Prior to issuing new debt or to issuing refunding debt, the County will submit a rating application to at least two of the nationally recognized rating agencies, which are Moody's Investors Service, Standard & Poor's Rating Service and Fitch Ratings.

As part of the application process, County staff may make a bond rating presentation directly to the credit analysts of the selected rating agencies. The County evaluates each time whether the circumstances favor making the presentation at the Bond Rating Agency offices, as a site visit or in some other convenient location. Included in the presentation, staff compiles information relevant to the County's current economic and financial condition as well as County initiatives.

When issues occur the rating agency application and offering document will be supplemented by a minimum of a written presentation of updated information about the County since the last rating application.

Annually, the County will distribute the ACFR and the current operating and capital budgets to each of the bond rating agencies that maintain ratings on the County's outstanding debt obligations. Information about the County is also available on the County's website, www.co.union.nc.us.

DISCLOSURE DOCUMENTS

The financial advisor normally assists the County in the preparation of the Official Statement in conjunction with the sale of bond. The Official Statement contains relevant economic, financial and debt information to prospective purchasers of the new issue. Underwriters are required by SEC Rule 15c2-12 to obtain a copy of the Official Statement that is "deemed final" within 7 business days following the bidding or purchasing a new issue of securities. The senior underwriter files a copy of each Official Statement with the MSRB via its Electronic Municipal Market Access database ("EMMA").

Continuing Disclosure

The County is required under the provisions of SEC Rule 15c2-12 to provide current information annually to update certain information typically required in each Official Statement. The Official Statement provides relevant information in a series of tables. Those tables are updated and provided in the County's Annual Comprehensive Financial Report on an annual basis. This ensures the underwriters and investors have the opportunity to preview current information about the County prior to bidding or purchasing part or all of a County issuance or purchasing outstanding obligations in the secondary market. The ACFRs are filed with EMMA.

Additionally, the County will also provide timely notices of certain events to the MSRB. The County will provide notice of any of the following events with respect to bonds issued within ten business days after the occurrence of an event: (1) principal and interest payment delinquencies; (2) non-payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Obligations, or other material events affecting the tax status of the Obligations; (7) modifications to rights of holders of the Obligations, if material; (8) redemption of the Obligations, if material, and tender offers; (9) defeasances; (10) release, substitution, or sale of property securing repayment of the Obligations; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the County; (13) the consummation of a merger, consolidation, or acquisition involving the County or the sale of all or substantially all of the assets of the County, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and (14) appointment of a successor Paying Agent/Registrar or change in the name of the Paying Agent/Registrar, if material.

CAPITAL PROGRAM

One of the County's goals is to maintain the excellent quality of the County's infrastructure. One of the mechanisms to achieve that objective is the maintenance of a Capital Program. The Capital Program is outlined in the County's Capital Improvement Program Management Policy and also recommends a course of action if a new debt issuance is required.

BOND TYPE & STRUCTURE

Fixed Interest versus Variable Interest

The County primarily issues fixed rate bonds to protect the organization against interest rate risk. The County has the option to issue variable rate bonds, and may if market conditions warrant consideration of such a structure. The County will limit the amount of variable rate bonds to no more than 10% of its total debt portfolio.

DERIVATIVES

A derivative is a financial instrument whose value depends on other, more basic underlying variables. Derivatives may take the form of interest rate swaps; futures and options contracts; options on swaps; and other hedging mechanisms such as caps, floors, collars, and rate locks. Derivatives can provide interest rate savings, alter debt service patterns, and provide a hedge against risk associated with variable interest rate debt. However, derivatives also come with multiple risks that currently outweigh the benefits. The County believes capital objectives can be accomplished with traditional and more conservative financing methods and therefore limits the use of derivatives. The County will also use an outside financial advisor for the preparation of derivative disclosures in its ACFR.

General Obligation Bonds

The County issues General Obligation Bonds for general purpose capital improvements when benefits accrue to the entire community. General Obligation Bonds are also used when the expectation of the project is that it will not generate significant revenues. The County pledges its "full faith and credit" and levies property tax to repay the debt. In order to issue General Obligation Bonds, the County's voters must authorize the amount to be issued through a referendum. General Obligation Bonds are sold for a term equal to, or less than, the useful life of the project that it is funding. The County may also issue two-thirds bonds of the prior year's general obligation net reduction without voter referendum as defined in N.C. GS 159-49.

As stated in the Union County Capital Improvement Program Management Policy, it is anticipated that new general obligation debt will be funded through increased tax rate, and that voter approval of general obligation debt represents a tacit approval of the accompanying tax rate. It is also anticipated that as new general obligation debt matures; the associated tax rate will be reduced accordingly.

Installment Financings / Certificates of Participation / Limited Obligation Bonds

The County has the opportunity to enter into installment financings under N.C. GS 160A-20, which are basically general obligation debts that do not require voter approval, and the debt service obligations are subject to the annual appropriation by the Board of Commissioners. Although voter approval is not required, additional notification requirements do apply. The installment financings are secured by a lien on all or a portion of the property being financed, but otherwise are non-recourse to the County.

The County can enter into an installment financing as a private placement directly with a financial institution or, with the assistance of the Union County Public Facilities Corporation (Corporation), use Certificates of Participation (COPs) or Limited Obligation Bonds (LOBs) as a vehicle to finance the projects in the public markets.

The Corporation is a blended component unit of the County and exists to solely assist the County in financing public facilities. The Corporation is governed by a three-member board, all of whom are appointed by the County Board of Commissioners. The Board can remove any Corporation member with or without cause. The corporation's transactions are reported within the General and Capital Projects Funds. The Corporation does not issue separate financial statements.

Revenue Bonds

The County issues Revenue Bonds primarily for Union County's Water and Sewer Enterprise Systems. Revenue Bonds are secured by a specific source of revenue. There is no tax pledge. Revenue Bonds are issued to pay for improvements that benefit the users that repay the debt through user fees. When Revenue Bonds are issued or are outstanding, coverage requirements consistent with the bond covenant will be maintained. In addition to coverage requirements, additional system maintenance and renewal contribution levels may be required.

Conduit Securities

The County acts as a conduit for tax-exempt financing for several entities within the County. Union County Industrial Facilities and Pollution Control Financing Authority (Authority) is a component unit of the County and exists to issue and service revenue bond debt of private business for economic development purposes. The Authority is governed by a seven-member board, all of whom are appointed by the County Board of Commissioners (Board). The Board can remove any Authority member with or without cause. The Authority has no financial transactions or account balances; therefore, it is not presented in the basic financial statements. The Authority does not issue separate financial statements.

The County may compel the entity issuing conduit financing to (1) commit to provide the municipal securities market with continuing disclosure information, (2) issue an Official Statement or other disclosure document that clearly describes the lack of direct financial support from the County or (3) obtain an opinion that states that the County will not be liable for the payment of principal and interest in the event of default by the conduit borrower. If the opinion

cannot be obtained, the County may ask the conduit borrower to purchase bond insurance or provide a letter of credit in the County's name to protect taxpayers in event of default.

Structure

Bonds are generally issued with an average life of 20 years or less for general obligation bonds or 30 years for revenue bonds. Typically interest is paid in the first fiscal year after a bond sale and principal is paid no later than the second fiscal year after the debt is issued. Call provisions for bond issues shall be made as short as possible consistent with the lowest interest cost to the County. The targeted maximum length to call is 10 years. When considering structure, issues such as asset life, inter-generational equity, and affordability, among others, will be considered.

INVESTMENT OF BOND PROCEEDS

Interest on bond proceeds is restricted such that it may only be used to fund projects that have the same purpose as the purpose for which the bonds were originally issued. Construction proceeds are typically invested in short-term securities so that they are liquid. Interest & Sinking funds may be invested longer as they have to be maintained for the life of the issue.

POST-ISSUANCE COMPLIANCE

The County will comply with all tax rules on its tax-exempt debt, including arbitrage rebate requirements, spending of bond proceeds, use of financed facilities and record keeping as established by the Internal Revenue Service, and all disclosure requirements established by the Securities and Exchange Commission. This effort includes tracking investment earnings on bond proceeds, calculating rebate payments in compliance with the tax law and remitting rebatable earnings to the federal government in a timely manner in order to preserve the tax-exempt status of the County's outstanding debt issues. The County Finance Director is responsible for such compliance efforts in consultation with the County Attorney and bond counsel.

REFUNDING & RESTRUCTURING OPTIONS

The County may elect to refund existing debt for any of the following reasons:

- To achieve interest rate savings in a declining interest rate environment, the minimum savings achieved will be in accordance with LGC standards and guidance;
- To update covenants on outstanding debt which impair efficient operations, require burdensome coverage, or prohibit necessary or desirable activities;
- To restructure the pattern of debt service associated with outstanding bond issues; and
- To alter bond characteristics such as call provision or payment dates.

The Tax Reform Act of 1986 limits each issue to one advance refunding for all issues issued after 1986. When interest rate savings is the principal reason for advance refunding an issue, the County will have as a goal to, but not a requirement to, include issues that contribute three percent or more present value savings. Other factors may also affect the County's decision to advance refund an issue.

DEBT RATIOS

The County has identified key debt ratios that investors and financial analysts use when reviewing the County's creditworthiness. The County will periodically update for investors and others the values for these ratios. These ratios include:

- Debt as a percentage of assessed value - This ratio indicates the relationship between the County's debt and the taxable value of property in the County or the County's ability to repay the debt.
- Debt per capita is the ratio that indicates the per capita debt burden and is a general indicator of the County's debt burden.

- Debt per capita as a percentage of per capita income is a measure of the capacity of the County of citizens to finance tax-supported debt. A low ratio means that taxes required to pay debt represent a smaller portion of the average residents' income.
- Debt Service as a percent of general governmental expenditures - County's ability to repay debt without hampering other County services.
- Unreserved General Fund Balance as a percent of General Fund Operating Expenses.

BUDGET & PROJECTIONS

The annual operating budget will include a detailed debt analysis and discussion to include:

- Debt Service Requirements;
- Debt Ratios;
- Projection of Debt Service Payments for future years; and
- Current Credit Ratings.

In addition, during the annual projection process, all projections should include anticipated debt service for new issuances based on the adopted CIP.

Adopted by the Board of County Commissioners on June 17, 2013.

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Financial Policies - Finance Best Practices

FINANCE BEST PRACTICES OVERVIEW

These "best management practices", adopted by the Board of County Commissioners on March 15, 2004, are influenced by the North Carolina Local Government Budget and Fiscal Control Act, sound financial principles and credit guidelines advocated by the rating agencies and Local Government Commission. Operating independently of changing circumstances and conditions, these practices guide the Board in policy decision making and provide the Manager with a framework in developing budgetary and financial planning recommendations – both in the short term (the annual budget) and long-term (capital planning and financial forecasting).

The practices were modified November 1, 2004, to include parameters defining the use of derivative products to mitigate the County's interest rate exposure, October 17, 2005, to include limitations regarding the duration in which independent accounting firms may conduct the annual audit, October 15, 2007, to include parameters regarding the imposition of user fees, September 15, 2008, to reflect refinements in the tax-supported debt capacity limits, March 30, 2010, to reflect debt composition (fixed, variable and derivatives), fiscal impact statements, tax rate increases in connection with bond referendums and the expansion of benchmarking metric definitions and June 5, 2023 to add that general obligation bonds should be used for increased capacity to the water and sewer system and to remove depreciation from the calculation used for the fund balance targets for the water and sewer operating fund.

OPERATING BUDGET

1. The County will annually adopt a balanced budget by June 30, which will provide an operational plan for the upcoming fiscal year.
2. The Manager will develop a budget which contains detailed budget recommendations for the next succeeding fiscal year (year 1) and financial targets for next budget year (year 2) following the first succeeding year.
3. The County will maintain a system of budgetary controls to ensure adherence to the budget.
4. Current operating revenues will be sufficient to support current operating expenditures. Fund balance appropriated for recurring expenditures will not exceed an amount that the County can reasonably expect to save during the fiscal year.
5. The County will maintain an appropriated contingency account. The contingency account will not exceed 5 percent of all other appropriations within the same fund.
6. Debt proceeds or non-recurring revenues will not be used to finance recurring operating and recurring capital expenditures.

ACCOUNTING

7. The County will establish and maintain an accounting system in accordance with the North Carolina Local Budget and
8. An annual audit will be performed by an independent accounting firm in accordance with generally accepted accounting principles.
9. Auditing independence is enhanced by requiring that the independent accounting firm be replaced at the end of the audit contract period - a period of at least five years.
10. Financial systems will be maintained to monitor revenues and expenditures on a continual basis.

DEBT - TAX SUPPORTED

11. Tax supported debt to be issued over a 5-year capital planning period will be managed to a projected ratio of no more than 3 percent of the assessed valuation of taxable property of the County, may exceed the 3 percent ratio in any single year during the 5-year capital planning period, with the 5-year capital planning trend at or below 3 percent.
12. Payout of aggregate principal outstanding shall be no less than 50% repaid within 10 years.
13. Capital projects will be financed for a period not to exceed the expected useful life of the project.

14. The County will maintain its financial condition in order to maintain a minimum bond rating in the "AA" category for outstanding G.O. debt and "A" category for outstanding installment financing agreements from at least one nationally recognized municipal debt rating service.
15. Bond referendum and voted and non-voted debt issuance shall be considered only after inclusion of the financed projects in the County's Capital Improvement Plan and Financial Feasibility Plan.
16. Bond referendum initiatives shall be placed on the ballot in connection with countywide or municipal elections.
17. Tax supported bond referendum initiatives shall be placed on the election ballot only after the development of a comprehensive debt service management plan that provides for the:

- establishment of cash flow projections which provide an indication of fund requirements and the timing of bond sales
- development of principal and interest repayment schedules associated with bond sales
- development of annual operating costs associated with capital projects
- allocation of General Fund unrestricted revenues to support the repayment of issued bonds.

18. Projected bond cash flow deficits (the difference between projected bond repayment schedules and available revenues) shall be funded through increased taxes or reduction in General Fund services and programs.
19. A debt service management plan and fiscal impact statement shall be developed in connection with each bond referendum initiative and shall be disseminated to the general public.
20. Bond referendum initiatives that pass which contain debt service management plans providing for increased taxes shall be imposed in the first fiscal year immediately following the passage of the referendum. Fiscal impact statements that contain property tax rate increases shall be limited to $0.04 per $100 in any one fiscal year. By way of illustration, a fiscal impact statement contains a $0.07 per $100 property tax rate increase. A property tax rate increase of $0.04 shall be imposed in the first fiscal year immediately following the passage of the referendum with the balance of $0.03 occurring the second year following the referendum passage.

20a. A comprehensive debt service management plan, repayment plan and fiscal impact statement shall be developed prior to the issuance of non-voted debt.

21. General Fund resources (taxes) required to service debt service expenditures shall be calculated and communicated to the general public with the annual tax bill or annual report.

DEBT - UTILITY REVENUE SUPPORTED

22. Utility debt service coverage ratios shall be maintained at a level of 1.25 to 1.5 times coverage or greater (as measured by net revenues, excluding capital contributions, available for debt service divided by total debt service requirements).
23. Utility system debt to equity shall not exceed 70% - 75% (as measured by total long-term debt divided by total net assets).

23a. Combined water and wastewater rates shall not exceed 1.5% of median household income. 23b.
23b. Payout of aggregate principal outstanding shall be no less than 40% repaid within 10 years and 80% repaid within 20 years.
23c. Capital contributions shall be used to fund non-recurring asset additions contained in the capital improvement plan thereby reducing the requirement to issue utility system debt.

24. Utility capital projects will be financed for a period not to exceed the expected useful life of the project.
25. Utility capital projects shall be consistent and conform with other master plans such as Land Use, Economic Development and Transportation.
26. Utility capital projects shall satisfy area wide benefits relating to production, treatment, transmission and distribution, as well as being economically viable.
27. The County will maintain its enterprise financial condition in order to maintain a minimum bond rating in the "A" category for outstanding Revenue debt from at least one nationally recognized municipal debt rating service.

28. Utility debt issuance shall be considered only after inclusion of the financed projects in the County's Capital Improvement Plan and Financial Feasibility Plan.
29. Debt issuance shall be considered only after the:

- establishment of cash flow projections which provide an indication of fund requirements and the timing of bond sales
- development of principal and interest repayment schedules associated with bond sales
- development of annual operating costs associated with capital projects
- development of a financial feasibility plan to support the repayment of issued bonds

30. Utility capital projects funded by the County that increase the capacity of treatment or production of water or wastewater facilities owned and operated by the County shall be financed through General Obligation Bonds, which shall be voted upon by referendum, pursuant to Chapter 159 of the North Carolina General Statutes and other applicable law. At the time of issuance, the County shall declare that the GO bonds shall be payable as "General Obligation Indebtedness" from the revenues of the Water and Sewer Enterprise Systems in accordance with the priorities set forth in the General Trust Indenture that governs the County's Enterprise Systems Revenue Bonds and applicable law.
31. Upon the approval of the Board of County Commissioners in each instance of debt issuance, the issuance of debt to fund capital projects that are not to increase treatment or production capacity at water or wastewater facilities owned and operated by the County may continue to be issued as revenue bonds, Subordinate Indebtedness, or Other Indebtedness permitted by the County's General Trust Indenture that governs the County's Enterprise Systems Revenue Bonds and applicable law.

INVESTMENTS

32. The County will monitor the receipt and disbursement of all funds to ensure the maximum investment of idle cash.
33. The County will invest only in instruments which comply with the North Carolina Budget and Fiscal Control Act.

CAPITAL PLANNING

34. The County will develop, and annually update, a comprehensive 5-year capital improvement plan for the General Fund (in collaboration with and to include the Union County Public Schools) which identifies and balances both sources (where the money comes from) and uses (where the money goes).
35. The County will develop, and update semi-annually, a comprehensive 5-year capital improvement plan for the Enterprise Funds which identifies and balances both sources (where the money comes from) and uses (where the money goes).

FUND BALANCE TARGETS

36. The maintenance of adequate fund balance is necessary to provide working capital, funds for unanticipated expenditures, funds for capital expenditures in advance of their reimbursement from debt proceeds and tax rate stabilization.
37. General Fund target unreserved fund balances are estimated at 16% (as measured by unrestricted cash and investments minus liabilities divided by expenditures plus recurring interfund transfers.
38. Water and Sewer Operating Fund target fund balances are estimated at 365 days cash on hand (as measured by unrestricted cash and investments minus non-GAAP liabilities divided by operating expenses).

EXCESS FUND BALANCE

39. General and Enterprise Fund balances in excess and Enterprise Fund balances in excess of target levels will be transferred to capital reserve funds to provide equity resources to fund the County's capital improvement plan or will be used to redeem outstanding debt.

SWAP AGREEMENTS

40. Authorized to achieve a reduction and/or limit the financial exposure of debt service payments.

41. Must receive an opinion of bond counsel law firm that agreement is legal and binding.
42. Must receive Local Government Commission approval.
43. Must retain independent certification from financial advisor that swap agreement provides fair market value and that the associated risks are prudent risk appropriate for the County.
44. Counterparty must have two long-term, unsecured credit ratings in at least double A category.
45. Swap agreements may be procured either through negotiation or competitive. If negotiated, County must receive fair market opinion from financial advisor.

45a. Swap agreements which synthetically fix variable rate debt, combined with unhedged variable rate debt, will not exceed 20% to 30% of all long-term debt outstanding; this metric will be applied separately to tax supported and enterprise debt.

USER FEES

46. County encourages the establishment of fees at a level that maximizes revenues.
47. Regulatory fees shall be set at a level that strives to recover full costs (direct and indirect costs, such as depreciation or usage costs associated with capital assets) of providing the service, unless statutory restrictions limit the fee amount.
48. Non-regulatory fees are charged for a wide variety of services with the primary purpose for non-regulatory fees being to:

48a. influence the use of the service and
48b. increase equity.

49. Non-regulatory goods or services provided to specific, identifiable recipients shall be self-sustaining and therefore, shall be financed through user fees.
50. Non-regulatory user fees shall be set at a level that is competitive in the marketplace and strives to recover full costs (direct and indirect costs, such as depreciation or usage costs associated with capital assets) except when:

- free or subsidized service provides a significant public benefit;
- the County has determined that it should influence personal choice to achieve community-wide public benefits;
- full cost recovery would result in reduced use of the service or limit access to intended users thereby not achieving community-wide public benefits;
- the cost of collecting the user fees would be excessively high;
- ensuring the users pay the fees would require extreme measures.

Adopted by the Board of County Commissioners on June 5, 2023.

Financial Policies - Not Supplanting

OBJECTIVE

Supplanting, for the purposes of this policy, refers to the substituting of local funds for reductions in State, federal, or private funding.

The residents of Union County receive important, beneficial services from a wide variety of State, federal, and private agencies, as well as County programs which rely on funding from these agencies. These agencies are critical partners with the County and Union County Public Schools (UCPS) in the provision of programs to the community. When these agencies terminate programming, reduce services, or curtail funding, it cannot be assumed that the County will maintain these programs. The County's ability to assume the financial responsibility for these services without significantly impacting other service areas which are solely the responsibility of the County or without having to increase tax rates is limited.

The purpose of this policy is to formalize a Board of County Commissioners policy of not automatically supplanting funds from State, federal, or private agencies with local funds when those agencies reduce or eliminate funding to County or UCPS programs.

POLICY

1. It is the policy of the Board of County Commissioners to prevent, to the extent possible, the shifting of financial responsibility for State, federal, or privately funded programs to the residents of Union County by not supplanting those funds with local funds when those agencies reduce funding to the various community programs that rely on that funding.
2. The County Manager will provide information, on a periodic basis, to the Board of County Commissioners concerning any reductions in funding from State, federal, or private sources that are expected to adversely affect services to the residents of Union County. When services are severely affected by such reductions, the County Manager will determine what actions, if any, may be necessary to mitigate the impact on local services.
3. The Board of County Commissioners may from time to time express concerns, via resolution, to the County's legislative delegation, concerning possible impacts of reduced funding or increased/unfunded mandates.

Adopted by the Board of County Commissioners on February 4, 2013.

Financial Policies - Cash Handling

PURPOSE

The purpose of this policy is to establish the Cash Handling Policy in accordance with North Carolina General Statutes (N.C.G.S.) §§159-25(a) and §159-32.

APPLICABILITY

All employees or County representatives that receive moneys on behalf of the County.

POLICY

The Finance Officer, in accordance with N.C.G.S. §159-25(a), will supervise the receipt and deposit of all moneys received by the County.

It is required by N.C.G.S. §159-32 that any officer or employee of local government who collects and receives taxes or other moneys deposit the collection and receipts daily, except as otherwise provided by law.

Pursuant to N.C.G.S. §159-32, the Board of Commissioners does hereby approve requiring daily deposit only when the moneys on hand amount to as much as five hundred dollars ($500), but in any event a deposit shall be made on the last business day of the month. The five hundred dollar limit is an aggregate total for all County operations on a given day and not a limit for each individual County department or division. The Finance Officer, in such officer's sole discretion, is authorized to apply the five hundred dollar exception when determined necessary and appropriate for business reasons for a given department or division.

Pursuant to N.C.G.S. §159-32, the Finance Officer shall have the authority to audit the records of any officer or employee collecting or receiving taxes or other moneys for the County. The Finance Officer may also prescribe the methods to be used and records necessary to accomplish this review.

The Finance Officer is authorized to establish the necessary system of internal controls, procedures, and training to implement this policy. These controls and procedures shall require the segregation of related duties, proper authorizations, adequate documentation and written procedures.

The County's independent auditor shall review for compliance with the established cash handling policy as part of their annual audit and include any findings in the Management Letter presented to the Board of County Commissioners.

Adopted by the Board of County Commissioners on April 20, 2020.

Financial Policies - Donations

PURPOSE

On occasion, the County receives donations to support County projects and programs. Contributions made to the County may be deductible for Federal Income Tax purposes under provisions of the Internal Revenue Code.

The Union County Donations Policy provides general guidelines and authorizes the County Manager and the Finance Director to have certain authority relative to the receipt of donations.

APPLICABILITY

This policy applies to donations of personal property received by the County.

POLICY

Donation is defined as a gift or a free contribution, something voluntarily transferred by one person or entity to Union County without compensation. The Finance Director shall establish procedures and processes necessary to ensure that donations are managed to their optimum potential and that they are properly accounted for.

For single monetary donations less than or equal to $15,000, the Finance Director shall estimate the annual operating impact of the donation, if any, and obtain approval from the County Manager prior to acceptance. Such donations may be used for their intended purpose without approval of the Union County Board of Commissioners (the "BOCC").

Monetary donations greater than $15,000 will require approval and appropriation by the BOCC. The BOCC, in its sole discretion, may decline to accept monetary donations of any value. (Note: The Annual Operating Budget will contain a reserve for donations that will provide small donation appropriations in accordance with the budget ordinance. The reserve for donations will be funded through anticipated small donations and transferred as donations are received.)

For non-monetary donations the estimated value of which is less than or equal to $50,000, the Finance Director shall estimate the annual operating impact of the donation, if any, and obtain approval from the County Manager prior to acceptance. Such donations may be used for their intended purpose without approval of the BOCC. If the estimated value of the donation is greater than $50,000, the Finance Director shall instruct the recipient Department to notify the BOCC in writing by describing the donation, its intended use, and possible operating impacts. The BOCC, in its sole discretion, may decline to accept non monetary donations of any value.

It shall be the responsibility of the recipient Departments to send letters of appreciation to donors and to ensure that each donation is used only for its intended purpose. It is also the responsibility of the recipient Department to provide the donor with a "Donation Receipt." County staff will not provide tax advice concerning the impact of donations on an individual or business's tax liabilities.

Adopted by the Board of County Commissioners on April 6, 2015.

Revised August 14, 2023.

Financial Policies - Capital Asset

PURPOSE

It is required by North Carolina General Statute §159-26(b)(8) that local governments, including counties, establish and maintain "[a] ledger or group of accounts in which to record the details relating to the capital assets of the unit or public authority" in its accounting system.

The Capital Asset Policy provides certain guidelines and authorizes the Finance Director to establish procedures and processes necessary to adhere to the North Carolina General Statutes and Generally Accepted Accounting Principles, subject to approval by the County Manager.

APPLICABILITY

All capital assets, as defined below.

POLICY

Capital assets will be defined as tangible and intangible assets that have initial useful lives that extend beyond a single reporting period and a capitalization threshold of $10,000.00 or more. Capital assets include land, land improvements, buildings, building improvements, water tanks, water distribution lines, wastewater collection lines, water and wastewater operating plants, software, equipment and vehicles.

Capital assets are recorded at their original cost at the time of acquisition. As a general rule, cost includes the purchase price and other acquisition costs such as installation costs, freight charges, and transportation. Donated assets are recorded at their estimated fair value at the date of donation.

The acquisition, disposal, and transfer of fixed assets is done in accordance with applicable North Carolina General Statutes and with the appropriate procedures and processes not inconsistent with such statutes, as implemented by the Finance Director.

Capital assets are depreciated using the straight-line method over the asset's estimated useful life. Capital assets will be reported in the County's Annual Comprehensive Financial Report.

The Finance Director is authorized to establish procedures and processes to implement this policy in accordance with North Carolina General Statutes, Generally Accepted Accounting Principles, and best practices, subject to approval by the County Manager.

Adopted by the Board of County Commissioners on October 20, 2014.

Revised August 14, 2023.

Financial Policies - Procurement

1. GENERAL INFORMATION

1.1 INTRODUCTION

The purpose of this Procurement Policy is to establish guidelines for the procurement of goods and services by County officials and employees (collectively, "Employees" or "Employee" when used in the singular) for any County office, service area, department, division, board, commission, or other organizational unit of Union County (collectively, the "County Departments"). Union County's procurement operations are governed by North Carolina General Statutes ("N.C.G.S.") Chapter 143 (State Departments, Institutions and Commissions), Chapter 153A (Counties), and Chapter 159 (Local Government Finance); ordinances approved by the Union County Board of Commissioners; and all other applicable laws, rules, regulations, codes, standards, and orders of governmental bodies, agencies, authorities, and courts having jurisdiction ("Applicable Law"). The procurement of goods and services by Employees shall be in strict accordance with Applicable Law and with the requirements of this Policy.

It is the intent of this Policy, where appropriate, to prescribe procurement requirements beyond Applicable Law and to confer on County staff the authority to make certain discretionary decisions, when authorized by Applicable Law. Where there is no prescribed policy for the procurement of goods or services, such as when in an amount for which these policies are not cost effective or administratively feasible, Employees are expected to seek competitive proposals, when practicable, and to utilize such practices as necessary to ensure that County business is not concentrated among a few vendors or service providers.

The basic goals of the County's purchasing program are:

- To comply with the legal requirements of public purchasing and procurement.
- To assure vendors that impartial and equal treatment is offered to all that wish to do business with the County.
- To promote open competition in support of the goals of securing value, receiving the maximum value for each dollar spent, and promoting fairness.
- To provide County departments with the required goods, equipment, and services at the time and place needed and in the proper quantity and quality.
- To professionally administer the search for sources of supplies, the development of new sources, the selection of suppliers, and negotiations.
- To promote good and effective vendor relations, cultivated by informed and fair buying practices and strict adherence to ethical standards.

If the requirements established in this Policy are followed, each department can efficiently manage, control, and plan its available resources to meet present and future departmental needs and help the County to meet these goals. *

[Contact the Procurement Department for questions pertaining to this Policy.]*

The purchasing process is an ever-changing progression due to new technology and tools available to the purchasing profession. Therefore, this Policy shall be reviewed and revised periodically to keep current with continued developments as they pertain to the procurement process.

The Union County Board of Commissioners (the "BOCC") has approved this, Policy. Therefore, the BOCC shall approve any and all policy changes prior to their becoming effective. Administrative procedures may be adopted by the County Manager or Deputy County Manager as may be necessary to implement and maintain this Policy.

1.2 OVERVIEW

1.2.1 Centralized Purchasing

It is the policy of Union County that the Procurement Department provides centralized procurement services.

The main purpose of a centralized purchasing function is to provide for a uniform and systematic method of purchasing the necessary goods and services required by County departments.

The Procurement Department provides technical assistance to all County departments and agencies in areas of specifications, review, development, cost reduction, and product and price information. The Procurement Department ensures that the County properly and economically adheres to all purchasing requirements and limitations imposed by state law. In addition, the Procurement Department assists with administering various agency-wide contract programs and the Procurement Card Program.

1.2.2 Program Administration

The Procurement Director shall administer an effective centralized purchasing program for carrying out the policy directives of the BOCC, including, but not limited to:

- Collaborating with departments to reduce the cost of purchasing supplies, materials, equipment, and applicable services;
- Contractual assistance with construction and repair projects;
- Providing timely, effective, and efficient service to County departments and divisions, and to vendors doing business with the County;
- Maintaining open communications with departmental representatives and the public in general; and
- Encouraging free and open competition in the bid process.

1.2.3 Competitive Bidding

When required by Applicable Law, the County shall obtain competitive bids on purchases. The County shall also endeavor to obtain competitive bids whenever it is deemed to be in the best interest of the County, regardless of the dollar amount.

1.2.4 Budget Ordinance

The County Manager, Procurement Director, and Procurement Department shall adhere to the policies and procedures approved by the Board of Commissioners in each annual budget ordinance. If approved by the BOCC, the annual self- certification for micro purchase thresholds as required under 2 C.F.R. § 200.320(a)(1)(iv)(A) for federal loan/grant awards will be incorporated into the annual budget ordinance. All reference to the annual self-certification for micro purchase thresholds as required under 2 C.F.R. § 200.320(a)(1)(iv)(A) for federal loan/grant awards listed in each annual budget ordinance shall be incorporated in this Procurement Policy.

1.3 CODE OF CONDUCT

1. All procurement activities must be conducted according to Applicable Law, including, but not limited to, N.C.G.S. §14-234.
2. All procurement activities must be conducted with integrity at all times and kept free from any personal obligations to vendors or contractors.
3. No employee or officer of Union County shall participate in the award or administration of a federal, state, or locally funded project or purchase if that person, that person's spouse, any member of that person's immediate family, or an organization which employs or is about to employ the person, the person's spouse, or a member of the person's immediate family has a financial or other interest in the company selected for award.
4. Any County employee having knowledge of or a reason to know of a potential personal interest or upon the discovery of a potential personal interest has an affirmative duty to disclose such personal interest to the department head. Any attempts by any person, firm or corporation to influence the decision of a county Employee with regard to County business must be reported to the County Manager.

2. SMALL PURCHASES

Purchase of Goods: Less than $30,000

Construction and Repair: Less than $30,000

The Procurement Department will provide assistance as needed.

Purchases of apparatus, supplies, materials, equipment, and construction or repair services valued at less than $30,000 may be made without soliciting multiple quotes or informal bids. The requesting department shall, however, obtain a written quote from the vendor they select. The Department Director shall maintain written documentation in their file to show that the price is fair and reasonable.

3. BIDDING PROCESS AND PURCHASING REQUIREMENTS

3.1 GENERAL

The Procurement Department will provide assistance in the preparation of specifications/bid documents that will ensure competitive bids whenever possible. Because competition is critical to public purchasing, it is essential that specifications be developed to ensure a sufficient number of competitive bids will be received. Specifications shall be as simple as possible while maintaining the degree of exactness required to meet the requirements of goods or services being requested. Specifications utilizing a brand name must include the term "or approved equal" to avoid being restrictive and eliminating fair competition from the bidding process. Well-written specifications will ensure that the Procurement Department is able to procure what is needed, when it is needed, at the lowest possible cost. The Procurement Director will determine which Procurement method will be most advantageous to the County and will ensure that the County is in compliance with Applicable Law.

3.2 INFORMAL BIDS

Purchase of Goods: Greater than or equal to $30,000, but less than $90,000

Construction and Repair: Greater than or equal to $30,000, but less than $500,000

The Procurement Department will obtain all informal bids as defined by N.C.G.S. §143-131 in writing. In accordance with N.C.G.S. §143-131, informal bids are required for purchases of apparatus, supplies, material, or equipment ("purchase contracts") costing greater than or equal to $30,000, but less than $90,000; and construction and repair work costing greater than or equal to $30,000, but less than $500,000. **

*[** The use of a licensed architect or engineer is required for certain construction or repair projects in the informal range pursuant to N.C.G.S. §133-1.1(a). For more information regarding the procurement of architectural, engineering, or other professional services, see Section 3.4 herein.]*

Bids may be obtained by utilizing any one of the competitive bidding methods described in this policy if the Procurement Director deems it to be in the best interest of the County. Bids may be received by sealed bids, email, regular mail, or electronic means (if permitted by Applicable Law). Pursuant to N.C.G.S. §143-135, bids are not required for construction projects when the work is performed by Employees using force account qualified labor on the permanent payroll of the County, provided that the value of such work does not exceed the limits prescribed by statute.

All contracts shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.

Bid tabulations shall not be subject to public inspection until the contract has been awarded (N.C.G.S. §143-131). If a combination of informal/formal process is used, information becomes public after bid opening.

3.3 FORMAL BIDS

Purchase of Goods: $90,000+

Construction and Repair: $500,000+

A formal bid is required for:

1. Purchase of Goods: The expenditure is $90,000 or more for the purchase of apparatus, supplies, materials, and/or equipment.
2. Construction and Repair: The estimated expenditure is $500,000 or more for construction and repair projects.

The contract for any such purchase and/or service must be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.

3.4 PROFESSIONAL SERVICES

The County will select firms for professional services through a qualifications-based selection process in accordance with N.C.G.S. §§143-64.31 and 143-64.32. Requirements for professional services will be "announced" and offerors must be selected based on demonstrated competence and qualifications for the type of professional services required without regard to fee.

The County shall use good faith efforts to notify minority firms of the opportunity to submit qualifications for consideration.

If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm.

The County Manager may exempt particular projects from the qualifications-based selection process for which the estimated professional fee is in an amount less than $50,000.

3.5 PROCUREMENT OF OTHER SERVICES

The provisions listed in this section apply to contracts for services, except for contracts for architectural, engineering, and surveying services, and unless governed by other County policy or contract, or by State or Federal requirements.

3.5.1 Contracts for Services Less Than $50,000

1. Department may award to one vendor/company without soliciting via RFP or quotations upon approval by the County Manager or Assistant County Manager.
2. The Department Director shall provide written documentation to the County Manager to show that the price is fair and reasonable.
3. To the extent practicable, purchases should be distributed among qualified companies.
4. Contracts must be in writing.

3.5.2 Contracts for Services Greater Than or Equal to $50,000, but Less than $90,000

Such services may be procured without utilizing an RFP; provided, however, that Directors and/or Department Representatives solicit three quotations and document such quotations in writing, in order to ensure that services which most closely match the Department's needs are procured at the lowest available price.

Note: If Federal funds are to be utilized, refer to* Section 5*.

3.5.3 Contract for Services Greater Than or Equal to $90,000

Unless governed by other County policy, contract, or by State or Federal requirements, such services shall be procured by the County upon issuance of a Request for Proposal (RFP) by the Procurement Department. The terms of the RFP shall be prepared by the Procurement Representative in conjunction with the Department Representative requesting the services.

The RFP shall include a list of factors to be utilized in evaluating the proposals. The County shall secure not fewer than two proposals, when practicable. The award of a service agreement shall be made to the offeror whose proposal is determined to be the most advantageous to the County, taking into consideration the evaluation factors set forth in the RFP. Because there are no statutory requirements applicable to the procurement of such services, an Assistant County Manager (ACM) or the County Manager may exempt a service from the RFP process for good cause and when in the best interests of Union County. The exemption of any such service exceeding $90,000 shall be reported to the Board of Commissioners at its next regular meeting and shall include the justification for exemption.

3.6 EMERGENCY PURCHASES

The County Manager may exempt the procurement of any goods or service from the requirements of this Policy in cases of special emergency involving the health and safety of the people or their property pursuant to N.C.G.S. §143-129(e) (2). In order to exercise this emergency exemption, the emergency must be present, immediate, and existing. It cannot be a condition that is merely anticipated and may never actually occur. If the condition can be foreseen in time to take action to prevent harm to the public (or if the required procurement method can be completed before any harm would occur), the emergency exception cannot be invoked. Further, if harm to the public can be averted through temporary measures while the proper procurement method is being conducted, the emergency exception cannot be used. The failure to take proper precautions to prevent the need for an emergency procurement will not be accepted as a justification for exemption from the requirements of this Policy.

3.7 EXCEPTIONS TO THE FORMAL BIDDING REQUIREMENTS

N.C.G.S. §143-129(e) lists exceptions to the standard formal bidding requirements of N.C.G.S. §143-129. The Procurement Director is responsible for gathering information to document the basis for the use of any exception to the competitive bidding requirements. The County Manager, with the Procurement Director, will determine whether exceptions are appropriate for a purchase or group of purchases.

3.8 SOLE SOURCE

In accordance with N.C.G.S. §143-129, sole source purchasing applies to purchases of apparatus, supplies, materials, or equipment when: (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration. In the event a department believes that this sole source exception may apply to a purchase, the Procurement Director may waive the competitive pricing procedures outlined in this Policy pending applicable approval by the County Manager and Union County Board of County Commissioners in accordance with N.C.G.S. §143-129.

3.9 PRE-QUALIFICATION OF BIDDERS FOR CONSTRUCTION PROJECTS

3.9.1 General

Prequalification is a process of evaluating and determining whether potential bidders have the skill, judgment, integrity, sufficient financial resources, and ability necessary to the faithful performance of a contract for construction or repair work. This policy is an objective prequalification policy applicable to all construction or repair work for which Union County intends to prequalify bidders.

The County is not required to prequalify bidders on any particular project. Prequalification of a bidder for a project shall only apply to that individual project. The use of prequalification pursuant to this policy is limited to construction or

repair projects (regardless of cost) that are bid under the single-prime, separate-prime (multi-prime), or dual bidding methods. Prequalification is prohibited for contracts for architectural services, engineering services, surveying services, construction management at risk services, design-build services, design-build bridging services, and public private partnership construction services.

A construction manager at risk shall use the process outlined in this Policy for prequalification of contractors being utilized on construction management at risk projects. In such an instance, the construction manager at risk and the County shall jointly develop the assessment tool and criteria for each construction management at risk project, including the prequalification scoring values and minimum required score for prequalification on the project.

If the County determines it is appropriate to use prequalification for a project, a bid shall be deemed nonresponsive if a bidder submits a bid on a construction project subject to prequalification for which it has not been prequalified in accordance with this Policy. The previous statement does not apply to bidders initially denied prequalification that are subsequently prequalified pursuant to a protest under this Policy.

Notwithstanding the fact that a bidder is prequalified, the County reserves the right to reject a bidder's bid if it is determined that the bidder has not submitted the lowest responsible and responsive bid. The prequalification of a bidder shall not preclude the County from subsequently concluding that the bidder is not a responsible bidder pursuant to applicable law. All construction and repair contracts shall be awarded to the lowest responsive and responsible bidder, taking into consideration quality, performance, and time specified in the bids for the performance of the project.

The County shall advertise for prequalification for a particular project at least nine (9) weeks prior to the actual bid opening date for a project and have a prequalification submission deadline at least seven (7) weeks prior to the bid opening date for a project.

3.9.2 Requirements for Prequalification Criteria and Assessment Tool

The criteria and assessment tool for each project must be uniform, consistent, and transparent in its application to all bidders. All bidders who meet the prequalification criteria required to be prequalified for a project are allowed to bid on that project. The criteria must be rationally related to the construction or repair work at issue for a project. The criteria and assessment tool shall, at a minimum, address the following factors listed below. However, additional or more detailed factors may be used in an assessment tool for a project that are appropriate for that particular project.

1. Organizational Structure: The bidder shall provide a list of all owners, officers, partners, or individuals authorized to sign legal documents for the bidder on a project. The bidder must include its full legal name, typed or printed in a clear and legible manner.
2. Classification: A bidder shall indicate the type(s) of work the bidder normally performs, information regarding licensure, and any other required pertinent information.
3. Experience: A bidder shall be permitted to submit history or experience with projects of similar size, scope, or complexity compared to the project subject to prequalification. The bidder shall not be required to have been previously awarded a construction or repair contract by Union County.
4. Financial: A bidder shall be required to provide any solicited financial information appropriate to demonstrate its financial capability to perform the work for the project.
5. Capacity: A bidder shall demonstrate sufficient bonding capacity, insurance, and resources for the project.
6. Safety: A bidder shall demonstrate an acceptable safety history.
7. Legal Authorization: A bidder shall provide a copy of their North Carolina contractor's license, or provide a statement indicating that they are able to acquire one before submitting a bid on any project for which such license is required. If a statement is necessary, the bidder shall identify the states in which they are licensed for the type of work contemplated for a project.

3.9.3 Review of Prequalification Submittals Process

1. Prequalification Committee: A County department's assigned project manager for a particular project shall establish a prequalification committee for that project to review and score qualifications submitted by bidders to determine prequalification eligibility utilizing the prequalification process set forth herein. If a construction manager at risk is utilized, the construction manager and project manager shall agree upon the members of the project's prequalification committee. The names of the prequalification committee members shall be submitted to Union County's Procurement Department prior to the commencement of the review and scoring process.

2. Review of Qualifications: The prequalification committee shall adopt and use an objective assessment tool and criteria for the specific project as outlined in this Policy. The prequalification criteria shall not require a bidder to have previously been awarded a construction or repair project by the County. The assessment tool and prequalification criteria used by the prequalification committee shall include pre qualification scoring values and the minimum required score to be prequalified for the project. The prequalification committee shall determine whether each bidder is prequalified for a project in accordance with the assessment tool and criteria and scoring system established for the project.
3. Notice of Decision: Bidders that submit prequalification applications shall be notified by e-mail and first-class mail of the prequalification committee's decision regarding pre-qualification. Notice to a bidder determined not to be prequalified shall include the reason(s) for denial. Notice shall be provided prior to the opening of bids for the project, with sufficient time for the bidder to protest the denial of prequalification.

3.9.4 Protest Procedure

1. Protest: A bidder may protest denial of prequalification by filing a written protest via hand delivery or e-mail. The written protest must be received by the Procurement Director, or designee (hereinafter the "Director"), within three (3) business days of notice of denial. The date of the notice of denial shall be the date the notice of denial was emailed to the bidder. The written protest shall be addressed to the Director, list the assigned County representative for the project, articulate the reasons why the bidder is contesting the decision, and attach any documents or information that support the bidder's position. The Director shall contact the bidder within five (5) business days of a receipt of a protest to schedule a date and time to review the protest, which review meeting shall be held within ten (10) business days of the date the protest was received.

2. Protest Decision: The Director shall evaluate the protest within five (5) business days of the scheduled date and time of the protest review meeting and make a finding that: (1) bidder did meet the prequalification requirements and is prequalified for bidding on the project, or (2) uphold the denial. If after review, the Director finds that the bidder meets the criteria for prequalification, then the bidder shall be notified via e-mail and first-class mail that they are prequalified for the specified project and are allowed to submit a bid for the project. If the Director upholds the denial, the bidder shall be notified in writing via e-mail and first-class mail.
3. General Rules for Protests: The e-mail address for the Director will be given to bidders submitting prequalification applications to assist with communication regarding the protest process. A bidder shall submit at least two e-mail addresses for use by the County and/or construction manager at-risk (if applicable) in communicating decisions regarding a protest. Bids received from bidders who have been disqualified shall not be opened and shall be returned to the bidder. A bidder's failure to comply with any requirements of the protest procedure in this Policy shall result in the bidder's protest being denied.

4. ADDITIONAL BID PROCESSES

4.1 ADVERTISING FOR BIDS

N.C.G.S. §143-129 requires that formal bids be advertised in a newspaper having general circulation, or by electronic means, or both.

The Procurement Director or an authorized designee shall advertise either electronically or in a local newspaper, whichever is determined to be most efficient and effective. Newspaper advertisements shall appear at least one time

and at least ten full days before the time specified for the opening of bids in a newspaper having general circulation in the jurisdiction that is seeking bids. Electronic advertisements shall appear electronically at least ten days prior to the bid opening date.

4.2 BID OPENING

It is the County's policy that all sealed bids in the formal range and/or all sealed bids in the informal range, if utilizing the sealed bid method, be opened in public in the designated Procurement Department location unless otherwise stated in the solicitation or authorized.

It is also the County's policy that the bid opening, evaluation, and award process be governed by the standards of openness and impartiality.

4.3 BID DEPOSIT / BID BOND

Pursuant to N.C.G.S. §143-129(b), no formal proposal for construction or repair work may be considered or accepted unless at the time of its filing it is accompanied by a bid deposit equal to not less than five percent (5%) of the proposal. The bid deposit may be cash, cashier's check, or a certified check. In lieu of making the cash deposit, bidders may submit an original bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds. A faxed or copied Bid Bond will not be accepted.

4.4 FIXED PRICE TERM AGREEMENTS

4.4.1 Purpose / Applicability

This Policy applies only to fixed price service and bulk purchase agreements ("Fixed Price Term Agreements") which have been properly procured through the applicable procurement method, and which contain a set price or rate list or the term of the agreement which cannot be altered except by limited price escalation such as annual CPI increases.

This Policy does not apply to any professional services performed by architects, engineers, surveyors, or construction managers at risk, nor to any consulting agreements, capital project agreements, construction agreements, agreements involving the expenditure of federal funds, or to agreements originating in an enterprise fund department or expending enterprise funds.

Some examples of agreements to which this Policy applies include, but are not limited to, office supplies, maintenance services, temporary staffing services, printing services, County uniforms, and other routine services or bulk purchases which have not been specifically excluded from this Policy.

4.4.2 Policy

Fixed Price Term Agreements which have been properly procured under the County's Procurement Policy and which have received the requisite internal approvals through the contract review and execution process will be submitted to the Board of County Commissioners ("BOCC") for approval prior to signature of the initial agreement by the County Manager.

Following initial BOCC approval, the County Manager shall be authorized to execute amendments and authorize spending under each Fixed Price Term Agreement during the initial term of the agreement and any renewal terms as authorized by the Procurement solicitation.

Once a Fixed Price Term Agreement has received BOCC approval, the agreement shall not be subject to the County Manager's then-current contracting authority limits. All spending under Fixed Price Term Agreements shall remain restricted to the amounts appropriated by the BOCC in in the annual budget in a given fiscal year.

The Procurement Department shall maintain a list of all currently effective Fixed Price Term Agreements and shall report to the BOCC on a quarterly basis the total amounts spent under such agreements.

4.5 CHANGE ORDER POLICY

4.5.1 Purpose

The purpose of this procedure is to establish a process that defines the delegation of signature authority for the execution of construction contract change orders. It is recognized that amendments to the County's Procurement Policy will be needed to clarify the authority of the County Manager in this regard and that a more comprehensive procedure for the administration of construction change orders will be developed after the adoption of these policy changes.

4.5.2 Policy

This policy applies only to construction contract change orders that increase or decrease the original contract amount whereby the revised contract amount is within the contingency amount prescribed in the contract as awarded by the Board of County Commissioners (BOCC). All change orders for work exceeding the original contract contingency amount must be approved by the Board of County Commissioners. All change orders for work within contract contingency shall be authorized by the County Manager. The County Manager has authorization to assign signature authority for such change orders to Senior Management or Director level positions as needed.

4.6 CONTRACTING AUTHORITY

The County shall award all contracts in accordance with Applicable Law and County policy. The dividing of contracts to evade the provisions of the Procurement Policy or Applicable Law is prohibited.

The County Manager may:

1. Delegate contract signature authority for only those repetitive standard agreements for which the terms are fixed and not subject to change (e.g. Parks & Recreation camp site leases, subscriber agreements for electronic filing in the Register of Deeds' office, license agreements for use of the Agricultural Services Center, etc.);
2. Delegate, on a temporary basis, to an Assistant County Manager the ability to exercise such contract approval and appropriation transfer authority as granted to the County Manager pursuant to this Policy or the annually adopted County budget ordinance when the County Manager will be out of the office or otherwise unable to take such action; and
3. Authorize the Procurement Director to sign and approve contracts, which would include purchase orders, which are valued at $30,000 or less, provided that (a) the contract has been pre-audited in accordance with N.C.G.S. § 159-28 (or any successor statute); and (b) the goods or services underlying the contract were procured in accordance with this Policy.

4.7 ADDITIONAL AUTHORIZATION

To facilitate the orderly and timely administration of the County's procurement program, authorization is hereby given by the Board of County Commissioners for the following:

1. The County Manager is authorized to reject formal and informal bids received for the purchase of apparatus, supplies, materials, or equipment, and to re-advertise to receive bids when necessary and in the best interest of the County.
2. The Procurement Director is authorized to advertise bids by publication in a newspaper having general circulation in Union County, or by solely electronic means, or both, in the Director's discretion.
3. Pursuant to N.C.G.S. §133-33, the Procurement Director may keep confidential the County's estimate of any public contract prior to bidding and the identity of contractors who have obtained proposals for bid purposes.

4. The County Manager or Deputy County Manager is authorized to adopt such processes and procedures as may be necessary and expedient for implementation of this Policy.
5. In addition to such other authority granted herein, the County Manager may exempt from this Policy the procurement of goods and services valued at less than $30,000 and may otherwise vary the application of these guidelines upon good cause shown and when in the interests of Union County, provided that such exemption or variance does not violate Applicable Law.

4.8 PERFORMANCE AND PAYMENT BONDS

1. N.C.G.S. 143-129(c) requires a performance and payment bond when the sum of all contracts for a construction or repair project exceed $300,000. Any contractor or construction manager at risk with a contract exceeding $50,000 for such a project will be required to provide performance and payment bonds for the full amount of the contract. In place of bonds, the contractor may provide cash, certified checks or governmental securities in the full amount of the contract.

2. The County may require a performance and payment bond on construction projects costing less than $300,000, certain purchase contracts, or contracts for services if it is in the best interest of the County to do so.

4.9 EXPENDITURES REQUIRING BOARD OF COMMISSIONERS APPROVAL

County staff shall obtain BOCC approval on the following expenditures:

1. Purchases of goods and services above the Manager's delegated authority to execute contracts;
2. Construction contract change orders above the contingency amount included in the award for the contract;
3. Applicable revenue generating contracts above the Manager's delegated authority to execute contracts;
4. Sole Source purchases pursuant to N.C.G.S. §143-129(e)(6); and
5. "Piggybacking" or previously bid Purchase Contracts, upon at least 10 days' published notice pursuant to N.C.G.S §143-129(g).

4.10 M/WBE REQUIREMENTS

Union County will provide minority and women-owned businesses equal opportunity to participate in all aspects of County procurement relating to building construction and repair contracts in accordance with the County's Minority Business Plan.

N.C.G.S. §143-128.2 establishes goals for minority participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods on County building construction, erection, alteration, and repair projects ("building projects") in the amount of $300,000 or more and on County building projects involving State funding where the total project cost is $100,000 or more.

For the purpose of this policy, "Minority Business" is defined by statute as a business that is at least 51 percent owned by one or more ethnic minorities or socially and economically disadvantaged individuals.

Union County has established a verifiable goal of 10% for participation by minority businesses in the aforementioned building project contracts.

5. VENDOR RELATIONSHIPS

The County shall work to maintain and practice the highest possible standards of business ethics, professional courtesy, and competence in dealing with vendors and contractors.

6. CONFLICTS OF INTEREST, GIFTS AND FAVORS

This Policy requires that all business shall be transacted in compliance with Applicable Law and shall be conducted in conformance to the highest ethical standards. The proper operation of government requires that Employees be independent, impartial, responsible to the citizens, and that the public positions not be used for personal gain. The following conduct is required in furtherance of these principles.

Employees shall not undertake or make, pursuant to their public authority, any contracts for their own benefit or contracts in which they are in any manner concerned or interested or from which they receive profits. Employees are prohibited from obtaining a direct benefit from any contract in which they are involved on behalf of Union County. They are further prohibited from influencing or attempting to influence award of contracts, soliciting, or receiving gifts or rewards for recommending, and influencing or attempting to influence contract awards. These matters are generally governed by N.C.G.S. §14-234.

Pursuant to N.C.G.S. §133-32, no Employee of Union County who is charged with the duty of (i) preparing plans, specifications, or estimates for public contracts; (ii) awarding or administering public contracts; or (iii) inspecting or supervising construction, shall accept any gifts or favors from any vendor or service provider who has a contract with a governmental agency, or has performed under such a contract within the past year, or anticipates bidding on such a contract in the future.

This section is not intended to prevent a gift a public servant would be permitted to accept under N.C.G.S. §138A-32, or the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting.

This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to their Department Director if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift.

7. GENERAL PROVISIONS

In the event of any conflict between this Policy and the North Carolina General Statutes, the General Statutes shall control. Whenever any provision of this Policy refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, the Policy shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section. To the extent any provisions of this Policy exceed the requirements of Applicable Law, such provisions shall confer no rights on vendors or service providers. Without limiting the generality of the foregoing, failure to comply with those portions of the Policy which exceed the requirements of Applicable Law shall not be deemed arbitrary and shall confer no right of appeal or resort to the courts. Pursuant to N.C.G.S. § 143-133, no contract shall be divided for the purpose of evading the provisions of this Policy. Failure to comply with the requirements of this Policy shall subject such Employee to disciplinary action in accordance with County personnel policies and may subject such Employee to personal liability when authorized by Applicable Law.

8. ENVIRONMENTAL IMPACT

Combined, local and state governments purchase more than one trillion dollars of goods and services each year. Many of these products may contribute to problems in the overall environment, including contamination of the air and water, and depletion of environmental resources. Union County has an opportunity to serve as a community

model for environmental leadership. We work proactively to identify and source environmentally friendly options to meet our organizational needs without adversely impacting operational budgets or performance requirements. By incorporating environmental consideration into public procurement, Union County can reduce its burden on the local and global environment, remove unnecessary hazards, protect public health, reduce costs and liabilities, and help develop markets for environmentally responsible products.

9. REQUISITIONS AND PURCHASE ORDERS

9.1 REQUISITIONS

A requisition a request for goods or services made by a department. If the requisition is approved, the Procurement Department will process the requisition to a purchase order (PO) and send to the requesting Department.

9.2 PURCHASE ORDERS

A purchase order will not be issued without receiving an approved requisition from the ordering department. The Procurement Director, or designee, and the Finance Officer, or Deputy Finance Officer, must authorize all purchase orders.

All orders placed by the County shall be by Purchase Order or in accordance with the Procurement Card Policy.

Orders shall not be placed by any Employee prior to receipt of a Purchase Order unless utilizing a County-issued procurement card. Failure to comply with the policy and procedures contained herein may result in an Employee being held personally liable for any funds obligated for the purchase as provided for in N.C.G.S.§159-28.

10. DISPOSITION OF SURPLUS PROPERTY

10.1 SURPLUS – REAL PROPERTY

The County Manager shall review and evaluate all real property owned by the County periodically to determine if it is of use to the County before declaring it surplus.

10.2 SURPLUS – PERSONAL PROPERTY

10.2.1 Policy

When apparatus, supplies, materials, or equipment purchased for use by a County department are no longer suitable for use by that department, such property shall be provided to the Procurement Director for distribution to another department or for disposition as surplus. The Procurement Director shall apprise all County departments of such property in order to maximize its benefit to Union County. If, after a reasonable period, the Procurement Director determines that such property is not suitable for use by another County department, the Procurement Director may dispose of such surplus property as outlined in Section 10.2.2 herein.

10.2.2 Sale or Disposition of Surplus Personal Property

1. The Procurement Department will process all surplus personal property sales for the County after obtaining approval from the County Manager or from the Board of Commissioners, as required.
2. The Procurement Director may dispose of any surplus personal property, with or without notice and minimum waiting period, by any means which he or she judges reasonable to yield the highest attainable sale price in money or other consideration, including but not limited to the methods of sale described below:

- Auction: Electronic or Public
- Negotiated Offer, Advertisement, and Upset Bid
- Private Negotiation and Sale (only if under $30,000)

- Advertisement for Sealed Bids
- Property Exchanges
- Trade-ins (when specifications are prepared)

3. All sales shall be conducted in accordance with Article 12 of Chapter 160A of the North Carolina General Statutes.
4. Surplus personal property may be conveyed to other units of government. Other governmental units consist of a city, county, school administrative unit, sanitary district, fire district, the State, or any other public district, authority, department, agency, board, commission, or institution.
5. Surplus property may only be conveyed without monetary consideration as authorized under N.C.G.S. Chapter 160A, Article 12.
6. Sale of surplus property to County employees is not prohibited except in those instances where there is deemed to be a conflict of interest. The presence of conflict of interest will be ruled on by the Procurement Director; however, the County Manager shall have the final authority in these decisions.
7. The disposal of recyclable items and real property is not covered under this Section 10.2.2.
8. Federal Grant Funds: Any personal property that the County wishes to dispose of that was acquired in whole, or in part, with state or federal grant funds must satisfy any conditions imposed by such grants prior to the sale of the property.

11. PROCUREMENT CARD PROGRAM

11.1 PURPOSE

Procurement cards may be used by County Employees for any County office, department, division, board, commission, or other organizational unit of Union County (collectively, the "County Departments"). The Procurement Card Program has been established to provide a vehicle for departments to quickly procure goods and services and to significantly reduce paperwork and costs. By using a procurement card, the traditional requisition to purchase order and the number of written checks is reduced. Approved holders of a procurement card are required to comply with Applicable Law and with the requirements of this Procurement Policy.

11.2 POLICY

The Procurement Card Program enables authorized Union County Employees to purchase and pay for applicable materials, supplies, goods and services below $5,000 within given policy and guidelines, on behalf of their division/department. This Section 11.2 applies to all County Employees participating in the Procurement Card Program. The $5,000 limit includes any and all applicable sales tax.

Cardholders are required to timely satisfy all procedures identified herein in order to avoid past due transactions from appearing on statements and/or cards being rejected due to credit limits being exceeded.

11.3 PROCUREMENT CARD BENEFITS

The Procurement Card (P-Card) Program is an efficient, cost-effective method of paying for transactions. The procurement card has all the features of a regular credit card and can be used directly with any supplier where Visa is accepted. The benefits are:

- Increased productivity by allowing the cardholders to purchase applicable supplies, goods, and materials quickly;
- Offers a simple and easy-to-use payment method;
- Reduces number of purchase requisitions, petty cash transactions, and other time-consuming purchasing activities;
- Diminishes paperwork associated with expense reimbursements, invoices and checks;
- Enables supplier to receive payment in a timely manner;
- Improves accounts payable operations with fewer checks to process;
- Provides immediate settlement of procurement card payments, reducing their cost of funding;
- Streamlines administration through reduced paper-processing for invoices and receivables; and
- Improves accounts receivable performance and reduces bad debt and collection activities.

12. PROCUREMENT WITH FEDERAL FUNDS

12.1 POLICY

All contracts and purchases funded, in whole or in part, with any federal or state grant or loan funds must be procured by all County Departments in a manner that conforms will all Applicable Law, including, without limitation, all federal laws, policies, and standards, including those under the federal Uniform Guidance (2 C.F.R. Part 200). Union County's rules regarding procurement using federal funds are found in the attached **Appendix A**.

Note: In the event of any conflict between this Policy and federal purchasing requirements, the most restrictive purchasing requirement applies.

13. EFFECTIVE DATE

This Policy shall become effective upon adoption and shall supersede the Union County Procurement Policy, which was adopted on November 17, 2014, as well as any such other procurement policy as may be in effect at that time.

APPENDIX A - PROCUREMENT PROCEDURES WITH FEDERAL FUNDS

1. POLICY

All contracts and purchases funded, in whole or in part, with any federal or state grant or loan funds must be procured by all County Departments in a manner that conforms will all Applicable Law, including, without limitation, all federal laws, policies, and standards, including those under the federal Uniform Guidance (2 C.F.R. Part 200). Further, such regulations shall supersede all local purchasing provisions to the extent of any conflict. Without limiting the generality of the foregoing, purchases made by the Union County Department of Transportation with federal transit funds shall comply with the current version of FTA (Federal Transit Administration) Circular 4220.1. All sub-recipient agencies receiving federal or state funds through the County of Union shall also comply with the federal or state granting agency procurement regulations, which supersede all local purchasing resolution provisions. The procurement of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects funded in whole or in part with federal financial assistance must comply with all of the provisions of this Appendix A, which describe the requirements related to conflicts of interests and gifts. The Procurement Director may establish procedures consistent with this Policy to ensure compliance with the requirements of this paragraph.

This Appendix A applies when procuring goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects funded in whole or in part with federal financial assistance (direct or reimbursed). This Section also applies to any sub-recipient of the funds.

The Employee responsible for managing the federal financial assistance award shall review the notice of award to identify any additional conflicts of interest prohibitions or requirements associated with the award, and shall notify all employees, officers, and agents, including sub-recipients, of the requirements of this section and any additional prohibitions or requirements.

1.1 COMPLIANCE WITH FEDERAL LAW

All procurement activities involving the expenditure of federal funds must be conducted in compliance with the Procurement Standards codified in 2 C.F.R. §200.317 through §200.327 unless otherwise directed in writing by the federal agency or state pass-through agency that awarded the funds. The County of Union will follow all applicable local, state, and federal procurement requirements when expending federal funds. Should the County of Union have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law. In addition, the County must comply and adhere to any other grant specific requirements.

1.2 CONTRACT AWARD

When bids are required by law, or otherwise solicited by the County, all contracts shall be awarded only to the lowest responsive responsible bidder possessing the ability to perform successfully under the terms and conditions of the contract. Consideration shall be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

1.3 NO EVASION

No contract may be divided to bring the cost under bid thresholds or to evade any requirements under this policy or state and federal law.

1.4 CONTRACT REQUIREMENTS

All contracts paid for in whole or in part with federal funds shall be in writing. The written contract must include or incorporate by reference the provisions required under 2 C.F.R Section § 200.326 and as provided for under 2 C.F.R. Part 200, Appendix II.

1.5 SELF-CERTIFICATION

Annual self-certification shall be included within the annual Budget Ordinance and approved by the Board of Commissioners.

1.6 CONTRACTOR'S CONFLICT OF INTEREST

Designers, suppliers, and contractors that assist in the development or drafting of specifications, requirements, statements of work, invitation for bids or requests for proposals shall be excluded from competing for such requirements.

1.7 APPROVAL AND MODIFICATION

The Administrative Procedures contained within this policy are administrative and may be changed as necessary at staff level to comply with the Federal Procurement Standards within this Policy. However, any policy changes must be approved by the Board of Commissioners prior to becoming effective.

Note: As a reminder, if there is a conflict between the Union County Procurement Policy and federal purchasing requirements, the most restrictive purchase policy applies.

2. PROCEDURE

Either the Purchasing Department or the Requesting Department shall procure all contracts in accordance with the requirements of this Section of the Policy.

General Procurement Standards and Procedures:

2.1 NECESSITY

Purchases must be necessary to perform the scope of work and must avoid acquisition of unnecessary or duplicative items (no stockpiling). The Procurement Department and/or the requesting department should check with the federal surplus property agency prior to buying new items when feasible and less expensive. Strategic sourcing should be considered with other departments and/or agencies who have similar needs to consolidate procurements and services to obtain better pricing.

2.2 CLEAR SPECIFICATIONS

All solicitations must incorporate a clear and accurate description of the technical requirements for the materials, products, or services to be procured, and shall include all other requirements which bidders must fulfill and all other factors to be used in evaluating bids or proposals. Technical requirements must not contain features that restrict competition.

2.3 NOTICE OF FEDERAL FUNDING

All bid solicitations must acknowledge the use of federal funding for the contract. In addition, all prospective bidders or offerors must acknowledge that funding is contingent upon compliance with all terms and conditions of the funding award.

2.4 COMPLIANCE BY CONTRACTORS

All solicitations should inform prospective contractors that they will need to comply with all applicable federal laws, regulations, executive orders, FEMA requirements, and terms and conditions of the funding award.

2.5 FIXED PRICE

Solicitations must state that the bidders shall submit bids on a fixed price basis and that the contract shall be awarded on this basis unless otherwise provided for in this Policy. Cost plus percentage of cost contracts are prohibited. Time and materials contracts are prohibited *in most circumstances*. Time and materials (cost-plus) contracts will not be used unless no other form of contract is suitable and the contract includes a "not-to-exceed" amount. A time and materials contract shall not be awarded without the express written permission of the federal agency or state pass-through agency that awarded the funds.

2.6 USE OF BRAND NAMES

When possible, performance or functional specifications are preferred to allow for more competition, leaving the determination of how to reach the required result to the contractor. Brand names may be used only when it is impractical or uneconomical to write a clear and accurate description of the requirement(s).When a brand name is listed, it is used as reference only and "or equal" must be included in the description.

2.7 LEASE VERSUS PURCHASE

Under certain circumstances, it may be necessary to perform an analysis of lease versus purchase alternatives to determine the most economical approach. Note: This comparison is necessary for most FEMA financial assistance programs following an emergency or major disaster declaration.

2.8 DIVIDING CONTRACT FOR M/WBE PARTICIPATION

If economically feasible, procurements may be divided into smaller components to allow maximum participation of small and minority businesses and women business enterprises. The procurement cannot be divided to bring the cost under bid thresholds or to evade any requirements under this Policy.

2.9 DOCUMENTATION OF PROCUREMENT PROCEDURES

Documentation must be maintained by the Procurement Department and/or the requesting department detailing the history of all procurements. The documentation should include procurement method used, contract type, basis for contractor selection, price, sources solicited, public notices, cost analysis, bid documents, addenda, amendments, contractor's responsiveness, notice of award, copies of notices to unsuccessful bidders or offerors, record of protests or disputes, bond documents, notice to proceed, purchase order, and contract. All documentation relating to the award of any contract must be made available to the granting agency upon request.

2.10 COST ESTIMATE

For all procurements costing $250,000 or more, the Procurement Department and/or requesting department shall develop an estimate of the cost of the procurement prior to soliciting bids. Cost estimates may be developed by reviewing prior contract costs, online review of similar products or services, or other means by which a good faith cost estimate may be obtained. Cost estimates for construction and repair contracts may be developed by the project designer.

2.11 CONTRACT REQUIREMENTS

The requesting department must prepare a written contract incorporating the provisions as required by the Uniform Guidance, 2 CFR, Part 200.

2.12 DEBARMENT

No contract shall be awarded to a contractor included on the federally debarred bidders list. Prior to preparing the contract, the Procurement Department or the requesting department must verify that the contractor is not on the federally debarred bidders list.

2.13 CONTRACTOR OVERSIGHT

The requesting department receiving the federal funding must maintain oversight of the contract to ensure that the contractor is performing in accordance with the contract terms, conditions, and specifications.

2.14 OPEN COMPETITION

Solicitations shall be prepared in a way to be fair and provide open competition. The County shall not restrict competition by imposing unreasonable requirements on bidders, including but not limited to unnecessary supplier experience, excessive or unnecessary bonding; specifying a brand name without allowing for “or equal” products, or other unnecessary requirement that have the effect of the restricting competition.

2.15 DOMESTIC SOURCING

The County should provide for domestic sourcing preferences to the greatest extent possible.

2.16 GEOGRAPHIC PREFERENCE

No contract shall be awarded on the basis of geographic preference.

2.16 PRE-QUALIFICATION

At the discretion of the County, contractors for construction and repair projects will be prequalified in accordance with the County’s Pre-Qualification for Capital Improvement Projects (Section 3.9 of the Union County Procurement Policy). Protests for denial of prequalification will be in accordance with the pre-qualification policy.

2.17 PROTESTS AND DISPUTES

If required by the federal funding source, bid protests and disputes will comply with any requirements issued by the funding agency.

2.18 COMPETITIVE BIDS

Purchases made through a Cooperative Purchasing Program, or a contract procured by the State of North Carolina may be allowed ONLY if the contracts were procured in compliance with 2 C.F.R. 200.317-327 and written approval is granted by the federal grantor agency. Documentation must be provided by the supplier demonstrating compliance.

However, State Contract or Cooperative Purchasing programs may be used for purchases under the micro purchase limit.

3. SPECIFIC PROCUREMENT PROCEDURES

The Procurement Department shall solicit bids/quotes in accordance with the requirements under this Section of the Policy based on the type and cost of the contract.

3.1 MICRO-PURCHASE

Purchase Contracts: Up to $30,000

Service Contracts: Up to $50,000

Shall be procured using the Uniform Guidance micro-purchase procedure (2 CFR §200.320(a)(1)). The thresholds are approved annually as a resolution by the Board of Commissioners to increase the micro-purchase limit. Does not apply to Architectural or Engineering ("A/E") Professional Services.

3.1.1 PROCEDURE

1. No bidding is required.
2. Price must be considered fair and reasonable.
3. To the extent practicable, purchases must be distributed among qualified suppliers
4. Contract must be in writing (this could be in the form of a purchase order).

3.2 SMALL PURCHASE

Purchase Contracts: At least $30,000, but less than $90,000

Service Contracts: At least $50,000, but less than $90,000

Shall be procured using the Uniform Guidance "small purchase" procedure (2 CFR §200.320(a)(2)). Does not apply to A/E Professional Services.

3.2.1 PROCEDURE

1. Cost or price analysis is NOT required prior to soliciting bids.
2. Obtain written price quotes from an adequate number of suppliers or sources (which shall not be less than two (2) quotes). Check specific grant as some agencies may require more than two (2) quotes.
3. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. §200.321 by posting on the State's IPS site and the HUB Site.
4. Award contract as a fixed price. A not-to-exceed basis is permissible for service contracts only where obtaining a fixed price is not feasible.
5. Award to lowest responsive, responsible bidder.
6. Contract must be in writing (purchase contracts may be in the form of a purchase order; service contracts and construction or repair contracts require use of contract template).

3.3 SEALED BID

Service Contracts: $90,000 up to $250,000

Purchase Contracts: $90,000+

Shall be procured using a combination of the most restrictive requirements of the Uniform Guidance sealed bid procedure (2 CFR §200.320(b)(1)) and state formal bidding procedures (G.S. §143-129).

3.3.1 PROCEDURE

1. Cost or price analysis is required prior to soliciting bids.
2. Complete specifications or purchase description must be available to all bidders.
3. Public Advertisement: electronic advertising is authorized.
4. Legal notice must reserve to the governing board the right to reject any or all bids only for "sound documented reasons."
5. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 CFR § 200.321 by posting on the State's IPS site and the HUB site.
6. Solicit from adequate number of known suppliers.
7. Bids must be submitted sealed.
8. Must have two (2) sealed bids submitted to open;
9. Public Bid Opening.
10. If fewer than two bids are received, re-advertisement is necessary. If upon re-advertisement only one bid is received, the bid can be accepted and opened.
11. Bids may only be rejected for "*sound documented reasons*".
12. Award contract as a firm fixed-price. A not-to-exceed basis is permissible for service contracts only where obtaining a fixed price is not feasible.
13. Award to lowest, responsive, responsible bidder.
14. Contract must be in writing (purchase contracts may be in the form of a purchase order; service contracts and construction repair require use of contract template).
15. Cannot use a cooperative purchasing program as an Exception to the Bidding.
16. Governing board approval prior to award is not required (per local policy, the BOCC has delegated award authority to County Manager).

3.4 COMPETITIVE PROPOSALS

Service Contracts: $250,000+

Shall be procured using the Uniform Guidance competitive proposal procedure (2 CFR § 200.320(b)(2)) when the sealed bid procedure is not appropriate for the particular type of service being sought.

Note: RFP's (competitive proposals) can only be used when conditions are not appropriate for the use of sealed bids such as service contracts. This can be used for all types of contracts $250,000 and over.

3.4.1 PROCEDURE

1. Public advertisement is required; however, formal advertisement in a newspaper is not required so long as the method of advertisement will solicit proposals from an "adequate number" of qualified firms.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided under 2 C.F.R. § 200.321 by posting on the State's JPS site and the HUB site.
3. Identify evaluation criteria and relative importance of each criteria (criteria weight) in the RFP.
4. All responses must be considered to the maximum extent practical.
5. Must have a written method for conducting technical evaluations of proposals and selecting the winning firm.
6. Award the contract to the responsible firm with the most advantageous proposal taking into account price and other factors identified in the RFP.
7. Governing board approval is required per local policy.
8. Award the contract on a firm fixed-price or cost-reimbursement basis.
9. Must have written contract with federal contract provisions included.
10. Cannot use a cooperative purchasing program as an exception to the bidding.
11. If only one response is received, re-advertisement is not required.

3.5 CONSTRUCTION AND REPAIR CONTRACTS – SMALL PURCHASE

At least $30,000, but less than $250,000

Shall be procured using the Uniform Guidance small purchase procedure (2 C.F.R. § 200.320(a)(2)). The $30,000 threshold is approved annually as a Resolution by the Board to increase the micro-purchase limit.

3.5.1 PROCEDURE

1. Cost or price analysis is not required prior to soliciting bids, although price estimates may be provided by the project designer.
2. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321 by posting on the State's JPS site and the HUB site.
3. Obtain written price quotes from an adequate number of suppliers or sources (typically means two (2); however, verify with granting agency).
4. Award Contract on a fixed-price or not-to-exceed basis.
5. Award to lowest responsive, responsible bidder.
6. Award by the BOCC is not required; however, BOCC authorization of the contract may be required pursuant to the BOCC delegation of contracting authority.
7. Must have written contract with federal contract provisions included.
8. If fewer than two bids are received, re-advertisement is necessary. If upon re-advertisement only one bid is received, the bid can be accepted and opened.

3.6 CONSTRUCTION AND REPAIR CONTRACTS – SEALED BID

At least $250,000, but less than $500,000

Shall be procured using the Uniform Guidance sealed bid procedure (2 C.F.R. § 200.320(b)(1))

3.6.1 PROCEDURE

1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
2. Complete specifications must be made available to all bidders.
3. Public Advertisement: Advertise the bid solicitation for a period of time sufficient to give bidders notice of opportunity to submit bids (formal advertisement in a newspaper is not required so long as other means of advertising will provide sufficient notice of the opportunity to bid).
4. The advertisement must state the date, time, and location of the public bid opening, and indicate where specifications may be obtained.
5. Solicit from adequate number of known suppliers.
6. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. §200.321 by posting on the State's IPS site and the HUB site.
7. Bids must be submitted sealed.
8. Public Bid Opening
9. Must have two (2) sealed bids submitted prior to opening.
10. Original 5% Bid Bond (a bid that does not contain a bid bond cannot be counted toward the two (2) bid requirement.
11. Performance and Payment Bonds for 100 % of contract price Bids may only be rejected for "sound documented reasons".
12. Contract awarded on firm-fixed price basis.
13. Award to lowest responsive, responsible bidder
14. Must have written contract with federal contract provisions included.
15. Award of the contract by the BOCC is not required; however, contract execution authority limits as adopted by the BOCC shall still apply.
16. If fewer than two bids are received, re-advertisement is necessary. If upon re-advertisement and only one bid is received, the bid can be accepted and opened.

**** Building Projects $300,000 and above***

Construction or repair contracts involving a building $300,000 and above must also include:

1. Pursuant to N.C.G.S. §143-128.2, formal HUB (historically underutilized business) participation is required, including local government outreach efforts and bidder good faith efforts.
2. Separate specifications shall be drawn up for the HVAC, electrical, plumbing, and general construction work as required under G.S. 143 -128(a).

3.7 CONSTRUCTION AND REPAIR – SEALED BIDS $500,000+

$500,000 and above

Shall be procured using a combination of the most restrictive requirements of the Uniform Guidance sealed bid procedure (2 C.F.R. § 200.320(b)(1)) and state formal bidding procedures (N.C.G.S. §143-129).

3.7.1 PROCEDURES

1. Cost or price analysis is required prior to soliciting bids (this cost estimate may be provided by the project designer).
2. Complete specifications must be made available to all bidders
3. Separate specifications shall be drawn for the HVAC, electrical, plumbing, and general construction work as required under N.C.G.S. 143-128(a).
4. The project shall be bid using a statutorily authorized bidding method (separate prime, single-prime, or dual bidding) as required under N.C.G.S. §143-129(a)(1).
5. Public Advertisement: (Electronic Advertising is authorized)
6. Legal notice must reserve to the governing board the right to reject any or all bids only for "sound documented reasons."
7. Solicit from adequate number of known suppliers.
8. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as required under 2 C.F.R. § 200.321 by posting on the State's JPS site and HUB.
9. Good Faith MBE Requirements/Affidavits must be submitted Bids must be submitted sealed and in paper form.
10. Public Bid Opening
11. Must have three (3) sealed bids submitted before opening
12. Original 5% Bid Bond (a bid that does not contain a bid bond cannot be counted toward the three (3) bid requirement) Bid Bonds may not be faxed or emailed. Bid Bonds must be original and submitted with the Bid.
13. Performance and Payment Bonds for 100% of contract price.
14. Bids can only be rejected for "*sound documented reasons*".
15. Contract awarded on firm-fixed Price basis.
16. Award to lowest, responsive, responsible bidder.
17. Must have written contract with federal contract provisions included.
18. Award by the BOCC is required (cannot be delegated).
19. If fewer than three bids are received, re-advertisement is necessary. If upon re advertisement less than three bids are received, bid(s) can be accepted and opened.

3.8 PROFESSIONAL SERVICES (ARCHITECTURAL AND ENGINEERING SERVICES)

Less than $50,000

Shall be procured using the RFQ process or Exemption Process

3.8.1 PROCEDURE UNDER $50,000

Professional Services under $50,000, for the purchase of services subject to the qualifications-based selection process in the Mini-Brooks Act may be exempt pursuant to N.C.G.S. §143-64.32 as long as the annual self-certification has been included in the annual Budget Ordinance. If the self-certification was not done, the micro-purchase threshold shall be $10,000.

$50,000 - $250,000

Shall be procured using the state "Mini-Brooks Act" requirements (N.C.G.S. §143-64.31)

3.8.2 PROCEDURE $50,000 - $250,000

1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms.
2. Advertisement: Solicit only - Newspaper is not required.
3. Price (other than unit cost) shall not be solicited in the RFQ.
4. Take affirmative steps to solicit price quotes from M/WBE vendors and suppliers as provided for under 2 C.F.R. §200.321 by posting on the State's IPS site and HUB.
5. Evaluate the qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department.
6. State licensure requirements apply.
7. Rank respondents based on qualifications and select the best qualified firm. Price cannot be a factor in the evaluation.
8. Preference may be given to in-state (but not local) firms.
9. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
10. Award the contract to best qualified firm with whom fair and reasonable compensation has been successfully negotiated.
11. Must be a fixed price or not to exceed contract type for services.
12. Governing board approval is not required.
13. Must have written contract with federal contract provisions included.
14. Do NOT have to re-advertise if only one response is received.

$250,000 and above

Shall be procured using the Uniform Guidance competitive proposal procedure (2 C.F.R. § 200.320(b)(2))

3.8.3 PROCEDURE $250,000+

1. Issue a Request for Qualifications (RFQ) to solicit qualifications from qualified firms Advertisement: Solicit only -Newspaper is not required). Price (other than unit cost) shall not be solicited in the RFQ.
2. Take affirmative steps to solicit qualifications statements from M/WBE vendors and suppliers as provided for under 2 C.F.R.§ 200.321 by posting on the State's IPS site and HUB site.
3. Identify the evaluation criteria and relative importance of each criterion (the criteria weight) in the RFQ.
4. Proposals must be solicited from an adequate number of qualified sources (an individual federal grantor agency may issue guidance interpreting "adequate number").
5. Must have a written method for conducting technical evaluations of proposals and selecting the best qualified firm.
6. Consider all responses to the publicized RFQ to the maximum extent practical.
7. Evaluate qualifications of respondents based on the evaluation criteria developed by the Purchasing Department and/or Requesting Department
8. Rank respondents based on qualifications and select the most qualified firm.
9. Preference may be given to in-state (but not local) firms provided that granting the preference leaves an appropriate number of qualified firms to compete for the contract given the nature and size of the project.
10. Price cannot be a factor in the initial selection of the most qualified firm.
11. Negotiate fair and reasonable compensation with the best qualified firm. If negotiations are not successful, repeat negotiations with the second-best qualified firm.
12. State licensure requirements apply.
13. Must be a fixed price or not to exceed contract type for services.
14. Governing board approval is required (per local policy)
15. Must have written contract with federal contract provisions included

Note: The RFQ process cannot be used for general consulting services or other services not defined by state law or federal law even if those services can be performed by an architectural or engineering firm.

4. EXCEPTIONS

Non-competitive contracts are allowed *only* under the following conditions and with the written approval of the federal agency or state pass-through agency that awarded the federal funds.

4.1 SOLE SOURCE

A contract may be awarded without competitive bidding when the item is available from only one source. The Procurement Department and/or requesting department shall document the justification for and lack of available competition for the item. Written prior approval is required by the granting agency for all sole source procurements in excess of $250,000. All sole source contracts must be approved by the BOCC when federal funding is involved unless the contract is under $30,000.

4.2 PUBLIC EXIGENCY

A contract may be awarded without competitive bidding when there is a public exigency. A public exigency exists when there is an imminent or actual threat to public health, safety, and welfare, and the need for the item will not permit the delay resulting from competitive bidding. A cost analysis is still required.

4.3 INADEQUATE COMPETITION

A contract may be awarded without competitive bidding when competition is determined to be inadequate after attempts to solicit bids from a number of sources as required under this Policy does not result in a qualified winning bidder.

4.4 AWARDING AGENCY APPROVAL

A contract may be awarded without competitive bidding with the express written authorization of the federal agency or state pass-through agency that awarded the federal funds so long as awarding the contract without competition is consistent with state law. When hiring consultants, prior approval must be obtained from the awarding agency whose rate exceeds the consultant rate maximum limit as specified by the awarding agency.

In addition to the prohibition against self-benefiting from a public contract under N.C.G.S. § 14-234, no officer, employee, or agent of Union County may participate directly or indirectly in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. A real or apparent conflict exists when any of the following parties has a financial or other interest in or receives a tangible personal benefit from a firm considered for award of a contract:

1. The employee, officer, or agent involved in the selection, award, or administration of a contract;
2. Any member of his or her immediate family;
3. His or her partner; or
4. An organization which employs or is about to employ any of these parties.

Any officer, employee, or agent with an actual, apparent, or potential conflict of interest as defined in this Appendix shall report the conflict to his or her Department or Division Director. Any such conflict shall be disclosed in writing to the federal award agency or pass-through entity in accordance with applicable Federal awarding agency policy.

5. GIFTS

In addition to the prohibition against accepting gifts and favors from vendors and contractors under N.C.G.S. § 133-32, officers, employees, and agents of Union County are prohibited from accepting or soliciting gifts, gratuities, favors, or

anything of monetary value from contractors, suppliers, or parties to subcontracts. Items of nominal value which fall into one of the following categories may be accepted:

1. Promotional items.
2. Honorariums for participation in meetings; or Meals furnished at banquets.

Any officer, employee or agent who knowingly accepts an item of nominal value allowed under this Policy shall report the item to his or her immediate supervisor.

6. VIOLATION

Employees violating Appendix A will be subject to discipline up to and including dismissal. If a contractor violates the conflict of interest or gift rules set out herein, the County may terminate any contract(s) between the County and said contractor and said contractor may not be eligible for future contract awards.

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Financial Policies - Procurement

PROCUREMENT POLICIES AND PROCEDURES FOR FEDERAL TRANSIT AUTHORITY

I. INTRODUCTION

The Federal Transit Administration (FTA) requires an FTA recipient to conduct all applicable FTA procurements and third party procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition as determined by FTA. The following guidance is based on the requirements of the Common Grant Rule for governmental recipients, specifically the requirements of FTA Circular 4220.1F and applicable statutory and administrative requirements.

The following procedures provide guidance for third-party procurements financed in whole or in part with grant funds awarded by the FTA and are designed to set forth the standards for processing all contracts funded by FTA Grants which are awarded to Union County. These standards are included to ensure that goods, equipment, materials, supplies, real property and services are obtained in an efficient and economical fashion, adhering to the principles of good administrative practices. For a complete list of all requirements, refer to FTA Circular 4220.1F and its appendices.

II. OVERVIEW

A. Purpose

The purpose of this policy is to establish guidelines that meet or exceed the procurement requirements for the purchase of goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects when FTA federal funds are being used by Union County or a third-party recipient of FTA funds in whole or in part to pay for the cost of specified FTA contract.

B. Policy

1. Application of Policy. This policy applies to contracts for purchases, services, and construction or repair work funded with FTA federal financial assistance Program. The requirements of this Policy also apply to any sub-recipient of the FTA funds.
    - All federally funded FTA projects, loans, grants, and sub-grants, whether funded in whole or in part by FTA funds, are subject to the FTA procurement requirements as described in this policy, and applicable state and local procurement requirements.
2. Compliance with Federal Law. All procurement activities involving the expenditure of federal FTA funds must be conducted in compliance with the Procurement Standards codified in FTA Circular 422.01F unless otherwise directed in writing by the federal agency or state passthrough agency that awarded the funds. The County of Union will follow all applicable local, state, and federal procurement requirements when expending FTA federal funds. Should the County of Union have more stringent requirements, the most restrictive requirement shall apply so long as it is consistent with state and federal law. In addition, the County must comply and adhere to any other grant specific requirements.

III. PROCUREMENT PROCEDURES

Union County follows Board of County Commissioners-approved procurement policies and procedures.

A. Authority

The procurement policies and procedures set forth in this FTA policy have been developed in conformance with the standards and limitations established by State of North Carolina and applicable federal laws as follows:

- Article 8 of Chapter 143 of the General Statutes of North Carolina (Public Contracts)
- Union County Procurement Policy, including procedures for procurement using federal funds (Uniform Guidance - 2 C.F.R. Part 200)

The applicable federal laws, regulations, and agreements affecting the procurement practices are as follows:

- Federal Transit Act (formerly Urban Mass Transportation Act of 1964), as amended, through June 1992, 49 USC Sec 1601 et seq.
- FTA Circular 4220.1F, Third-party Contracting Guideline, November 1, 2008
- Participation by Disadvantaged Business in Department of Transportation Programs, 49 CFR Part 26

B. **Roles and Responsibilities**

This policy will follow all applicable Union County purchasing guidelines, as well as all applicable local, state, and federal guidelines when procuring items using FTA funds. The County will use an informal bid process (combination of informal and formal may be used) for FTA purchases between the amounts of *$10,000 and $89,999.99 and will use a formal bid process for FTA purchases $90,000 and above or according to NC General Statutes or UC policy, if lower thresholds apply.

**Note: If UC receives annual self-certification to increase the micro-purchase threshold to $30,000.00 for purchases and $50,000.00 for services (non-architectural and engineering), then these thresholds in the stated areas will be increased accordingly.*

C. **Third-party Contracting Capacity**

As part of a FTA recipient's obligation to maintain adequate technical capacity to carry out its project and comply with the Common Grant Rules, the recipient's third-party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable federal, state, and local requirements. The Common Grant Rules require the recipient to maintain a contract administration system to ensure that it and its third- party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local requirements. Many FTA recipients assign contracting duties to technical, financial or management personnel. If the recipient lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the recipient, FTA expects the recipient to acquire the necessary services from sources outside the recipient's organization. When using outside sources, the recipient should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

D. **Contract Administration System**

The FTA Common Grant Rules require the recipient to maintain a contract administration system to ensure that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable federal, state and local responsibilities.

The County's contract administration system ensures that it and its third-party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable federal, state, and local responsibilities. For sealed bid procurements and competitive negotiations, the procurement and/or contract file shall contain the following documentation:

a. The executed contract and notice of award;
b. Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
c. Contract-required insurance documentation;
d. Post-award (pre-performance) correspondence from or to the contractor or other Government agencies;
e. Notice(s) to proceed;

f. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
g. Modifications/changes to the contracts including the rationale for the change, change orders issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;
h. Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority (i.e., city council, board of directors, executive director) of the settlement amount;
i. Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
j. Documentation relating to contract closeout.

E. **Protests**

The FTA Common Grant Rules charges the recipient with the initial responsibility to resolve protests of third-party contract awards. All protests must be filed and resolved in a manner consistent with the requirements of FTA Circular 4220.1F Third-party Contracting Guidelines, as well as applicable Union County procurement policies. The recipient shall notify FTA when it receives a third-party contract protest and keep FTA informed about the status of the protest.

Protest procedures are as follows:

a. General Rules for Protests - Bidders submitting applications shall be provided an e-mail address for communication with the Procurement Director or UC Department Project Representative during the protest process. The bidder shall provide at least two e-mail addresses for use by the Procurement Director or UC Department Representative in communicating with the bidder.

b. A written bid protest must be received by the Procurement Director, or designee (hereinafter, the "Director"), within two business days of bid opening. The written protest shall clearly identify the project and the Project Manager, clearly articulate the reasons for the protest, and attach any documents or additional information in support of the bidder's position. The Director will contact the bidder and set up a date and time to discuss the protest. Upon review, the Director shall notify the bidder of the decision on the bid protest in writing by e-mail and first-class mail. If the bidder desires further review after receiving the decision of the Director, the bidder may request an administrative review and final decision by the County Manager, or designee. A written request for administrative review must be received by the County Manager or designee within two business days of the bidder's receipt of the decision from the Director. The request for administrative review shall clearly identify the project and the Project Manager, clearly articulate the reasons for the review, and attach any documents or additional information in support of the bidder's position. The County Manager, or designee, will contact the bidder and set up a date and time for the administrative review. The County Manager, or designee, shall notify the bidder of the decision on the protest in writing by e-mail and first-class mail.

F. **Prequalification**

Prequalification lists are most commonly used in procurements of property involving lengthy evaluations needed to determine whether it satisfies the recipient's standards. Prequalification should not be confused with reviews of technical qualifications that are an essential process in two-step procurements and qualifications-based procurements. The FTA Common Grant Rule for governmental recipients permits a recipient to prequalify people, firms, and property for procurement purposes under the following standards:

a. Lists. The recipient ensures that all prequalification lists it uses are current.

b. Sources. The recipient ensures that all prequalification lists it uses include enough qualified sources to provide maximum full and open competition.
c. Qualification Periods. The recipient permits potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). FTA, however, does not require a recipient

to hold a solicitation open to accommodate a potential supplier that submits property for approval before or during that solicitation. Nor must a recipient expedite or shorten prequalification evaluations of bidders, offerors, or property presented for review during the solicitation period.

G. **Federal Cost Principles**

The Common Grant Rules require project costs to conform to applicable federal cost principles for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by federal law or regulation, and must comply with federal cost principles applicable to the recipient. The following cost principles apply to procurements funded with FTA grants:

a. Governmental Entities. OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A 87)," 2 CFR Part 225, applies to project costs incurred by a recipient that is a state, local, or Indian tribal government.

IV. **ADDITIONAL REQUIREMENTS**

A. **Uniform Guidance – Federal Conflicts of Interest**

1. **Purpose**

The purpose of this section is to establish conflicts of interest guidelines that meet or exceed the requirements under state law and local policy when procuring goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects paid for in part or whole by federal funds as required under 2 CFR § 200.318(c)(1).

2. **Guidelines**

This section applies when procuring goods (apparatus, supplies, materials, and equipment), services, and construction or repair projects funded in part or whole with federal FTA financial assistance (direct or reimbursed). This section also applies to any sub-recipient of the funds.

The Employee responsible for managing the federal financial assistance award shall review the notice of award to identify any additional conflicts of interest prohibitions or requirements associated with the award, and shall notify all employees, officers, and agents, including sub-recipients, of the requirements of this section and any additional prohibitions or requirements.

3. **Conflicts of Interest**

In addition to the prohibition against self-benefiting from a public contract under N.C.G.S. § 14-234, no officer, employee, or agent of Union County may participate directly or indirectly in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. A real or apparent conflict exists when any of the following parties has a financial or other interest in or receives a tangible personal benefit from a firm considered for award of a contract:

a. the employee, officer, or agent involved in the selection, award, or administration of a contract;

b. any member of his or her immediate family;
c. his or her partner; or
d. an organization which employs or is about to employ any of these parties.

Any officer, employee, or agent with an actual, apparent, or potential conflict of interest as defined in this section shall report the conflict to his or her Department or Division Director. Any such conflict shall be disclosed in writing to the federal award agency or pass-through entity in accordance with applicable federal awarding agency policy.

4. **Gifts**

In addition to the prohibition against accepting gifts and favors from vendors and contractors under N.C.G.S. § 133-32, officers, employees, and agents of Union County are prohibited from accepting or soliciting gifts, gratuities, favors, or anything of monetary value from contractors, suppliers, or parties to subcontracts. Items of nominal value which fall into one of the following categories may be accepted:

a. promotional items;

b. honorariums for participation in meetings; or
c. meals furnished at banquets.

Any officer, employee or agent who knowingly accepts an item of nominal value allowed under this section shall report the item to his or her immediate supervisor.

5. **Violation**

Employees violating this section will be subject to discipline up to and including dismissal. Contractors violating this appendix will result in termination of the contract and may not be eligible for future contract awards.

6. **Self-certification**

FTA expects each recipient to self-certify that its procurement system complies with federal requirements for any FTA assisted third-party contract the recipient undertakes and administers.

b. Written Procurement Procedures

The FTA Common Grant Rule for non-governmental recipients requires the recipient to have written procurement procedures, and by implication, the Common Grant Rule for governmental recipients requires written procurement procedures as a condition of self-certification. The recipient's procurement procedures are expected to address:

Solicitations

The following standards apply to solicitations:

- Clear Descriptions. A clear and accurate description of the technical requirements for the material, product, or service to be procured is required (discussed further in Chapter VI of FTA Circular 4220.1F).
- Nonrestrictive Specifications. In competitive procurements, the description may not contain features that unduly restrict competition. Notably, FTA may not finance procurements that use exclusionary or discriminatory specifications (discussed further in Chapter VI of FTA Circular 4220.1F).
- Quality Requirements. A description may include a statement of the qualitative nature of the material, product, or service to be procured and, when necessary, describe minimum essential characteristics and standards to which the property or services must conform if it is to satisfy the recipient's intended use (discussed further in Chapter VI of FTA Circular 4220.1F).
- Preference for Performance Specifications. The FTA Common Grant Rule for governmental recipients advises the recipient that "detailed product specifications should be avoided if at all possible." The Common Grant Rule for nongovernmental recipients advises the recipient to describe technical requirements in terms of "functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards" (discussed further in Chapter VI of FTA Circular 4220.1F).
- Brand Name or Equal. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of the property or services sought. The specific features or salient characteristics of the named brand which must be met by offerors of "an equal" proposal must be clearly stated (discussed further in Chapter VI of FTA Circular 4220.1F).

B. **Written Standards of Conduct**

The FTA Common Grant Rules require each recipient to maintain written standards of conduct governing the performance of its employees that are engaged in or otherwise involved in the award or administration of third-party contracts.

C. **Union County Code of Ethics**

The purpose of this section is to establish guidelines for the procurement of goods and services by County officials and employees (collectively, "Employees" or "Employee" when used in the singular) for any County office, department, division, board, commission or other organizational unit of Union County (collectively, the "County Departments"). Union County's procurement operations are governed by North Carolina General Statutes ("N.C.G.S.") Chapter 143 (State Departments, Institutions and Commissions), Chapter 153A (Counties), Chapter 159 (Local Government Finance), ordinances approved by the Union County Board of Commissioners, and all other applicable laws, rules, regulations, codes, standards, and orders of governmental bodies, agencies, authorities, and courts having jurisdiction ("Applicable Law"). The procurement of goods and services by Employees shall be in strict accordance with Applicable Law and with the requirements of this Policy. It is the intent of this Policy, where appropriate, to prescribe procurement requirements beyond Applicable Law and to confer on County staff the authority to make certain discretionary decisions, when authorized by Applicable Law. Where there is no prescribed policy for the procurement of goods or services, such as when in an amount for which these policies are not cost effective or administratively feasible, Employees are expected to seek competitive proposals when practicable, and to utilize such practices as necessary to ensure that County business is not concentrated among a few vendors or service providers.

Union County's procurement practices are based on the principle of open competition in support of the dual goals of securing value and promoting fairness. All Employees involved in the procurement process have a responsibility to provide fiscal stewardship when expending County funds. The taxpayers entrust County government to expend money in the most efficient and effective manner possible. The integrity of the procurement process must be maintained at all times.

V. **PROHIBITIONS**

A. **Prohibitions**

1. The FTA Common Grant Rules prohibit solicitation requirements that contain features that unduly restrict competition. FTA recipients are also prohibited by 49 U.S.C. Section 5325(h) from using FTA assistance to support an exclusionary or discriminatory specification. Some situations considered to be impermissibly restrictive of competition include, but are not limited to, the following, all of which are identified in one or both Common Grant Rules:

    a. Excessive Qualifications. Imposing unreasonable business requirements for bidders or offerors.

    b. Unnecessary Experience. Imposing unnecessary experience requirements for bidders and offerors.
    c. Improper Prequalification. Using prequalification procedures that conflict with the prequalification standards described in FTA Circular 4220.1F.
    d. Retainer Contracts. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if that award is not for the property or services specified for delivery under the retainer contract.
    e. Excessive Bonding. To encourage greater contractor participation in FTA assisted projects, FTA does not require the recipient to impose bonding requirements on its third-party contractors other than construction bonding specified by the Common Grant Rules and FTA Circular 4220.1F for construction. The bonding requirements shall be reasonable, shall not be unduly restrictive, and shall not violate the Common Grant Rules as restrictive of competition. FTA discourages unnecessary bonding because it increases the cost of the contract and restricts competition, particularly by disadvantaged business enterprises. Unnecessary performance bonding requirements reduce a prospective bidder's or offeror's capability to bid or offer a proposal on bonded work.

f. Brand Name Only. Specifying only a brand name product without allowing offers of an equal product or allowing an equal product without listing the salient characteristics that the equal product must meet to be acceptable for award.
g. In-State or Local Geographic Restrictions. Specifying in-state or local geographical preferences or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by state or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-state dealers.
h. Architectural Engineering (A&E) Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project.

2. Organizational Conflicts of Interest

Engaging in practices that result in organizational conflicts of interest is prohibited by the Common Grant Rules. An organizational conflict of interest occurs when any of the following circumstances arise:

a. Lack of Impartiality or Impaired Objectivity When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
b. Unequal Access to Information The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
c. Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.
d. Remedies FTA expects the recipient to analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible, and avoid, neutralize, or mitigate potential conflicts before contract award.

3. Restraint of Trade

Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies. Questionable practices would include, but not be limited to submissions of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.

4. Arbitrary Action

Taking any arbitrary action in the procurement process.

5. Cost Plus a Percentage of Cost—Prohibited

The Common Grant Rules expressly prohibit the use of the cost plus a percentage of cost method of contracting.

6. Percentage of Construction Cost – Prohibited

The Common Grant Rules expressly prohibit the use of the percentage of construction cost method of contracting.

7. Time and Materials – Restricted.

The Common Grant Rules for governmental recipients permits the use of time and materials contracts only:

a. When to Use. After determining that no other contract type is suitable; and
b. Firm Ceiling Price If the contract specifies a ceiling price that the contractor may not exceed except at its own risk.

VI. PROCUREMENT ELEMENTS

1. Determining the Recipient's Needs To support a third-party contract with federal assistance awarded by the FTA, the Common Grant Rules require the recipient to adopt adequate procedures for determining the type and amount of property and services it needs to acquire:

    a. Eligibility. The property and services to be acquired must be eligible under the federal law authorizing the FTA assistance award and any regulations thereunder. For example, FTA prohibits the use of capital assistance for the recipient's operations expenses. If FTA assistance will be used to finance the cost of property or services, the property or services must be within the scope of the specific project from which that FTA assistance will be derived.
    b. Necessity. The Common Grant Rules require the recipient to establish procedures to avoid the purchase of unnecessary property and services (including duplicative items and quantities or options it does not intend to use or whose use is unlikely). In monitoring whether a recipient has complied with its procedures to determine what property or services are unnecessary, FTA bases its determinations on what would have been a recipient's reasonable expectations at the time the recipient entered into the contract.
    c. Procurement Size. The recipient should consider whether to consolidate or break out the procurement to obtain a more economical purchase. This could include joint procurements and/or small procurements. \
    d. Options. The recipient's contracts may include options to ensure the future availability of property or services, so long as the recipient is able to justify those options as needed for its public transportation or project purposes. An option is a unilateral right in a contract by which, for a specified time, a recipient may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract. Chapter VI of FTA circular 42201.F contains procedures for evaluating options.
    e. Lease versus Purchase. To obtain the best value, the recipient should review lease versus purchase alternatives for acquiring property and, if necessary, should obtain an analysis to determine the more economical alternative. The recipient may use FTA capital assistance to finance the costs of leasing eligible property if leasing is more cost effective than full ownership. Before the recipient may lease an asset, FTA regulations, "Capital Leases," 49 CFR Part 639, Subpart C, require the recipient to make a written comparison of the cost of leasing the asset compared with the cost of purchasing or constructing the asset. Costs used in the comparison must be reasonable, based on realistic current market conditions, and based on the expected useful service life of the asset.

2. Independent Cost Estimate

Union County's Procurement Department will prepare an independent cost estimate (ICE) for all procurements before receiving bids or proposals. An ICE is also required for each subsequent change order. The ICE will be used to assess the reasonableness of cost for goods or services. The estimate can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of such items as:

    a. Polls of known vendors who can provide parts, material or equipment.
    b. Recent competitive bids from other agencies that recently obtained the same goods and/or services
    c. Scanning the internet.
    d. Using historical data from previous competitive procurements updated with inflation factors.

For contract modifications, the independent estimate must be prepared without knowledge of the contractor's proposed pricing. The ICE may be completed in-house or by an external estimator independent of any offerors. The written ICE must state how it was derived and the basis of the estimate. The independent cost estimate must be maintained in the official solicitation file.

3. Procurement Selection Procedures

The County will use the following procedures for determining procurement selection:

a. Union County shall use written selection procedures for procurement transactions that include a clear and accurate description of the material, product, or service being requested for procurement. The description shall not be written in a way to contain features that unduly restrict competition. The description shall also include the minimum essential characteristics and standards that need to be met to satisfy the intended use of the request.

b. When Union County is unable to make a clear and accurate description of the technical requirements, a 'brand
c. name or equal' description can be used to define the characteristics of procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.
d. Identify all requirements that offerors must fulfill and all other factors to be used in evaluating the bid or proposal.
e. Union County will ensure that all lists of pre-qualified persons, firms, or products that are used in acquiring supplies, equipment and services are current and include enough qualified sources to ensure maximum full and open competition. In addition, Union County shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.
f. Union County has adopted a DBE Program as required by 49 CFR Part 26. The DBE Program sets goals for DBE participation in federally funded contracts, monitors these contracts to determine DBE participation, and reports DBE participation to the FTA. Union County informs its contractors of these goals and monitors DBE participation by subcontractors.
g. Union County shall ensure to the best of its knowledge and belief that none of its FTA assisted contracts for goods or services involve contractors debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. Staff is required to review the System for Award Management (SAM) https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf before entering into and third-party contracts and provide a copy of the search results to include in the grant or procurement file.

4. Contractor Qualifications

The following Federal laws and regulations may affect contractor selection:

a. "Responsibility" Requirements. In addition to the FTA Common Grant Rules that require contract awards be made only to responsible contractors, federal transit law at 49 U.S.C. Section 5325(j) limits third-party contractor awards to those contractors capable of successfully performing under the terms and conditions of the proposed contract. Before selecting a contractor for award, the recipient must consider such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

b. Debarment and Suspension. Debarment and suspension regulations and guidance include the following:

   i. DOT Debarment and Suspension Regulations. Department of Transportation (DOT) regulations, "Non-procurement Suspension and Debarment," 2 CFR Part 1200, apply to each third-party contract at any tier of $25,000 or more, to each third-party contract at any tier for a federally required audit (irrespective of the contract amount), and to each third-party contract at any tier that must be approved by an FTA official irrespective of the contract amount. See 2 CFR Part 1200. Thus, the recipient must apply DOT's debarment and suspension requirements to itself and each third-party contractor at every tier to the extent required by DOT's regulations that incorporate the requirements of Office of Management and Budget (OMB), "Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," 2 CFR Part 180.

c. General Services Administration (GSA) Excluded Parties List System. Even though the recipient may collect a debarment and suspension certification from the prospective third-party contractor or include a clause in the third- party contract requiring disclosure, FTA strongly recommends that the recipient check the Excluded Parties List System (EPLS). Now a part of the System for Awards Management (SAM), the EPLS is an

electronic, web-based system that identifies those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

d. State Debarment and Suspension Lists. A recipient may also treat any prospective contractor or subcontractor listed on a centralized state government debarment and suspension list as irresponsible and ineligible for contract award.

5. Adequate Third-party Contract Provisions

The Common Grant Rules require that all third-party contracts include provisions adequate to form a sound and complete agreement. Compliance with federal laws and regulations will usually result in the addition of many other contract provisions to ensure compliance with those laws and regulations. All FTA-funded procurements shall include provisions appropriate to the type and complexity of the project to form a sound and complete agreement. At a minimum these include a well-defined statement of work or specifications, delivery schedule, a defined contract term, a clear statement of the price and payment terms, and all applicable clauses required by federal, state or local laws, rules and regulations as well as all applicable policies and requirements of Union County. The solicitation document used for an FTA-funded procurement shall include the additional contract provisions to ensure compliance with the federal laws and regulations. Union County may request additional information from a bidder or offeror before making an award. Additionally, Union County reserves the right to seek clarification from any bidder or offeror about any statement in its bid or proposal that is considered ambiguous.

VII. **PROCUREMENT METHODS**

FTA Circular 4220.1F sets forth the regulatory guidance which is to be followed in undertaking procurements utilizing FTA funds. The procedures used must comply with State and local law as well as with Federal requirements. Federal restrictions vary with the type of procurement method used. The following guidance is based on the requirements of the Common Grant Rule for governmental recipients, supplemented by FTA policies that address the needs of FTA recipients. There are five basic types of procurement techniques that are permitted under these regulations. They are listed below.

1. Micro-Purchases

This method may be used when the purchase amount is less than $10,000.00. When a determination has been made that the price is fair and reasonable, FTA permits purchases may be made without competitive quotations, however, the method of determining how the price is fair and reasonable must be documented in the procurement file. Qualified vendors should receive an equitable distribution of the awards. Splitting of procurements is not allowed.

a. When Appropriate. If permitted by State and local law, the recipient may acquire property and services valued at $10,000 or less without obtaining competitive quotations. These purchases are exempt from FTA's Buy America requirements. Davis-Bacon prevailing wage requirements, however, will apply to construction contracts exceeding $2,000, even though the recipient uses micro-purchase procurement procedures. FTA does not intend to imply that the recipient must treat any purchase of $10,000 or less as a micro-purchase. The recipient may set lower thresholds for micro-purchases in compliance with state and local law, or otherwise as it considers appropriate.

b. Procedures. The following procedures apply to micro-purchases:

   i. Competition. The recipient should distribute micro-purchases equitably among qualified suppliers.
   ii. Prohibited Divisions. The recipient may not divide or reduce the size of its procurement merely to come within the micro-purchase limit.
   iii. Documentation. FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.

2. Small Purchase Procedures

Purchases which meet or exceed $10,000 but are less than or equal to the threshold of $250,000 may be made using written quotations, informal bids or sealed bids to be opened upon receipt, whenever practical. If small purchase procedures are used, price or rate quotations will be obtained from at least three qualified sources.

a. When Appropriate. Small purchase procedures may be used to acquire services, supplies, or other property valued at more than the micro purchase threshold (currently, $10,000) but less than the Federal simplified acquisition threshold at 41U.S.C. Section 403(11), currently $250,000. These purchases are also exempt from FTA's Buy America requirements. FTA does not intend to imply that any purchase of $250,000 or less must be treated as a small purchase. The recipient may set lower thresholds for small purchases in compliance with state and local law, or otherwise as it considers appropriate, and to the extent such lower thresholds exist, Union County shall comply with the more stringent requirements.

b. Procedures. When using small purchase procedures:

   i. Competition. The recipient must obtain price or rate quotations from an adequate number (i.e., at least three) of qualified sources.
   ii. Prohibited Divisions. The recipient may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions.

3. Procurement by Sealed Bids

When purchases will exceed the $250,000 threshold, sealed bids can be used when a complete, adequate, and realistic description of the product or services is available and two or more responsible bidders are able to compete. Bids are publicly solicited and a firm, fixed-price contract (lump sum or unit price) is awarded to the responsible bidder, whose bid is lowest in price and conforms to all terms and conditions included in the bid package.

a. When Appropriate. The FTA Common Grant Rule for government recipients states a preference for the sealed bids procurement method for acquiring property, construction, and other services. Sealed bid procurements should be used when the following circumstances are present:

   i. Precise Specifications. A complete, adequate, precise, and realistic specification or purchase description is available.
   ii. Adequate Sources. Two or more responsible bidders are willing and able to compete effectively for the business.
   iii. Fixed Price Contract. The procurement generally lends itself to a firm fixed price contract.
   iv. Price Determinative. The successful bidder can be selected on the basis of price and those price related factors listed in the solicitation including, but not limited to, transportation costs, life cycle costs, and discounts expected to be taken. Apart from responsibility determinations, contractor selection may not be determined on the basis of other factors whose costs cannot be measured at the time of award.
   v. Discussions Unnecessary. Discussions with one or more bidders after bids have been submitted are expected to be unnecessary as award of the contract will be made based on price and price related factors alone. This contrasts with competitive proposal procedures in which discussions with individual offerors are expected to be necessary and may take place at any time after receipt of proposals. However, a pre bid conference with prospective bidders before bids have been received can be useful.

b. Procurement Procedures. The following procedures apply to sealed bid procurements:

i. Publicity. The invitation for bids is publicly advertised.
ii. Adequate Sources. Bids are solicited from an adequate number of known suppliers.
iii. Adequate Specifications. The invitation for bids, including any specifications and pertinent attachments, describes the property or services sought in enough detail that a prospective bidder will be able to submit a proper bid.
iv. Sufficient Time. Bidders are allowed enough time to prepare bids before the date of bid opening.
v. Public Opening. All bids are publicly opened at the time and place prescribed in the invitation for bids.
vi. Fixed Price Contract. A firm fixed-price contract is usually awarded in writing to the lowest responsive and responsible bidder, but a fixed price incentive contract or inclusion of an economic price adjustment provision can sometimes be appropriate. When specified in the bidding documents, factors such as transportation costs and life cycle costs affect the determination of the lowest bid; payment discounts are used to determine the low bid only when prior experience indicates that such discounts are typically taken.
vii. Rejection of Bids. Any or all bids may be rejected if there is a sound, documented business reason.

4. Procurement by Competitive Proposal/Request for Proposals (RFP)

This method of procurement is used when conditions are inappropriate for use of sealed bid procedures. With competitive proposals, offerors typically compete for an award on the basis of criteria including cost. For competitive negotiations including architects, engineers, and related services, selection of the most qualified competitor is based upon evaluation of qualifications. Union County must identify their evaluation factors and indicate the relative importance that each has towards the award.

a. When Appropriate. Competitive proposals should be used when any of the following circumstances are present:

i. Type of Specifications. The property or services to be acquired are described in a performance or functional specification; or if described in detailed technical specifications, other circumstances such as the need for discussions or the importance of basing the contract award on factors other than price alone are present.
ii. Uncertain Number of Sources. Uncertainty about whether more than one bid will be submitted in response to an invitation for bids and the recipient lacks the authority or flexibility under state or local law to negotiate the contract price if it receives only a single bid.
iii. Price Alone Not Determinative. Due to the nature of the procurement, contract award need not be based exclusively on price or price related factors. In different types of negotiated acquisitions, the relative importance of cost or price may vary. When the recipient's material requirements are clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirements, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection and supersede low price.
iv. Discussions Expected. Separate discussions with individual offeror(s) are expected to be necessary after they have submitted their proposals. This contrasts with sealed bids (formal advertising) procedures in which discussions with individual bidders are not likely to be necessary, as award of the contract will be made based on price and price related factors alone.

b. Procurement Procedures. The following procedures apply to procurements by competitive proposals:

i. Publicity. The request for proposals is publicly advertised.
ii. Evaluation Factors. All evaluation factors and their relative importance are specified in the solicitation; but numerical or percentage ratings or weights need not be disclosed.
iii. Adequate Sources. Proposals are solicited from an adequate number of qualified sources.
iv. Evaluation Method. A specific method is established and used to conduct technical evaluations of the proposals received and to determine the most qualified offeror.
v. Price and Other Factors. An award is made to the responsible offeror whose proposal is most advantageous to the recipient's program with price and other factors considered.
vi. Best Value. If permitted under its state or local law, the recipient may award the contract to the offeror whose proposal provides the greatest value to the recipient. To do so, the recipient's solicitation must inform potential offerors that the award will be made on a "best value" basis and identify what factors will form the basis for award. The evaluation factors for a specific procurement should reflect the subject matter and the elements that are most important to the recipient. Those evaluation factors may include, but need not be limited to, technical design, technical approach, length of delivery schedules, quality of proposed personnel, past performance, and management plan. The recipient should base its determination of which proposal represents the "best value" on an analysis of the tradeoff of qualitative technical factors and price or cost factors. Apart from the statutory requirement that the contract must support the recipient's public transportation project consistent with applicable federal laws and regulations, FTA does not require any specific factors or analytic process.

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

FTA's enabling legislation at 49 U.S.C. Section 5325(b)(1) requires the use of the qualifications-based procurement procedures contained in the Brooks Act, 40 U.S.C. Sections 1101 through 1104, to acquire A&E services, but also for program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping and related services. The nature of the work to be performed and its relationship to construction, not the nature of the prospective contractor, determine whether qualifications-based procurement procedures may be used.

a. Qualifications-Based Procurement Procedures. The following procedures apply to qualifications-based procurements:

i. Qualifications. Unlike other two-step procurement procedures in which price is an evaluation factor, an offeror's qualifications are evaluated to determine contract award.
ii. Price. Price is excluded as an evaluation factor.
iii. Most Qualified. Negotiations are first conducted with only the most qualified offeror.
iv. Next Most Qualified. Only after failing to agree on a fair and reasonable price may negotiations be conducted with the next most qualified offeror. Then, if necessary, negotiations with successive offerors in descending order may be conducted until contract award can be made to the offeror whose price the recipient believes is fair and reasonable.
v. Effect of State Laws. To the extent that a state has, before August 10, 2005, adopted by law, an equivalent state qualifications-based-procurement requirement for acquiring architectural, engineering, and design services, state procedures, rather than Federal Brooks Act procedures (40 U.S.C. Sections 1101 through 1104), may be used.

6. Procurement by Noncompetitive Proposals (Sole Source)

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. Sole source, single bid and brand name or equal awards can be used only with appropriate documentation. In the case of a sole source award, the documentation should be a sole source justification, which includes a cost analysis. With a single bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained. For brand name or equal awards, the procurement specification should list the product's salient or unique characteristics and allow an equal product to be

offered. A contract change or change order that is not within the scope of the original contract is considered a sole source procurement that must comply with procurement procedures.

7. Piggybacking

A recipient may find that it has inadvertently acquired contract rights in excess of its needs. The recipient may assign those contract rights to other recipients if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions.

a. Piggybacking is permissible under the following circumstances:

   i. The solicitation and contract include an assignability clause that allows for the assignment of all or part of the specified deliverable items.
   ii. The quantities to be ordered were included in the original bid and evaluated as part of the contract award decision. Note that "piggybacking" is not permissible when the action would call for an increase in quantities that were not originally bid on and not originally evaluated as part of the contract award. Such an order for additional quantities - sometimes referred to as "tag-ons" - would constitute a non-competitive procurement. The use of tag- ons is prohibited and applies to the original buyer as well as to others.
   iii. The contract being accessed by the piggybacking procedure contains the clauses required by federal regulations.
   iv. The contractor has submitted the Certifications required by federal regulations with its original bid/ proposal.
   v. The procurement in other respects meets federal requirements.

8. Rolling Stock

The following Federal laws and regulations impose requirements that may affect rolling stock procurements:

a. Accessibility. Rolling stock must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

b. Transit Vehicle Manufacturer Compliance with DBE Requirements. Before a transit vehicle manufacturer (TVM) may submit a bid or proposal to provide vehicles to be financed with FTA assistance, 49 CFR Section 26.49 requires the TVM to submit a certification that it has complied with FTA's DBE requirements.

c. Minimum Service Life. FTA requires each recipient to maintain satisfactory continuing control of FTA assisted property. For buses and certain other vehicles, FTA has established minimum service life policies that may affect the quantity of vehicles that the recipient may acquire. See, the most recent versions of FTA Circular 5010.1, "Grant Management Requirements," FTA Circular 9030.1, "Urbanized Area Formula Program: Grant Application Instructions," and FTA Circular 9300.1, "Capital Program: Grant Application Instructions," that addresses minimum service life for vehicles.

d. Spare Ratios. While all FTA assistance for third party procurements must be limited to property and services the recipient will use in the near future, FTA is concerned that the recipient does not acquire an excessive number of spare vehicles not regularly used in public transportation service.

e. Air Pollution and Fuel Economy. Each third party contract to acquire rolling stock must include provisions to ensure compliance with applicable Federal air pollution control and fuel economy regulations, such as EPA regulations, "Control of Air Pollution from Mobile Sources," 40 CFR Part 85; EPA regulations, "Control of Air Pollution from New and In Use Motor Vehicles and New and In Use Motor Vehicle Engines," 40 CFR Part 86; and EPA regulations, "Fuel Economy of Motor Vehicles," 40 CFR Part 600.

f. Pre-award Review and Post Delivery Review. Each third-party contract to acquire rolling stock must include provisions for compliance with applicable requirements of 49 U.S.C. Section 5323(m) and those provisions of

FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663, that do not conflict with 49 U.S.C. Section 5323(m).

g. Bus Testing. Each third-party contract to acquire a new bus model or a bus with significant alterations to an existing model must include provisions to assure compliance with applicable requirements of 49 U.S.C. Section 5318, as amended by MAP-21, and FTA regulations, "Bus Testing," 49 CFR Part 665.

h. In-State Dealers. The recipient may not limit its third-party bus procurements to its in state dealers, 49 U.S.C. Section 5325(i). Although FTA respects state licensing requirements, FTA is prohibited by law from providing FTA assistance to support bus procurements that have the result of limiting competition to entities that have been able to obtain a state license.

i. Basis for Contract Award. As permitted by 49 U.S.C. Section 5325(f), the recipient may award a third party contract for rolling stock based on initial capital costs, or based on performance, standardization, life cycle costs, and other factors, or by selection through a competitive procurement process.

j. Time Limits for Options on Rolling Stock Contracts. MAP 21 amended 49 U.S.C. Section 5325(e)(1) by adding subsections (A) and (B), retaining the five (5) year option for the procurement of buses. Consequently:

    i. Buses. A recipient:

        a) May enter into a multi-year contract to acquire buses or replacement parts, with an option not exceeding five (5) years to buy additional buses or replacement parts, 49 U.S.C. Section 5325(e)(1)(A), but

        b) May not exercise the option to acquire buses or replacement parts later than five (5) years after the date of its original contract.

FTA interprets the five-year period as covering the recipient's "material requirements" for rolling stock and replacement needs from the first day when the contract becomes effective to its "material requirements" at the end of the fifth year. In the case of rolling stock, which frequently cannot be delivered expeditiously, FTA recognizes that a recipient's "material requirements" for rolling stock will necessarily precede its actual need to put that rolling stock to use in public transportation service. This means that the contract may not have options for more rolling stock and replacement parts than a recipient's material requirements for the applicable five-year period. This does not mean the recipient must obtain delivery, acceptance, or even fabrication in five years. Instead it means only that FTA limits a contract to purchasing no more than the recipient's material requirements for rolling stock or replacement parts for five or seven years based on the effective date of the contract.

9. Design-Bid-Build

The design-bid-build procurement method requires separate contracts for design services and for construction.

a. Design Services. For design services, the recipient must use qualifications-based procurement procedures, in compliance with applicable federal, state and local law and regulations.

b. Construction. Because the recipient may not use qualifications-based procurement procedures for the actual construction, alteration or repair of real property, the recipient generally must use competitive procedures for the construction. These may include sealed bidding or competitive negotiation procurement methods, as appropriate.

10. Design-Build

Currently, North Carolina state statutes do not meet procurement requirements and this procurement method should not be pursued. If state statues are amended to comply with procurement requirements, please refer to FTA Circular 4220.1F for applicable guidelines.

11. Revenue Contracts

A revenue contract is a contract in which the recipient or sub-recipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation or creating business opportunities with the use of FTA assisted property. The recipient has broad latitude in determining

the extent and type of competition appropriate for a particular revenue contract. In order to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the recipient should conduct its revenue contracting as follows:

a. Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity.

b. Open Contract Opportunities. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties.

VIII. **RECEIPT, EVALUATION, AND AWARD OF BID PROPOSALS**

1. Evaluations

The following standards apply:

a. General. When evaluating bids or proposals submitted, FTA expects the recipient to consider all evaluation factors specified in its solicitation documents and evaluate the bids or offers only on the evaluation factors included in . Evaluations.those solicitation documents. The recipient may not modify its evaluation factors after bids or proposals have been submitted without re-opening the solicitation.

b. Options. In awarding the contract that will include options, the following standards apply:

   i. Evaluation Required. In general, FTA expects the recipient to evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded.

2. Cost analysis and price analysis

The Common Grant Rules require the recipient to perform a cost analysis or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

a. Cost Analysis. The recipient must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The recipient must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). The recipient is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. The recipient, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

   i. Federal Cost Principles. Federal cost principles contain many requirements about the allowability and allocability of costs.

   ii. Profit. FTA expects the recipient to negotiate profit as a separate element of the cost for each contract in which there has been no price competition, and in all acquisitions in which the recipient performs or acquires a cost analysis. To establish a fair and reasonable profit, the recipient needs to consider the complexity of the work to be performed, the risk undertaken by the contractor, the contractor's

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

b. Price Analysis. If the recipient determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. The price analysis for micro- purchases may be limited. Similarly, the recipient may use an abbreviated price analysis for small purchases in most cases. One method to record this price analysis is through the use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.

IX. CONTRACT ADMINISTRATION

All contracts are subject to Union County standard terms & conditions, including purchase orders and other standard contracts utilized by the County.

1. Record keeping

The Common Grant Rules require the recipient to prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. The FTA Common Grant Rules require the recipient to maintain these records for three years after the recipient and sub-recipients, if any, have made final payment and all other pending matters are closed. The recipient must also prepare, maintain, and distribute the following documents as necessary:

a. Procurement History. The FTA Common Grant Rules require the recipient to maintain and make available to FTA written records detailing the history of each procurement, as follows:

   i. Procurement Method. A governmental recipient must provide its rationale for the method of procurement it used for each contract, including a sole source justification for any acquisition that does not qualify as competitive.
   ii. Contract Type. A governmental recipient must state the reasons for selecting the contract type it used (fixed price, cost reimbursement, and so forth).
   iii. Contractor Selection. A governmental recipient must state its reasons for contractor selection or rejection. FTA expects the recipient to include a justification for each noncompetitive award. Governmental recipients should include a written responsibility determination for the successful contractor.
   iv. Cost or Price. Each recipient (government and non-government) must evaluate and state its justification for the contract cost or price.
   v. Reasonable Documentation. The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records will vary greatly for different procurements. Procurements that are more substantial may require extensive documentation.

b. Access to Records. Apart from the more limited record access provisions of the Common Grant Rules, 49 U.S.C. Section 5325(g) provides FTA and DOT officials, the U.S. Comptroller General, or any of their representatives, access to and the right to examine and inspect all records, documents, and papers, including contracts, related to any FTA project financed with Federal assistance authorized by 49 U.S.C. Chapter 53.

2. Change of Scope

FTA requires a grant amendment if the request changes the overall scope of a grant or changes the project scopes within a grant. Examples and an exception to changes in scope that result in a grant amendment include:

a. A change in the quantity of items to be purchased or constructed that materially changes the purpose or intent of the approved grant.

b. The addition of a new project scope code or the deletion a project scope code if the deletion affects the intent or objectives of the grant.

c. The addition of an ALI that results from an amendment to the approved TIP/STIP.

d. Exception to change in scope: For earmarks, all changes to the grant after award must be consistent with the original intent of the Congressional language. Your FTA Regional Office will assist you in making this determination. For example, if the earmark is only for a facility, a grant amendment cannot be executed to add a scope for vehicles without explicit direction from Congress to FTA to change the earmark.

3. Payment Provisions

a. Advance payments. Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic pre-award authority for its project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other pre-award authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply:

i. Use of FTA Assistance Prohibited. The recipient may not use FTA assistance to make payments to a third-party contractor before the contractor has incurred the costs for which the payments would be attributable.

ii. Exceptions for Sound Business Reasons. Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence. A recipient that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence.

a) Adequate Security for Advance Payments. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of FTA or local share funds.

b) Customary Advance Payments. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed $100,000.

In summary, if there are sound business reasons justifying the advance payment and adequate security for the payment, FTA will generally concur in a written request for an exception.

a. Progress payments. Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has enough written documentation to substantiate the work for which payment is requested. For construction contracts, payments may be made on a percentage of completion method. This payment method is prohibited for non construction contracts.

i. Adequate Security for Progress Payments. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire

bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance.

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

iii. Percentage of Completion Method. The Common Grant Rules require that any progress payments for construction contracts be made on a percentage of completion method described therein. The recipient, however, may not make progress payments for other than construction contracts based on this percentage method.

4. Liquidated damages

FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient's costs should the standards not be met and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise.

5. Bonding

The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:

a. Bid Guarantee. Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.

b. Performance Bond. Both FTA and the Common Grant Rules generally require the third-party contractor to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third-party contract.

c. Payment Bond. The Common Grant Rules generally require the third-party contractor to obtain a standard payment bond for 100 percent of the contract price. A "payment bond" is obtained to ensure that the contractor will pay all people supplying labor and material for the third-party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:

i. Less Than $1 Million. Fifty percent of the contract price if the contract price is not more than $1 million,

ii. More Than $1 Million but Less Than $5 Million. Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million, or

iii. More Than $5 Million. Two and one half million dollars if the contract price is more than $5 million.

d. Acceptable Sureties. The Common Grant Rule for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, "Surety Companies Doing Business with the United States," 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury's Listing of Approved Sureties (Department Circular 570), http://fms.treas.gov/c570/c570.html. FTA encourages each governmental recipient to require similarly acceptable sureties.

e. Reduced Bonding. FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in FTA Circular 4220.1F. FTA reserves the right to approve bonding

amounts that do not conform to these minimums if the local bonding policy adequately protects the federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit its policy and rationale to the Regional Administrator for the region administering the project.

f. Excessive Bonding. Compliance with state and local bonding policies that are greater than FTA's bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor's bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient's "excessive bonding" requirements would violate the FTA Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient's bonding policies far exceed those described; FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

6. Existing Contracts

Occasionally, a recipient may find it advantageous to use existing contract rights. As used in FTA circular 4220.1F, "existing contract" means a contract that, when formed, was intended to be limited to the original parties thereto, and does not include state or local government purchasing schedules or purchasing contracts as discussed in sections 4, 5, and 6 of this Chapter.

a. Permissible Actions. Within the conditions set forth below, FTA permits a recipient to use existing contract rights held by another recipient:

i. Exercise of Options. A recipient may use contract options held by another recipient with the following limitations:

a) Consistency with the Underlying Contract. FTA expects the recipient to ensure that the terms and conditions of the option it seeks to exercise are substantially similar to the terms and conditions of the option as stated in the original contract at the time it was awarded.

b) Price. The recipient may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.

c) Awards Treated as Sole Source Procurements. The following actions constitute sole source awards:

1) Failure to Evaluate Options Before Awarding the Underlying Contract. If a contract has one or more options and those options were not evaluated as part of the original contract award, exercising those options after contract award will result in a sole source award.

2) Negotiating a Lower Option Price. Exercising an option after the recipient has negotiated a lower or higher price will also result in a sole source award unless that price can be reasonably determined from the terms of the original contract, or that price results from Federal actions that can be reliably measured, such as changes in Federal prevailing labor rates, for example.

In the circumstances described in this paragraph, FTA assistance may be used to support a sole source award only if that award can be justified under FTA's third-party contract standards for sole source awards.

X. CONTRACT PROVISIONS

Before a recipient may use FTA assistance to support the acquisition of property or services, it must comply with all applicable federal laws and regulations, whether or not addressed in the Common Grant Rules. Some of those laws and regulations will affect the third-party contractor providing the property or services, or even determine which entities may qualify as a third-party contractor. Other laws and regulations will affect the nature of the property or services to be acquired or the terms under which the property or services must be acquired. A recipient may not use FTA assistance to support acquisitions that do not comply with all applicable federal requirements. FTA's Master Agreement contains a current, but not all-inclusive, description of statutory and regulatory requirements that may affect a recipient's procurement (such as Disadvantaged Business Enterprise (DBE) and Clean Air requirements). The Master Agreement

states that applicable federal requirements will apply to project participants to the lowest tier necessary to ensure compliance with those requirements. A recipient will also need to include applicable federal requirements in each sub- agreement, lease, third-party contract, or other document as necessary. For specific guidance on cross-cutting requirements administered by other federal agencies, FTA recommends that the recipient contact those agencies.

The recipient may also use the checklists in Appendix E of FTA circular 4220.1F as a reminder of federal requirements, and the matrices in Appendix A of FTA circular 4220.1F for a list of clauses and provisions required by federal laws and regulations. The recipient may also refer to the Model Clauses in FTA's "Best Practices Procurement Manual" but cautions the recipient also to check the latest edition of FTA's Master Agreement to determine which provisions have been added, changed, or rescinded.

Some of the more typical requirements and restrictions that will affect the use of FTA assistance to finance a recipient's third-party contracts include:

- Contractor Qualifications
- Debarment and Suspension
- Conflict of Interest
- Lobbying Certification and Disclosure
- Federal Civil Rights Laws and Regulations
- Socio-Economic Development
    - Disadvantaged Business Enterprises (DBES)
    - Small and Minority Firms and Women's Business Enterprises
    - Fair Labor
    - Veterans Employment
- American with Disabilities Act
- Bonding Requirements
- Bus Testing
- Davis Bacon Labor Standards
- Drug and Alcohol Testing
- Federal Motor Vehicle Safety Standards

1. Buy America

FTA's "Buy America" law and regulations apply to projects that involve the purchase of more than $150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in the FTA assisted project. If FTA funds are used for the project, Buy America requirements apply to all procurement contracts under the project irrespective of whether a recipient decides to fund a discrete part of the project without FTA funds. Only if an activity is outside the FTA project and is financed entirely without funds to which FTA's Buy America regulations would apply may the recipient disregard FTA's Buy America requirements. Property that the contractor acquires to fabricate a deliverable for the recipient, such as tools, machinery, and other equipment or facilities, is not subject to FTA's Buy America requirements unless the recipient intends to take possession of that property upon completion of the project. Thus, if a third-party contractor is acquiring property for its general inventory of equipment or facilities to conduct its overall business affairs, the recipient may enter the cost of that acquisition into its calculations of overhead amounts applicable to the FTA assisted project irrespective of whether the property acquired would comply with FTA's Buy America regulations. FTA's Buy America statute does not pre-empt state laws with stricter requirements on the use of foreign articles, materials, and supplies.

FTA cautions that its Buy America regulations that apply to FTA assisted third-party procurements, published at 49 CFR Part 661, differ from federal "Buy American Act" regulations that apply to direct federal procurements, published in the FAR at 48 CFR Chapter 1, Subparts 25.1 and 25.2. FTA strongly recommends that the recipient review FTA's Buy America regulations before undertaking any FTA assisted procurement.

a. Certification requirements for procurement of steel or manufactured products. If steel, iron, or manufactured products (as defined in 49 CFR §661.3 and 661.5) are being procured, the appropriate certificates as set forth in Appendix C and Appendix D of FTA Circular 42201.F, shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR §661.13(b).

b. Pre-award audit requirements. A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under 49 CFR §663 is complete before the recipient enters into a formal contract for the purchase of such rolling stock. A pre-award audit includes:

   i. A Buy America certification as described in 49 CFR §663.25. A pre-award Buy America certification is a certification that the recipient keeps on file that:

      a) There is a letter from FTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
      b) The recipient is satisfied that the rolling stock to be purchased meets the requirements of section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists-

         1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
         2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

   ii. A purchaser's requirements certification as described in 49 CFR §663.27. A pre-award purchaser's requirements certification is a certification a recipient keeps on file that:

      a) The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and
      b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation.

   iii. Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in 49 CFR §663.41 or 49 CFR §663.43.

c. Post-delivery Buy America certification. A recipient purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit under 49 CFR §663 is complete before title to the rolling stock is transferred to the recipient. A post-delivery audit under includes

   i. A post-delivery Buy America certification as described in 49 CFR §663.35. A post-delivery Buy America certification is a certification that the recipient keeps on file that:

      a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
      b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:

         1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and
         2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.

ii. A post-delivery purchaser's requirements certification as described in §663.37 of this part. A post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that:

a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall:

1) Provide accurate records of all vehicle construction activities; and
2) Address how the construction and operation of the vehicles fulfills the contract specifications.

b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.

c) For procurements of:

1) Ten or fewer buses; or
2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or
3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.

iii. When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in 49 CFR §663.41 or 49 CFR §663.43.

d. Post-delivery audit review. If a recipient cannot complete a post-delivery audit because the recipient or its agent cannot certify Buy America compliance or that the rolling stock meets the purchaser's requirements specified in the contract, the rolling stock may be rejected and final acceptance by the recipient will not be required. The recipient may exercise any legal rights it has under the contract or at law. This provision does not preclude the recipient and manufacturer from agreeing to a conditional acceptance of rolling stock pending manufacturer's correction of deviations within a reasonable period of time.

2. Protections against performance difficulties

The Common Grant Rule for governmental recipients authorizes FTA to require each governmental recipient to include contract provisions that would reduce potential problems that might occur during contract performance. In addition to other clauses that may be approved by the Office of Federal Procurement Policy, FTA expects the governmental recipient to include provisions as described below:

a. Changes. FTA expects a governmental recipient to include changes and changed conditions provisions or clauses in most contracts, except for routine supply contracts.

b. Remedies. The Common Grant Rule for governmental recipients authorizes FTA to require remedies. Accordingly, FTA expectations are as follows:

i. Liquidated Damages. FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect

the recipient's costs should the standards not be met and must be specified in the solicitation and contract.

ii. Violation or Breach. Third-party contracts exceeding $100,000 must include administrative, contractual, or legal remedies for violations or breach of the contract by the third-party contractor.

iii. Suspension of Work. FTA may require provisions pertaining to suspension of work.

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

XI. CONTRACTOR/SUBRECIPIENT MONITORING

The purpose of this section is to assist Union County and its third-party contractor or lessee in maintaining compliance for federally funded projects and understanding the requirements and responsibilities of being a third-party contractor or lessee receiving funds through federally funded projects. All grant management will be conducted in accordance with FTA C 5010.1D and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards Title 2 CFR §200. Union County does not have any direct recipients or subrecipients; however, if applicable the following guidelines would also apply.

Any grantee under FTA programs is required to comply with all applicable federal civil rights statutes and with the implementing regulations for the statutes. FTA implements the Civil Rights Act of 1964 by prohibiting discrimination under projects, programs or activities receiving financial assistance because of race, color, creed, national origin, sex or age. The laws include: *Title VI of the Civil Rights Act of 1964, Equal Employment Opportunity, Disadvantaged Business Enterprise and Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA).*

The requirements for civil rights compliance are extended to third-party contractors. Assurances under Title VI and the other civil rights requirements are included in the required Annual Certifications and Assurances and in the contract with Union County. Third-party contractors are also required to identify any lawsuits or complaints alleging discrimination in service filed with the grantee. Civil rights monitoring will concentrate on how the grantee is providing service. Title VI also assures that funds are passed through to third-party contractors and their project without regard to race, color, or national origin.

1. Definitions

The following definitions are used in this section:

a. Direct Recipient. The term Direct Recipient refers to an entity that receives funding directly from FTA.

b. Subrecipient. The term subrecipient refers to an entity that receives a subaward (or sub-agreement) from a pass- through entity to carry out part of a federal program but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal Awards directly from a federal awarding agency.

c. Third-party Contractor/Lessee. The term third-party contractor/lessee refers to any entity that is awarded a contract, purchase order, or lease agreement from the Direct Recipient or subrecipient financed in whole or in part with federal assistance awarded by FTA.

2. Contractor/Subrecipient Monitoring

Quarterly monitoring of contractors shall be conducted by Union County to ensure that all federal guidelines are being adhered to when using federal funds. A project invoice is required along with any detailed accounting of the expenditure of the local match if applicable.

a. In addition to state or federal program specific monitoring requirements, all monitoring activities should address the following areas:

   i. All applicable requirements of Title VI of the Civil Rights Act of 1964, as defined in the current Title VI Compliance Commission Advisory Memorandum.
   ii. The applicable core monitoring areas, as defined by the Uniform Guidance. Currently, the core monitoring areas include but are not limited to:

      a) Activities allowed or un-allowed
      b) Allowable costs/cost principles
      c) Cash management
      d) Eligibility
      e) Equipment and real property management
      f) Matching, Level of Effort, Earmarking
      g) Period of Performance
      h) Procurement and Suspension and Debarment
      i) Program income
      j) Reporting
      k) Subrecipient Monitoring (Currently, Union County does not have any subrecipients)
      l) Reporting and special tests and provisions

Note: The full policy document approved by Union County Board of County Commissioners includes the following appendix documents:

- Appendix A: FTA Clause Matrix
- Appendix B: Procurement Checklist
- Appendix C: Decision Matrix
- Appendix D: Change Order Review Checklist
- Appendix E: Procurement History File Index
- Appendix F: Contract Type - Rationale for Selection
- Appendix G: FTA Forms