

CHAPTER 05 - PURCHASE AND CONTRACT

SUBCHAPTER 05A – DIVISION OF PURCHASE AND CONTRACT

01 NCAC 05A .0101 RESPONSIBILITY

The Department of Administration is responsible for administering the State's program for the acquisition, management, and disposal of personal property, as well as the acquisition of services for its agencies. The Secretary of the Department of Administration (Secretary) is authorized and responsible for adopting and carrying out the rules promulgated herein. The administration of this program is delegated to the State Purchasing Officer (SPO) who reports to the Secretary.

*History Note: Authority G.S. 143-49; 143-341;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05A .0102 SCOPE

The program administered by the Division of Purchase and Contract shall be based on sound competitive purchasing procedures, sound management of personal property, and the economical disposal of State property; and shall include the following where public funds are involved:

- (1) acquisition of equipment, materials, and supplies, for all agencies;
- (2) acquisition of all printing, rentals, leases and services for all agencies, except for community colleges and local school administrative units;
- (3) making purchasing services available to non-state agencies identified in G.S. 143-49 and 143-49.1;
- (4) establishment and enforcement of purchase specifications;
- (5) inspection and testing of products;
- (6) review of agency purchasing and warehousing practices to ensure compliance with operating rules and procedures established by the SPO.

*History Note: Authority G.S. 143-49; 143-49.1; 143-53; 143-56; 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05A .0103 ORGANIZATION

*History Note: Authority G.S. 143B-9; 143B-10;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. July 1, 1987.*

01 NCAC 05A .0104 LOCATION

The principal offices of the Division of Purchase and Contract are located in the Administration Building, 116 West Jones Street, Raleigh, N.C. 27603-8002.

*History Note: Authority G.S. 143B-10;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05A .0105 RULE-MAKING AUTHORITY

History Note: Authority G.S. 143-53; 143-60;

Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. July 1, 1987.

01 NCAC 05A .0106 STANDARDIZATION COMMITTEE
01 NCAC 05A .0107 INSPECTION OF STANDARDS

History Note: Authority G.S. 143-53; 143B-397; 143B-398;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1986.

01 NCAC 05A .0108 FORMS: PROCEDURES: TERMS AND CONDITIONS

The Division of Purchase and Contract establishes procedures for acquiring commodities, printing and services and prescribes forms, consistent language, terms and conditions and advertisement requirements, applicable to all agencies for such action. The procedures, forms, consistent language, terms and conditions and advertisement requirements shall be established taking into consideration market conditions and trends, legal requirements, and factors determined to be in the State's best interest. These shall be furnished to all agencies.

History Note: Authority G.S. 143-51; 143-53; 143-55; 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; May 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05A .0109 BOARD OF AWARD
01 NCAC 05A .0110 ADMINISTRATIVE PROCEDURES

History Note: Authority G.S. 143-53; 150B-2; 150B-22; 150B-23;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. August 1, 1988; May 1, 1988; July 1, 1987;
Repealed Eff. February 1, 1996.

01 NCAC 05A .0111 INFLATION POLICY

History Note: Authority G.S. 143-48; 143-49; 143-53;
Eff. February 27, 1979;
Repealed Eff. June 1, 1986.

01 NCAC 05A .0112 DEFINITIONS

For the purpose of this Chapter:

- (1) "Agency" or "Agencies" means all departments, institutions, boards, commissions, universities, community colleges, or other units of the State subject to G.S. 143, Article 3, unless specifically exempted by statute.
- (2) "Best and Final Offer" ("BAFO") is a document that memorializes the details of Negotiations between the State and a Vendor and mutually modifies the Vendor's Offer.
- (3) "Best Value Procurement" shall have the same meaning as in G.S. 143-135.9.
- (4) "Bid Value Benchmark" or "General Delegation" means the maximum authorized expenditure set pursuant to G.S. 116-31.10, G.S. 115D-58.14, or G.S. 143-52(a) and 143-53.1 for which an Agency may contract to purchase Goods or Services without obtaining prior approval for the purchase from the Division.
- (5) "Clarification" means communications between the State and a Vendor that occur after receipt of a Vendor's Offer made for the purpose of eliminating irregularities, informalities, or apparent clerical mistakes in an Offer. A Clarification may also be used in order for the State to interpret an Offer or

Offers or to facilitate the State's evaluation of all Offers. A Clarification shall not be used to cure material deficiencies in an Offer, alter the scope of an Offer, or to negotiate.

- (6) "Consultant Services" means contracted work or tasks performed by a Vendor or independent contractor possessing specialized knowledge, experience, expertise, and professional qualifications to investigate a Purchasing Agency's defined problems or projects and to provide counsel, review, analysis, or advice in formulating or implementing improvements in programs or Services. This includes improvements related to the organization, planning, directing, control, evaluation, and operation of a program, Agency or department.
- (7) "Competition" in purchasing exists when the available market for the Goods or Services to be acquired consists of more than one Responsible Vendor that is qualified and willing to submit an Offer.
- (8) "Contract" means any type of agreement entered into by Agencies, regardless of what it may be titled or called, setting out the obligations of the parties concerning a Procurement of Goods or Services.
- (9) "Contract Term" means the time period in which a Contract is active and in effect.
- (10) "Deficiency" means either a failure to meet a stated Requirement or a combination of weaknesses in an Offer that increases the risk that a Vendor will be unable to meet its contractual obligations.
- (11) "Division" means the Division of Purchase and Contract.
- (12) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.
- (13) "Electronic Bid System" means the Division's Electronic system used variously to advertise Solicitations, notify Vendors, conduct Reverse Auctions, and post Contract awards.
- (14) "Emergency Situations" means unforeseen circumstances as stated in G.S. 143-57, that endanger lives, property, or the continuation of a vital program such as those essential for health or safety, as determined by the Purchasing Agency Director, and that can be rectified only by immediate purchases or rental of Goods or Services.
- (15) "Extension" means an additional Contract Term not provided for in the Contract that is mutually agreed to by the State and all Vendor parties in a Contract amendment.
- (16) "Goods" means any tangible property, including all equipment, materials, supplies, and commodities. Where the printing is not the predominant aspect of a service contract, acquisition of printing shall be considered the purchase of Goods under these Rules.
- (17) "Goods Contract" means any agreement involving the Procurement of Goods from a Vendor, but that may also have ancillary Services aspects.
- (18) "Initial Contract Term" means the initial period for performance under a Contract after which the Contract will either terminate or be extended pursuant to a Renewal or Extension.
- (19) "Negotiation" means oral or written communications in a waived or open competitive Procurement between the State and Vendor undertaken with the intent of allowing a Vendor to revise its Offer. Revisions may apply to price, schedule, technical requirements, or other terms of the proposed Contract. Negotiations are specific to each Offer and shall be conducted to maximize the State's ability to obtain best value based on the evaluation factors set forth in the Solicitation. Negotiations shall be memorialized in any resulting Contract.
- (20) "Offer" means a bid, proposal, BAFO, or other proposition submitted in response to any Solicitation, Negotiation, or other approved acquisition process, as well as responses to solution-based Solicitations and government-Vendor partnerships.
- (21) "Personal Services Contract" has the same definition as in G.S. 143-48.6(b). A Personal Services Contract is a type of Service Contract.
- (22) "Pressing Need" means a need arising from unforeseen causes as stated in G.S. 143-57, outside the State's control, including delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, as determined by the Purchasing Agency Director, which can be satisfied only by immediate purchase or rental of Goods or Services.
- (23) "Price" means the amount paid by the State to a Vendor for Goods or Services.
- (24) "Procurement" means the process of acquiring Goods or Services.
- (25) "Professional Services" means the contracted work or tasks performed by a Vendor or independent contractor possessing specialized knowledge, experience, expertise, and professional qualifications, who provides ongoing Services. A Professional Services Contract is a type of Service Contract.
- (26) "Progressive Award" means an award for portions of a definite quantity requirement to more than one Vendor. Each portion is for a definite quantity and the sum of the portions is the total quantity

procured. A Progressive Award may be in the Purchasing Agency's best interest when awards to more than one Vendor for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

- (27) "Public Funds" means any amount received, held, disbursed, or otherwise subject to or accounted for in accordance with the State Budget Act and amounts used to acquire Goods and Services that are required to be purchased in accordance with Article 3 of Chapter 143 of the General Statutes.
- (28) "Purchasing Agency" or "Purchaser" means the Agency that issues a purchase order or otherwise acquires Goods or Services through a purchasing process.
- (29) "Recalled Bid" means a Bid that is rescinded by the Vendor after the bid opening but prior to a contract being awarded.
- (30) "Renewal" means an optional term provided for in the Contract that can be exercised as of right by the State.
- (31) "Responsible Vendor" means a Vendor who demonstrates in its Offer that it has the capability to perform the requirements of the Solicitation.
- (32) "Responsive Offer" means an Offer that conforms to the Requirements of the Solicitation.
- (33) "Requirement" is a provision of a Solicitation and any resulting Contract that prescribes the nature or details of a standard, process, or procedure that must be complied with by the Vendor before any further evaluation of the Offer is conducted by the State.
- (34) "Sealed Offer" means an Offer that remains unopened until the public opening time stated in the Solicitation.
- (35) "Secretary" means the Secretary of the North Carolina Department of Administration.
- (36) "Service Contract" means any agreement for compensation involving Services and requiring a particular or specialized knowledge, experience, expertise, or similar capabilities in the Vendor. Contracts for Consultant Services, Professional Services, and Personal Services are also examples of a Service Contract. A Service Contract may also involve the ancillary purchase of Goods.
- (37) "Services" means the tasks and duties undertaken by a Vendor in a Service Contract to fulfill the Requirements and Specifications of the Contract.
- (38) "Signature" means a manual autograph, an Electronic identifier, or an Electronic authentication technique, that is intended by the person using it to have the same force and effect as a manual signature.
- (39) "Small Purchase" means the purchase of Goods and Services not covered by a Term Contract where the expenditure of Public Funds including Extensions and Renewals is equal to or less than the Small Purchase Benchmark amount, pursuant to 01 NCAC 05B .0301.
- (40) "Solicitation" means to request or invite Vendor Offers, or to request information regarding the acquisition of Goods and Services, through the use of Solicitation Documents.
- (41) "Solicitation Documents" means a Written or Electronic (a) Invitation for Bids (IFB); (b) Request for Quotations (RFQ); (c) Request for Proposals (RFP); (d) Best and Final Offer (BAFO); or (e) other documents to invite Vendor Offers, including all mutually agreed attachments and items incorporated by reference therein.
- (42) "Specification" means any description of the physical or functional characteristics of, or the nature of, the Goods or Services to be procured.
- (43) "SPO" means the State Procurement Officer who is also the Director of the Division.
- (44) "Tabulation" means a list of Vendors submitting Offers in response to a particular Solicitation and, if applicable, the prices offered as allowed under G.S. 143-52(a).
- (45) "Technical Offer" means a proposal by a Vendor in response to the Solicitation, absent the price content.
- (46) "Term Contract" is a binding agreement between purchaser and seller to buy and sell certain Goods or Services at certain prices, for an agreed Contract Term, and under specific terms and conditions.
- (47) "Total Cost of Ownership" means a summation of all purchase, operating, and related costs to be expended during the projected lifetime of a Good or Service or both.
- (48) "Vendor" means a contractor, supplier, bidder, company, independent contractor, firm, corporation, partnership, individual, or other entity submitting a response to a Solicitation.
- (49) "Voided Bid" means an Electronic bid that was submitted by a Vendor in connection with an Electronic Solicitation that has been cancelled, the bids voided and not opened electronically.
- (50) "Weakness" means a flaw in the Offer that increases the risk of unsuccessful contract performance.

- (51) "Withdrawal" or "Withdrawn Bid" means a Bid that is rescinded by the Vendor prior to the bid opening.
- (52) "Written" or "Writing" means a communication recorded in a medium of expression that can be preserved, read, retrieved, and reproduced for an indefinite period of time, including information in a form that is electronically transmitted and stored.

History Note: Authority G.S. 143-48.3; 143-48.6; 143-49; 143-52; 143-53; 143-53.1; 143-57; 143-135.9;
Eff. February 1, 1996;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. March 1, 2022; November 1, 2021; October 1, 2019.

SUBCHAPTER 05B - PURCHASE PROCEDURES

SECTION .0100 - REQUISITIONING

01 NCAC 05B .0101 PROCEDURE

Using agencies shall request quotation, bid and purchase actions of the Division of Purchase and Contract by means of electronic or written requests.

History Note: Authority G.S. 143-49; 143-51; 143-55;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .0102 VERBAL REQUESTS

Verbal or other means of request are not satisfactory substitutes for electronic or written requests except in emergencies. Electronic or written confirmation must follow any such request made in an emergency situation.

History Note: Authority G.S. 143-49; 143-51; 143-55;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .0103 CONFIDENTIALITY

(a) All information and documentation whether Electronic, Written, or verbal relative to the development of a Solicitation for a proposed or pending Procurement shall be confidential, except as deemed necessary by the Purchaser to develop a complete contractual document. Such material shall remain confidential until the award of contract or action has been taken by the Purchasing Agency to cancel the Procurement.

(b) All information and documentation relative to the development of a Specification shall be confidential until a contract is entered into by the Purchasing Agency and the Vendor in accordance with G.S. 143-52(a).

(c) Trade secrets, test data and similar proprietary information that the Vendor does not wish disclosed shall be identified as follows:

- (1) each page shall be identified in boldface at the top and bottom as "CONFIDENTIAL"; and
- (2) if only a portion of a page marked "CONFIDENTIAL" contains trade secret information, the trade secret information shall be designated with a contrasting color or by a box around such information.

(d) Cost information shall not be confidential.

History Note: Authority G.S. 132-1.1; 133-33; 143-52; 143-53; 143-60;
Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. October 1, 2019.

SECTION .0200 - SPECIFICATIONS

01 NCAC 05B .0201 TYPES OF SPECIFICATIONS

There shall be two general types of purchase specifications. A standard specification shall be originated and developed by the Division of Purchase and Contract. It shall be comprehensive in nature and intended for repeated use. The other type of specification shall be originated by the user and modified as necessary to accomplish the intent of the rules of this Subchapter. Other type specifications may be used, including, but not limited to, "brand name or equal" or "brand specific".

*History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .0202 NEED

The Division of Purchase and Contract is authorized to inquire into the need for and the level of quality of the items and services requested.

*History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .0203 DEVELOPMENT OF SPECIFICATIONS

(a) A standard specification is intended for general use, applicable insofar as practicable to the needs of agencies and kept current by the Division of Purchase and Contract. In formulating such a specification, advisory committees made up of personnel from various agencies and the private sector may be employed for advice and assistance. This type of specification may be offered also for the review and comments of manufacturers and suppliers who may participate in future bidding on the items in question.

(b) North Carolina's purchasing program shall be built on the principle of competition. Purchasers shall seek competitive offers, except as may be permitted by statute or rule, from qualified and responsible sources of supply. Where competition is available, every purchaser shall use/write specifications and requirements that are reasonable to satisfy the need, but not unduly restrictive, which shall encourage competition in the open market and result in the best possible contract for the commodity, printing or service needed.

*History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .0204 ARTICLES FOR SPECIAL PURPOSES

Where articles are to be used for educational or training purposes, by handicapped persons, or for test and evaluation or research purposes, special or overriding consideration may be given to the factor of suitability in the preparation of specifications, the evaluation of offers, for waiver of competition, and the award of contracts.

*History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .0205 NORTH CAROLINA PRODUCTS

Where quality and availability allow, specifications are based on products grown or manufactured in North Carolina. This special interest in North Carolina products is intended to encourage and promote their use, but it is not exercised to the exclusion of other products or to prevent fair and open competition.

History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .0206 SUBMISSION FOR ADOPTION

Upon completion of all necessary studies, reviews and drafts, any proposed standard specification shall be submitted to the SPO for consideration. When a specification is adopted as a standard, it becomes applicable to agency purchases generally. A standard specification may be modified by the Division of Purchase and Contract on an interim basis as deemed necessary or advantageous until such time as the SPO can consider the proposed revision.

History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .0207 COPIES OF SPECIFICATIONS

01 NCAC 05B .0208 QUALIFIED PRODUCTS LIST

History Note: Authority G.S. 143-49(2); 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Repealed Eff. October 1, 2019.

01 NCAC 05B .0209 ON-SITE INSPECTION OF GOODS

History Note: Authority G.S. 143-49(2); 143-53; 143-49; 143-60; 143B-397; 143B-398;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

01 NCAC 05B .0210 CONFIDENTIALITY

History Note: Authority G.S. 133-33; 143-53; 143-60;
Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Repealed Eff. October 1, 2019.

SECTION .0300 - PROCUREMENT AUTHORIZATION AND PROCEDURES

01 NCAC 05B .0301 CONTRACTING REQUIREMENTS

Except where a waiver, special delegation, exemption, or an emergency purchase is permitted under Rule .1401, .1505(b), or Section .1600 of this Subchapter, all purchases involving the expenditure of Public Funds made by an Agency for Goods or Services not covered by Statewide Term Contracts, shall comply with the provisions of Rule .0314 of this Subchapter, and the following:

- (1) Small Purchases.
 - (a) A Small Purchase, as defined in 01 NCAC 05A .0112, is the purchase of Goods and Services, where the total Contract value, including the amounts of Extensions and Renewals, is equal to or less than the Small Purchase Benchmark as set by the SPO.

- (b) The Small Purchase Benchmark value shall be twenty five thousand dollars (\$25,000) in 2021 dollars. The SPO shall adjust the Small Purchase value for inflation in June of odd-numbered years using the Consumer Price Index for All Urban Consumers (CPI-U), all items in U.S. city average, not seasonally adjusted. The inflation change shall be calculated by dividing the CPI-U index value in May of the current year by the index value from May of two years prior.
 - (c) The executive officer of each Agency, or his or her designee, shall establish written internal policies for making Small Purchases, which shall include provisions to encourage and promote the use of historically underutilized businesses as defined in G.S. 143-128.4 in purchasing Goods and Services. The procedures shall be made available to the SPO upon request such as part of a compliance review, complaint, or other inquiry.
 - (d) The Purchasing Agency shall award Contracts for Small Purchases.
 - (e) An Agency may advertise Small Purchase Solutions through the Electronic Bid System maintained by the Division and may utilize Division Solicitation Documents as specified in Rule .0314 of this Section.
- (2) Informal Bidding Purchases.
- (a) Where the total Contract value, including the amounts of Extensions and Renewals, involves an expenditure of Public Funds exceeding the Small Purchase Benchmark in Item (1) of this Rule, and up to the Bid Value Benchmark established for a university under the provisions of G.S. 116-31.10, or the General Delegation limit for an Agency established by the SPO under the provisions of G.S. 143-53(a)(2) and G.S. 143-53.1, the following procedures shall be utilized:
 - (i) Competition shall be solicited, but the Solicitation of Sealed Offers is not required. Agencies may utilize the Division's Electronic Bid System to advertise Solicitations subject to this Subsection or to solicit Vendor Offers.
 - (ii) Division Solicitation Documents requesting or inviting offers shall be issued; and
 - (iii) Division Solicitation Documents and any resulting Contract shall include Contract language and terms and conditions as set forth in Rules .0314 and .0318 of this Section, and may be found on the Division's webpage. Additional terms and conditions used shall not conflict with the Division's standard terms and conditions as set forth in Rule .0314 of this Section.
 - (b) Contracts for purchases valued less than a university's Bid Value Benchmark or an Agency's General Delegation shall be awarded by the Purchasing Agency.
 - (c) Purchasing agencies shall encourage and promote the use of historically underutilized businesses as defined in G.S. 143-128.4 in purchasing Goods and Services.
- (3) Formal Bidding Procedure.
- (a) Where the total Contract value, including the amounts of any Extensions and Renewals, involve an expenditure of Public Funds in excess of the Bid Value Benchmark established under G.S. 116-31.10, G.S. 115D-58.14, or the General Delegation established by the SPO under G.S. 143-53(a)(2) and G.S. 143-53.1, the competitive bidding procedure as defined in G.S. 143-52 shall be utilized as follows:
 - (i) Competition shall be solicited;
 - (ii) Division Solicitation Documents requesting or inviting offers shall be issued by the Purchasing Agency;
 - (iii) Solicitation Documents and any resulting Contract shall include contract language and terms and conditions as set forth in Rules .0314 and .0318 of this Section, and may be found on the Division's webpage, unless prior written approval is obtained from the Division for unusual requirements, such as for unique, complex, or highly technical Procurements. If additional terms and conditions for unusual requirements are used, they shall not conflict with the Division's standard terms and conditions as set forth in Rule .0314, unless prior written approval is obtained from the Division;
 - (iv) an Agency shall provide to the Division a draft Solicitation Document for review and approval prior to posting on the Electronic Bid System. The Division shall review for compliance in accordance with G.S. 143-50.1 and Section .0300 of these Rules; and

- (v) an Agency shall solicit Sealed Offers in accordance with this Subsection. After opening and completing the evaluation of Offers received, the Agency shall prepare and submit a written recommendation for award, along with a copy of all Offers received, to the Division for approval or other actions deemed necessary by the SPO to ensure compliance with 01 NCAC 05B. Notice of the Division's decision shall be sent to the Agency.
 - (b) An Agency shall advertise all Solicitations subject to this Subsection through the Electronic Bid System maintained by the Division.
 - (c) Contracts for purchases in excess of a university's Bid Value Benchmark or an Agency's General Delegation shall be awarded by the Purchasing Agency upon approval from the Division in accordance with the process outlined in this paragraph.
 - (d) Purchasing agencies shall encourage and promote the use of historically underutilized businesses as defined in G.S. 143-128.4 in purchasing Goods and Services.
- (4) The Procurement of Goods and Services shall be processed in the same manner.

History Note: Authority G.S. 143-48; 143-49; 143-52; 143-53; 143-53.1; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Amended Eff. February 1, 1996; January 1, 1985; Temporary Amendment Eff. February 15, 1998; Amended Eff. April 1, 1999; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016; Amended Eff. March 1, 2022.

01 NCAC 05B .0302 MAILING LISTS

History Note: Authority G.S. 143-49; 143-52; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Amended Eff. February 1, 1996; Temporary Repeal Eff. February 15, 1998; Repealed Eff. April 1, 1999.

01 NCAC 05B .0303 ELECTRONIC, FACSIMILE, AND TELEPHONE OFFERS

E-mail, facsimile, and telephone Offers shall not be accepted in response to a Solicitation that is required to be sealed pursuant to Rule .0301 of this Section. The use of digital or Electronic Signatures on Electronic Offers must be consistent with G.S. 66-312(9).

History Note: Authority G.S. 66-312; 143-49; 143-52; 143-53; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Amended Eff. April 1, 1999; February 1, 1996; Readopted Eff. October 1, 2019.

01 NCAC 05B .0304 RECALL OF OFFERS

Offers may be recalled prior to opening upon Written and signed request from an authorized agent of the Vendor to the Purchasing Agency. A record of the recall shall be maintained in the bid file.

History Note: Authority G.S. 143-49; 143-52; Eff. February 1, 1976; Readopted Eff. February 27, 1979; Amended Eff. February 1, 1996; Readopted Eff. October 1, 2019.

01 NCAC 05B .0305 PUBLIC OPENING

(a) Pursuant to G.S. 143-52(a) the Purchasing Agency shall publicly open and tabulate all Offers (except those that have been previously withdrawn, or Voided Bids) at the time, date, and place identified in the Solicitation. The Tabulation shall be made public at the time it is created. There shall be at least two Purchasing Agency employees present at the opening when a Sealed Offer is required.

(b) When Negotiation after receipt of Offers is authorized pursuant to G.S. 143-49 and Rule .0503 of this Subchapter, only the names of offerors and the Goods and Services offered shall be tabulated at the time of opening. The cost and price Offer shall become available for public inspection at the time of the award.

(c) Under the two-step process outlined in Paragraph (b) of this Rule, the Technical Offers shall be reviewed for compliance with Rule .0301 of this Subchapter. Only the cost and price Offers for Offers found to be in compliance with Rule .0301 of this Subchapter will then be publicly opened. At least two days prior notification will be given to Vendors of the time and place of the opening.

History Note: Authority G.S. 143-49; 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Readopted Eff. October 1, 2019.

01 NCAC 05B .0306 LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS

All Offers or modifications must be received by the due date, time and location as specified in the Solicitation document. Any Offer or modification received after the specified time shall not be considered. Withdrawal of an Offer must be requested in writing prior to the contract award.

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Readopted Eff. October 1, 2019.

01 NCAC 05B .0307 ERROR/CLARIFICATION

When an offer appears to contain an obvious error or otherwise where an error is suspected, the circumstances may be investigated and then may be considered and acted upon. Any action taken shall not prejudice the rights of the public or other offering companies. Where offers are submitted substantially in accordance with the procurement document but are not entirely clear as to intent or to some particular fact or where there are other ambiguities, clarification may be sought and accepted provided that, in doing so, no change is permitted in prices.

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .0308 EXTENSION OF ACCEPTANCE TIME

When in the public interest, Vendors may be requested by the Purchasing Agency to extend the time within which an Offer is to be accepted.

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Readopted Eff. October 1, 2019.

01 NCAC 05B .0309 EVALUATION

(a) In determining the award of Contract, Responsive Offers shall be considered and evaluated as provided by statute and applicable rules. The evaluation criteria to be used in determining the award of Contract shall be identified in the Solicitation document.

(b) Possession of Offers, including any accompanying information submitted with the Offers, shall be limited to persons in the Purchasing Agency who are responsible for handling the Offers and accompanying information, and to others determined necessary by the Purchasing Agency for the purpose of evaluation and award of Contracts. No Vendor shall participate in the evaluation process nor submit any additional information or materials during the period of evaluation, unless requested by the Purchasing Agency.

(c) Evaluation of Offers shall be conducted by the Purchasing Agency. Following evaluation of the Offers by the Purchasing Agency, a recommendation shall be submitted to the Division to review for compliance with Rule .0301 of this Subchapter. Evaluation scoring sheets, and other materials utilized to determine the ranking or assessment of the Responsive Offers shall be retained in the Agency Procurement file.

(d) If a Vendor has not met the evaluation criteria provided in the Solicitation document, a written determination of such status shall be made, including the reason(s) therefore with any supporting documentation in the Procurement file.

(e) The failure of a Vendor to provide requested information to the Purchasing Agency in connection to a Clarification or mandatory addendum shall be sufficient justification for a determination of not having met the criteria.

History Note: Authority G.S. 143-49; 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Readopted Eff. October 1, 2019.

01 NCAC 05B .0310 NOTIFICATION OF AWARD

(a) Following the award of a Contract in accordance with Rule .0301 of this Section, the Purchasing Agency shall notify the winning Vendor in writing. Written notifications may include letter or Electronic means, such as posting on the Electronic Bid System or e-mail.

(b) Purchasing Agencies shall post Contract awards in the same manner described in Rule .0316 of this Section.

History Note: Authority G.S. 143-49; 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996; May 1, 1988; July 1, 1987;
Temporary Amendment Eff. February 15, 1998;
Amended Eff. April 1, 1999;
Readopted Eff. October 1, 2019.

01 NCAC 05B .0311 GOODS REQUIRING IMMEDIATE ACCEPTANCE

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987;
Repealed Eff. February 1, 1996.

01 NCAC 05B .0312 LACK OF COMPETITION

The purpose of soliciting offers is both to seek and to obtain competition; the responsibility is dual. Where only a single offer or a single acceptable offer is received or, otherwise, where reasonable and available competition is not obtained, the reason shall be ascertained and made a matter of record.

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .0313 TABULATIONS AND ABSTRACTS

History Note: *Authority G.S. 143-49; 143-52; 143-53;*
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Repealed Eff. October 1, 2019.

01 NCAC 05B .0314 SOLICITATION DOCUMENTS

(a) In this Rule, the Division establishes standard Solicitation Documents for use in Contracts with the State. A Purchasing Agency shall use Division Solicitation Documents for purchases over the Small Purchase Benchmark.

(b) Division Solicitation Documents shall act as templates for the Purchasing Agency, including provisions for:

- (1) Purchasing Agency contract lead name, contact information, Solicitation identifying information, and commodity codes;
- (2) Purpose and background information such as:
 - (A) a description of the requested Goods or Services;
 - (B) a description of the Purchasing Agency's needs; and
 - (C) the intent of the solicitation;
- (3) Contract Term information, including any Renewal period;
- (4) General information regarding the Solicitation and bid process including:
 - (A) date and time when the bids will be opened;
 - (B) instruction as to how and when the Vendor is to respond to the Solicitation;
 - (C) the intended schedule of events and responsibilities of the Solicitation;
 - (D) instructions for submitting written questions to the Purchasing Agency;
 - (E) a list of content that should be included in the Vendor's response; and
 - (F) instructions on how to submit an alternate bid, if permitted;
- (5) The method of award and bid evaluation process including:
 - (A) the number, type, and structure of the intended award;
 - (B) description of the evaluation criteria; and
 - (C) notice of the State's option to negotiate in accordance with 01 NCAC 05B .0503;
- (6) The terms of the Vendor's performance, including:
 - (A) the terms of pricing, invoicing, and methods of delivery of the requested Goods or Services;
 - (B) the scope of work required by the Solicitation;
 - (C) Specifications for the required Good or Service;
 - (D) licensing requirements, as applicable;
 - (E) statement of warranty or maintenance option; and
 - (F) instructions for submitting samples, demonstrations, or descriptive literature;
- (7) Requirements and instructions for submitting references;
- (8) Notice of confidentiality and prohibited communications;
- (9) Contract administration requirements including:
 - (A) post award contract management meetings and periodic status reports schedule;
 - (B) provisions for the review of the Vendor's performance as stated in Subparagraph (6) of this Paragraph; and
 - (C) dispute resolution.
- (10) Terms and conditions approved by the Division pursuant to 01 NCAC 05B .0318.

(c) The Purchasing Agency may add or remove provisions as required for certain Solicitations, such as those with unique, complex, or highly technical Specifications.

History Note: *Authority G.S. 143-49; 143-52(a); 143-53;*
Eff. February 1, 1996;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. March 1, 2022.

01 NCAC 05B .0315 DIVISION OF REQUIREMENTS

An agency shall not divide requirements in order to keep the expenditure under its benchmark or delegation and thereby avoid following the appropriate contracting requirement. In the case of similar and related items and groups of items, the dollar limits apply to the total cost rather than the cost of any single item.

*History Note: Authority G.S. 143-52; 143-53;
Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .0316 ADVERTISEMENT REQUIREMENTS

(a) Unless otherwise directed by statute or excepted pursuant to Paragraph (d) of this Rule, all advertisements required by Rule .0301 of this Section shall be posted through the Division's Electronic Bid System for at least 10 calendar days, unless a memo requesting a waiver is received by the Division and approved by the SPO in accordance with the Rule .1401 of the Section. The Purchasing Agency may also solicit bids via direct mailings or additional advertisement so long as the requirements of this Paragraph are met.

(b) The required data to be advertised shall include the complete Solicitation document with agency name, buyer name, phone number and address for accessing hard copies of the Solicitation, solicitation identification number, title, description of the commodity, service or printing requirement, and the opening date, time and place.

(c) Within three working days from the award of a contract that has been advertised through the Division's Electronic Bid System, Purchasing Agencies shall transmit an award notice to the Division's Electronic Bid System. The award notice shall be posted for at least 30 consecutive calendar days. This award notice shall identify the contract and award information.

(d) Exceptions to this Rule are as follows:

- (1) If the Purchasing Agency is unable to transmit the advertisement or award notice electronically, that agency may submit the data to the Division to transmit electronically, or the agency may place the advertisement (excluding the complete Solicitation document) via newspaper. If advertised via newspaper, the agency shall be responsible for placing the advertisement and no award notice shall be required.
- (2) If a Purchasing Agency is unable to electronically transmit an attachment to the Solicitation, the Purchasing Agency shall include instructions to obtain the attachment in the advertisement.
- (3) If a Purchasing Agency is unable to electronically transmit a Solicitation, the Purchasing Agency shall electronically transmit a summary notice that provides interested Vendors with instructions to obtain a copy of the Solicitation.
- (4) Reasons a Purchasing Agency may be unable to electronically transmit the documents listed in this Paragraph include computer equipment failure, networking difficulties, or insufficient copies of samples for a printing job.

*History Note: Authority G.S. 143-52; 143-53;
Temporary Adoption Eff. February 15, 1998;
Eff. April 1, 1999;
Readopted Eff. October 1, 2019.*

01 NCAC 05B .0317 MANDATORY CONFERENCES/SITE VISITS

(a) When a Solicitation requires potential Vendors to attend a mandatory conference or mandatory site visit, the date, time, location, and other details of the conference or site visit shall be given in the Solicitation, and in the advertisement when required by Rule .0316 of this Section.

(b) If only one Vendor attends the mandatory conference or mandatory site visit, the Purchasing Agency may conduct or postpone the conference or site visit. The Purchasing Agency shall review the Solicitation and factors set out in Rule .1401 of this Section to determine whether any Competition is available and why only one potential Vendor attended. The Purchasing Agency may schedule another conference or site visit if it determines that Competition is available, and it would be in the best interest of the State. If it is determined that there is no Competition available, then the Procurement may be subject to approval for a waiver of Competition pursuant to Rules .1401 and .1402 of this Subchapter.

(c) The Purchasing Agency shall document details of the conference or site visit as part of the official Procurement records.

(d) Any and all questions or Clarifications by a potential Vendor regarding a Solicitation shall be addressed to the Purchasing Agency named on the Solicitation. Any and all revisions to the Solicitation shall be made only by written addendum from the Purchasing Agency.

History Note: Authority G.S. 143-52; 143-53;
Eff. April 1, 1999;
Readopted Eff. October 1, 2019.

01 NCAC 05B .0318 TERMS AND CONDITIONS

(a) In this Rule, the Division establishes standard terms and conditions for use in Contracts with the State.

(b) In addition to any contract provisions specifically required by an applicable statute or rule, standard terms and conditions should contain provisions relating to:

- (1) The rights and responsibilities of the parties, including performance, payment terms, services terms, and condition and packaging of Goods;
- (2) Contract terms, including:
 - (A) default;
 - (B) termination;
 - (C) remedies;
 - (D) governing law;
 - (E) insurance coverage requirements;
 - (F) assignment and delegation;
 - (G) confidentiality;
 - (H) indemnification;
 - (I) conflict of terms;
 - (J) order of precedence;
 - (K) warranties;
 - (L) integration;
 - (M) amendments;
 - (N) no waiver;
 - (O) licensing provisions; and
 - (P) force majeure;
- (3) Contract terms required in Contracts with the State such as protections for State data and property, availability of State funds, vendor advertising, access by the State Auditor to persons and records, electronic procurement and related fees, electronic records, applicability of taxes, sovereign immunity, compliance with non-discrimination statutes, and provisions relating to the utilization of federal funds; and
- (4) Other provisions to protect the State from legal and other risks, as necessitated by current legal, market, and business conditions.

(c) The Purchasing Agency may add or remove specific terms and conditions for certain Contracts, such as those with unique, complex or highly technical Procurements.

History Note: Authority G.S. 143-49; 143-50.1; 143-52; 143-53; 143-135.9;
Eff. March 1, 2022.

01 NCAC 05B .0319 CONTRACT TERM

(a) Except as allowed in G.S. 143-53(d), the Agency's executive officer, or his or her designee, shall develop procedures consistent with this Chapter for approving Contract terms up to three years.

(b) Except as otherwise provided by statute, a Contract with a term that exceeds three years, including the Initial Contract Term and any Renewal and Extension, requires approval of the SPO prior to posting the Solicitation. Requests for approval may be made through the Electronic Bid System.

(c) No Contract may contain a provision that provides for more than two one-year Renewals without prior approval of the SPO.

(d) SPO approval may be granted after consideration of the factors in Rule .0321 of this Section or when the SPO determines it is most advantageous to the State in accordance with G.S. 143-52(a).

History Note: Authority G.S. 143-49; 143-52; 143-53; 143-135.9;
Eff. March 1, 2022.

01 NCAC 05B .0320 CONTRACT EXTENSIONS

(a) Except as allowed in G.S. 143-53(d), any Extension beyond the term originally provided in the Contract that would result in a total Contract term that exceeds three years shall be by approval of the SPO prior to the expiration of the initial Contract or Renewal as provided in Rule .0319 of this Section, after consideration of the factors set forth in Rule .0321.

(b) When an Agency determines, through consideration of the factors listed in Rule .0321 of this Section, that a Contract Extension is most advantageous to the State, as defined by G.S. 143-52, the Agency shall publicly post a notification of the Extension on the Electronic Bid System. The notification shall state for any Contract Extension:

- (1) the original bid number;
- (2) the awarded Vendor;
- (3) the Contract start and end dates;
- (4) the original Contract amount;
- (5) the revised end date;
- (6) an explanation of any pricing modification to be included; and
- (7) Agency and Contract Manager contact information.

(c) When an Agency determines it is most advantageous to the State, as defined by G.S. 143-52, the Agency may request the Vendor to extend the scheduled termination dates of Contracts. Extensions shall not result in a change in the prices stated in the original Contract unless agreed to by the Purchasing Agency in writing. Extensions that result in a total contract value that exceeds a Purchasing Agency's General Delegation or Bid Value Benchmark shall be submitted to the Division for approval.

History Note: Authority G.S. 143-49; 143-52; 143-53; 143-135.9;
Eff. March 1, 2022.

01 NCAC 05B .0321 FACTORS FOR CONTRACT EXTENSION OR RENEWAL

(a) Before exercising a Renewal or seeking an Extension of a Contract as provided in this Section, the Agency shall consider and document in the official file, in accordance with 01 NCAC 05B .1903, the following factors:

- (1) market research that reveals any changes in the industry subject to the Contract;
- (2) the Vendor's past performance under the Contract;
- (3) existence of new risk factors not present at award that increase the risk of unsuccessful contract performance;
- (4) the presence and effectiveness of any performance-based contract provisions and metrics;
- (5) the impact of transitioning to a new Vendor on the Agency's ability to meet the requirements of its programs; and
- (6) any other requirements of State or federal statutes or rules.

(b) Subject to the limitations in Rule .0319 of this Section, an Agency's decision to renew or extend a Contract Term shall be approved by the Agency's head of Procurement.

(c) Contracts shall only be extended or renewed prior to the expiration of the last active Contract Term.

(d) An Agency shall obtain SPO approval before exercising a Renewal or seeking an Extension of a Contract when:

- (1) the factors in Paragraph (a) of this Rule do not support a Renewal or Extension; or
- (2) a Renewal or Extension would result in a total contract value that exceeds the Agency's General Delegation or Bid Value Benchmark.

History Note: Authority G.S. 143-49; 143-52; 143-53; 143-135.9;
Eff. March 1, 2022.

SECTION .0400 - INFORMAL PROPOSALS (QUOTATION) PROCEDURE

01 NCAC 05B .0401 GENERAL DELEGATION

01 NCAC 05B .0402 REVIEW BY BOARD OF AWARD AND SECRETARY OF ADMINISTRATION

01 NCAC 05B .0403 DIVISION OF REQUIREMENTS

History Note: Authority G.S. 143-52; 143-53; 143-53.1;

Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996; January 1, 1985;
Temporary Repeal Eff. February 15, 1998 (1 NCAC 5B .0401);
Repealed Eff. April 1, 1999.

01 NCAC 05B .0404 DELEGATIONS

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987; January 1, 1985;
Repealed Eff. February 1, 1996.

SECTION .0500 - REJECTION OF OFFERS

01 NCAC 05B .0501 REJECTION OR CANCELLATION OF OFFERS

- (a) Any Offers received in response to a Solicitation may be rejected. The basis for rejection may include the following:
- (1) the Offer does not address the requirements in the Solicitation for bid regarding quantity, quality, delivery, price or service;
 - (2) the Offer does not comply with the conditions set forth in the Solicitation for bid;
 - (3) the Purchasing Agency determines there is a lack of Competition;
 - (4) the Solicitation contains errors;
 - (5) cancellation of or changes to the project reference in the Solicitation;
 - (6) dual or similar Offers which prevent a Best Value Procurement to be determined; or
 - (7) limitation or lack of available funds of the Purchasing Agency.
- (b) Negotiation may be utilized if permitted by Rule .0503 of this Section.
- (c) If all Offers are rejected, a Solicitation may be cancelled in its entirety or otherwise handled in accordance with the provisions of this Chapter.

History Note: Authority G.S. 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Readopted Eff. October 1, 2019.

01 NCAC 05B .0502 PUBLIC RECORD

History Note: Authority G.S. 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Repealed Eff. October 1, 2019.

01 NCAC 05B .0503 NEGOTIATION

- (a) The Purchasing Agency may negotiate with one or more Responsive Vendors or reject all Offers under the provisions of Rule .0501 of this Subchapter and negotiate with one or more sources of supply that may be capable of satisfying the requirement. Negotiations may also be conducted under conditions that merit a waiver of Competition pursuant to Rule .1401 of this Section.
- (b) Negotiations shall be conducted by the Purchasing Agency if the Solicitation is under its Bid Value Benchmark or General Delegation. A Purchasing Agency may request the participation of the Division in any Negotiation.
- (c) Negotiations shall be memorialized by a written agreement executed by the parties and issued by the Division.
- (d) All Negotiation results shall be documented in writing for public record.

History Note: Authority G.S. 143-52; 143-53; 143-60;

Eff. February 1, 1996;
Amended Eff. April 1, 1999;
Readopted Eff. October 1, 2019;
Amended Eff. August 1, 2020.

SECTION .0600 - PURCHASE OF USED ITEMS

01 NCAC 05B .0601 GENERAL PROCEDURES

Rules of this Subchapter regarding seeking competition shall be followed wherever feasible, when it appears that the acquisition of used commodities is in the public interest.

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .0602 ACQUISITION IN BEST INTEREST OF STATE

Solicitation documents on used items may or may not include a request for prices on like new products, but in either case acquisition may be made on the basis of that which is considered most advantageous for the intended purpose.

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

SECTION .0700 - REMOVAL OF CERTAIN ITEMS FROM GENERAL CONSTRUCTION

01 NCAC 05B .0701 POLICY

Every agency shall review the items being included in a construction/renovation project and remove any items that it considers are non-related to the actual construction/renovation of the building. Items that are considered commodities or just furnishings, and that would complete the project for use by the agency, shall be handled in accordance with the rules of this Chapter. Items that are usually removed for construction/renovation projects include carpet, office panel systems, food service equipment, and furniture. If an agency determines that one of these items, or any item that is normally handled as a commodity purchase, is best suited for inclusion in the construction/renovation project, the agency's justification shall be documented in writing for public record.

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .0702 TURN KEY PROJECTS

History Note: Authority G.S. 143-341(3);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

SECTION .0800 - PRINTING

01 NCAC 05B .0801 GENERAL POLICY

01 NCAC 05B .0802 PROCEDURE

History Note: Authority G.S. 143-49; 143-53;
Eff. February 1, 1976;
Readopted February 27, 1979;
Amended Eff. February 1, 1996; January 1, 1985;
Temporary Repeal Eff. February 15, 1998;
Repealed Eff. April 1, 1999.

01 NCAC 05B .0803 LEAD TIME
01 NCAC 05B .0804 SUBMISSION OF MATERIAL AFTER PROMISED DATE
01 NCAC 05B .0805 SUBMISSION OF MANUSCRIPTS
01 NCAC 05B .0806 PRINTING SAMPLES
01 NCAC 05B .0807 AUTHOR'S ALTERATIONS
01 NCAC 05B .0808 APPROVAL SIGNATURE

History Note: Authority G.S. 143-49;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

01 NCAC 05B .0809 MULTI-COLOR PROCESS PRINTING

History Note: Authority G.S. 143-169;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1987.

01 NCAC 05B .0810 STATEMENT OF COST OF PUBLIC DOCUMENTS

History Note: Authority G.S. 143-170.1;
Eff. July 1, 1987;
Repealed Eff. February 1, 1996.

SECTION .0900 - INSPECTION AND TESTING

01 NCAC 05B .0901 RESPONSIBILITY

In general, it is the responsibility of the receiving agency to inspect all materials, supplies, and equipment upon delivery to insure compliance with the contract requirements and specifications. However, when the contract requires an inspection by the Division of Purchase and Contract, it shall be conducted by a designee of the Division.

History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .0902 SELECTION

The Division may periodically inspect any items to insure that specifications are met. The agency must insure that items and services purchased comply with applicable codes, statutes, local ordinances, policies or safety requirements.

History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .0903 REINSPECTIONS

The Division may re-inspect any item or service performed and reverse an agency decision when justified.

*History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .0904 SAMPLES

When samples are required in response to a solicitation document issued by the Division of Purchase and Contract, the Division shall test, or have tested, those samples. Samples shall not be sent directly to laboratories outside the Division of Purchase and Contract or agency unless it is determined by the Division that these facilities do not have the capability, time, or expertise needed.

*History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .0905 SPECIFICATIONS

When it is determined to be advantageous, the agency which awarded the contract may authorize revisions to a contract specification, including any cost adjustment associated with any such revision, as part of contract administration. If an increase in cost results in the total contract value being more than the agency's benchmark or delegation, then prior written approval shall be obtained from the Division of Purchase and Contract, regardless of what agency initially awarded the contract.

*History Note: Authority G.S. 143-53; 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .0906 REPORT OF DISCREPANCY

Where commodities, services or printing delivered fail to meet the specifications or contract requirements, the discrepancy shall be resolved by the agency which issued the solicitation document.

*History Note: Authority G.S. 143-53; 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

SECTION .1000 - GUARANTEES AND WARRANTIES

01 NCAC 05B .1001 ENFORCEMENT

Using agencies shall enforce the contractual guarantee or warranty applying to the supplies, materials, and equipment purchased.

*History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .1002 REPORT TO PURCHASING

If any agency has difficulty in obtaining satisfactory performance, including service as provided for in a guarantee or warranty, under a contract handled by the Division of Purchase and Contract, the matter shall be referred to the Division of Purchase and Contract for attention and appropriate action.

*History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .1003 RESPONSIBILITY OF USING AGENCY

The using agency must notify the vendor promptly when latent or other defects are discovered. In the event the vendor fails to remedy the condition reported, and the contract was handled by the Division of Purchase and Contract, the matter shall be referred to the Division of Purchase and Contract.

*History Note: Authority G.S. 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

SECTION .1100 - TERM CONTRACTS

01 NCAC 05B .1101 USE

(a) Term contracts, known also as indefinite quantity or requirements contracts, are used generally to establish suppliers and prices of a given commodity, group of commodities, printing, or services for a period of time without guaranteed quantities being specified. Statewide term contracts consolidate normal requirements of all agencies into one agreement and shall be handled by the Division of Purchase and Contract.

(b) A term contract is a binding agreement between purchaser and seller to buy and sell certain commodities, printing, or services at certain prices and under stipulated terms and conditions. It is neither an "approved list" nor a list of approved or ceiling prices. No agency may purchase any commodities, printing, or services covered by a statewide term contract from any other sources.

(c) A term contract shall be based upon competition, where available, with the potential vendors being advised as to the agency(s)' business they are competing for and, if successful, the agency(s)' business they have earned.

(d) Agencies may handle agency specific term contracts for use by their agency if the expenditure over the term of the contract is under their benchmark or delegation, and the commodity, printing, or service is not covered by a statewide term contract.

(e) Rules applying to service and printing contracts do not apply to local school administrative units or community colleges.

*History Note: Authority G.S. 115C-522; 115D-58.5; 143-52; 143-53; 143-55;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .1102 DETERMINING FACTORS

In determining whether a product should be on a statewide term contract, the Division shall consider such factors as volume, nature of the product, repetitiveness of use, relative stability of prices, and transportation costs. In determining whether a product should be on an agency specific term contract, the agency shall consider such factors as volume, nature of the product, repetitiveness of use, relative stability of prices, and transportation costs.

History Note: Authority G.S. 143-52; 143-53; 143-55;

Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1103 COPIES OF TERM CONTRACTS
01 NCAC 05B .1104 AMENDMENTS TO CONTRACTS

History Note: Authority G.S. 143-52; 143-55;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

01 NCAC 05B .1105 SPECIAL ITEMS

In situations where a general type of item is covered by a term contract but a special type item is needed for a particular application, the agency may proceed with the purchase of the special type item under the rules of this Chapter. The need for the special type item in lieu of the general type item shall be justified by the agency/user in writing and the agency file documented for public record.

History Note: Authority G.S. 143-52; 143-53; 143-55;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1106 DISCOUNT SCHEDULES

History Note: Authority G.S. 143-52; 143-55; 143-58; 143-49;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

01 NCAC 05B .1107 ANTI-INFLATION COMPLIANCE: TERM CONTRACT PRICE INCREASES

History Note: Authority G.S. 143-52; 143-53; 143-55;
Eff. February 27, 1979;
Repealed Eff. June 1, 1986.

SECTION .1100 - TERM CONTRACTS

01 NCAC 05B .1108 EXTENSION OF CONTRACT TERMINATION DATES

When in the best interest of the State, Vendors may be requested to extend the scheduled termination dates of contracts. Extensions shall not result in a change in the prices stated in the original contract unless agreed to by the Purchasing Agency in writing. Extensions that result in an annual contract value exceeding a Purchasing Agency's delegation must be submitted to the Division for approval based on the determining factors set forth in Rule .1102 of this Section.

History Note: Authority G.S. 143-52; 143-49;
Eff. February 1, 1996;
Readopted Eff. October 1, 2019.

SECTION .1200 - PARTIAL AND MULTIPLE AWARDS

01 NCAC 05B .1201 USE

- (a) The Purchasing Agency may make a partial, multiple or Progressive award for the following reasons:
- (1) there are insufficient funds to make a full award;

- (2) a legislative mandate;
- (3) if the Purchasing Agency determines that it is in the best interests of the State to award separately by items; or
- (4) if more than one supplier is needed to meet the Specifications as to quantity, quality, delivery, services, or geographical areas as set forth in the Solicitation.

(b) Multiple awards shall be made consistent with the applicable provisions of G.S. 143-52.3(5).

History Note: Authority G.S. 143-52.3; 143-53(6);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Readopted Eff. October 1, 2019.

01 NCAC 05B .1202 SELECTION FROM LISTS OF SUPPLIERS

History Note: Authority G.S. 143-53(6);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

SECTION .1300 - SMALL PURCHASES

01 NCAC 05B .1301 PROCEDURES

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Temporary Repeal Eff. February 15, 1998;
Repealed Eff. April 1, 1999.

01 NCAC 05B .1302 DOLLAR LIMITATIONS

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

01 NCAC 05B .1303 DESIGNATION OF AUTHORIZED PERSONS

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. April 1, 1999.

SECTION .1400 - WAIVER OF COMPETITION

01 NCAC 05B .1401 POLICY

Under conditions listed in this Rule, and otherwise if deemed to be in the public interest by the SPO or the agency, if under its delegation or benchmark, competition may be waived. Conditions permitting waiver include cases where performance or price competition is not available; where a needed product or service is available from only one source of supply; where emergency action is indicated; where competition has been solicited but no satisfactory offers received; where standardization or compatibility is the overriding consideration; where a donation predicates the source of supply; where personal or particular professional services are required; where a particular medical product or service, or prosthetic appliance is needed; where a product or service is needed for the blind or severely disabled and there are

overriding considerations for its use; where additional products or services are needed to complete an ongoing job or task; where products are bought for "over the counter" resale; where a particular product or service is desired for educational, training, experimental, developmental or research work; where equipment is already installed, connected and in service, and it is determined advantageous to purchase it; where items are subject to rapid price fluctuation or immediate acceptance; where there is evidence of resale price maintenance or other control of prices, lawful or unlawful, or collusion on the part of companies which thwarts normal competitive procedures; where the amount of the purchase is too small to justify soliciting competition or where a purchase is being made and a satisfactory price is available from a previous contract; where the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); and where a used item(s) is available on short notice and subject to prior sale.

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1402 APPROVAL AND DOCUMENTATION

Although competition may be waived pursuant to Rule .1401 of this Section, its use is required wherever practicable. Where waiver is contemplated, agencies may negotiate with a potential vendor(s) in an effort to acquire the quality of commodity, service or printing needed at the best possible price, delivery, terms and conditions, when the expenditure is less than their respective benchmark or delegation. A solicitation document requesting or inviting an offer(s) shall be issued by the agency, including standard language, terms and conditions issued by the Division of Purchase and Contract.

Under an emergency or pressing need situation, a solicitation document requesting or inviting an offer(s) shall be issued by the agency, including standard language, terms and conditions issued by the Division, unless circumstances prohibit their use. Negotiations may also be conducted with a potential vendor(s) for contracts exceeding an agency's benchmark or delegation, but are subject to the conditions of Rule .1518 of this Subchapter, except where otherwise permitted by rule.

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1403 DATA PROCESSING HARDWARE AND SOFTWARE

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987;
Repealed Eff. February 1, 1996.

SECTION .1500 - MISCELLANEOUS PROVISIONS

01 NCAC 05B .1501 CONFIDENTIALITY

History Note: Authority G.S. 143-52; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Repealed Eff. October 1, 2019.

01 NCAC 05B .1502 BONDS

01 NCAC 05B .1503 REMEDIES

History Note: Authority G.S. 143-52; 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

01 NCAC 05B .1504 PAYMENT PLANS

Purchase contracts may provide for payment over a period of time. Such instances, however, shall be fully justified, kept to a minimum and carry written prior approval of the administrative head of the agency. Administrative heads and governing board of agencies shall see that statutory or other prohibitions are not violated. The intended plan of payment shall be included in the procurement document.

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1505 FUNDS FROM DIFFERENT SOURCES

(a) All public funds irrespective of source, whether special, federal, local, gifts, bequests, receipts, fees, or State appropriated, used for the purchase, rental, lease, installment purchase and lease/purchase of commodities, printing and services shall be handled under the provisions of Article 3 of G.S. 143 and in accordance with rules adopted pursuant thereto by the Division of Purchase and Contract.

(b) Rules applying to service, rental, lease, and printing contracts do not apply to local school administrative units or community colleges.

History Note: Authority G.S. 143-53; 143-60(5);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1506 CONDITIONAL GRANTS ETC IN PUBLIC PURCHASING

Where a grant, donation or special discount is predicated upon making a purchase from the grantor, the proposed transaction shall be explained in writing and shall have prior approval of the SPO. Prior to approval, the SPO shall consider the conditions placed on the grant, donation, or special discount, and how they will affect the agency and the State, the cost of agreeing to such conditions, and the market place conditions. When a donation from private sources is predicated upon making the purchase or lease from a specific source, the purchase or lease may be made without prior approval of the SPO or Secretary.

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1507 CHANGE IN CORPORATE STRUCTURE

Contracts following an award to a Vendor are not instruments for sale and shall not be assigned. If a Vendor is involved in corporate consolidations, acquisitions or mergers, the Purchasing Agency may negotiate agreements for the transfer of contractual obligations and the continuance of Contracts if the Purchasing Agency determines that it is in the best interest of the State.

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;

Readopted Eff. October 1, 2019.

01 NCAC 05B .1508 PURCHASES FOR ACROSS THE COUNTER RESALE

Purchases of items for "across the counter" resale are not handled through the Division of Purchase and Contract. However, all purchases of items for use by agencies, even if channeled through bookstores or other internal supply sources, including stockrooms and warehouses, are to be in accordance with rules adopted by the Secretary.

*History Note: Authority G.S. 143-53; 143-60(5);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .1509 PURCHASING FROM OR THROUGH AGENCY EMPLOYEES

Every reasonable effort shall be made to avoid making purchases from or through employees of any agency. Prior written approval from the SPO is required in any instance which may develop of doing business with such personnel. In deciding whether to grant approval, the SPO shall consider the type item or service needed, the prevailing market conditions, whether competition is available, the cost involved, and the effects of doing business with the employee.

*History Note: Authority G.S. 143-53; 143-60(5);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05B .1510 USE OF PURCHASING POWER FOR PRIVATE GAIN

*History Note: Authority G.S. 143-53; 143-58.1;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;
Repealed Eff. October 1, 2019.*

01 NCAC 05B .1511 ANTICOMPETITIVE, DECEPTIVE, AND FRAUDULENT PRACTICES

(a) A Purchasing Agency shall act to prevent the continuance of anticompetitive, deceptive, or fraudulent practices. Anticompetitive practices include actions involving Vendors that restrain trade or commerce or eliminate Competition.

(b) Anticompetitive, deceptive, or fraudulent practices may be evidenced by one or more of the following:

- (1) conspiracy in restraint of trade or commerce;
- (2) combination bidding in restraint of trade or commerce;
- (3) price fixing which may include reliance upon an industry price list;
- (4) collusion;
- (5) identical bidding; or
- (6) agreements to:
 - (A) rotate Offers;
 - (B) share the profits with a Vendor who is not the low Vendor;
 - (C) sublet work in advance of bidding as a means of preventing Competition;
 - (D) refrain from bidding;
 - (E) submit prearranged Offers;
 - (F) submit complementary Offers;
 - (G) set up territories to restrict Competition;
 - (H) alternate bidding; or
 - (I) any other unlawful act in restraint of trade or commerce.

(c) Agency actions to discourage or prevent the continuance of anticompetitive, deceptive, or fraudulent practices may include the following:

- (1) rejecting the Vendor's Offer;

- (2) awarding a bid to a Vendor with a cost or technical proposal that is evaluated lower than the offending Vendor's proposal; and
 - (3) recommending that the SPO debar a Vendor from doing business with the State in accordance with Rule .1520 of this Section.
- (d) The Purchasing Agency shall report evidence of anticompetitive, deceptive or fraudulent practices to the Attorney General's office and any other appropriate law enforcement authority.

History Note: Authority G.S. 143-53; 143-54;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Readopted Eff. October 1, 2019.

01 NCAC 05B .1512 AVAILABILITY OF SERVICES TO CERTAIN NON-STATE AGENCIES

- (a) The Division of Purchase and Contract shall make purchasing services available to certain non-State agencies as defined by G.S. 143-49 and G.S. 143-49.1. This may be affected by budgetary allowances for personnel, time and related costs.
- (b) Where a non-State agency covered by this provision elects to participate in a contract, its resulting contractual duties, obligations and responsibilities shall be the same as those required for agencies. Non-State agencies covered by this provision shall make payments to suppliers in a timely manner and in accordance with the terms of the contracts.
- (c) As may be practicable in terms of personnel, time and costs, the Division may offer its services, in addition to purchasing and contracting, to non-State agencies with respect to preparing specifications and contracts for services, inspecting and testing of products, expediting deliveries and advising as to market conditions.

History Note: Authority G.S. 143-49(6); 143-49.1; 143-52;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1513 COOPERATIVE PURCHASING

Where an agency is a participant in an authorized cooperative project with another governmental activity or with a charitable non-profit organization, goods and services necessary to the project shall be acquired according to the rules of this Chapter; provided, however, that if the interest of the State would be better served by one of the following acquisition methods, the SPO may authorize that acquisition method to be used:

- (1) by making acquisition on behalf of such governmental activity or charitable non-profit organization; or
- (2) by authorizing acquisition on the State's behalf under the provisions of G.S. 143, Article 8; or
- (3) by authorizing acquisition on the State's behalf under the provisions of another State or another governmental entity, provided due consideration is given by the SPO to the differences in purchasing rules, regulations and procedures of the contracting entity.

History Note: Authority G.S. 143-49; 143-53; 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1514 ANTI-INFLATION COMPLIANCE CERTIFICATION

01 NCAC 05B .1515 ANTI-INFLATION COMPLIANCE: TIE BIDS

History Note: Authority G.S. 143-49; 143-52; 143-53;
Eff. February 27, 1979;
Repealed Eff. June 1, 1986.

01 NCAC 05B .1516 ADVERTISING

No Vendor shall advertise or otherwise use any Contract for marketing purposes. A Vendor may only include the State on a listing of existing customers.

History Note: Authority G.S. 143-53; 143-60;
Eff. February 1, 1996;
Readopted Eff. October 1, 2019.

01 NCAC 05B .1517 GOODS REQUIRING IMMEDIATE ACCEPTANCE

History Note: Authority G.S. 143-49; 143-52;
Eff. February 1, 1996;
Repealed Eff. April 1, 1999.

01 NCAC 05B .1518 BOARD OF AWARD

History Note: Authority G.S. 143-53; 143-318.18(10);
Eff. February 1, 1996;
Amended Eff. April 1, 1999;
Expired Eff. August 1, 2016 pursuant to G.S. 150B-21.3A.

01 NCAC 05B .1519 PROTEST PROCEDURES

(a) When a Vendor wants to protest a Contract awarded by a Purchasing Agency valued at less than the amount set forth in G.S. 143-53, the Purchasing Agency and Vendor shall comply with the following:

- (1) The Vendor shall submit a written request for a protest meeting to the Agency's executive officer or his or her designee within 30 calendar days from the date of the Contract award. The executive officer shall furnish a copy of this letter to the SPO within five calendar days of receipt. The Vendor's request shall contain reasons why it has a concern with the award and any supporting documentation. If the request does not contain this information, or if the executive officer determines that the protest is meritless so that a meeting would serve no purpose, then the executive officer may, within 10 calendar days from the date of receipt of the request, respond in writing to the Vendor and refuse the protest meeting request. A copy of the executive officer's decision letter shall be forwarded to the SPO.
- (2) If the protest meeting is granted, the executive officer shall schedule the meeting within 30 calendar days after receipt of the request, unless mutually agreed. Within 10 calendar days from the date of the protest meeting, the executive officer shall respond to the Vendor in writing with the executive officer's decision and appeal rights under Article 3 of G.S. 150B. A copy of the executive officer's decision letter shall be forwarded to the SPO.
- (3) The Purchasing Agency shall notify the SPO in writing of any further administrative or judicial review of the Contract award.

(b) When a Vendor wants to protest a Contract awarded by the Secretary valued over the amount set forth in G.S. 143-53, the SPO and Vendor shall comply with the following:

- (1) The Vendor shall submit a written request for a protest meeting to the SPO within 30 calendar days from the date of the Contract award. The Vendor's request shall contain reasons why it has a concern with the award and any supporting documentation. If the request does not contain this information, or if the SPO determines that the protest is meritless so that a meeting would serve no purpose, then the SPO may, within 10 calendar days from the date of receipt of the request, respond in writing to the Vendor and refuse the protest meeting request.
- (2) If the protest meeting is granted, the SPO shall schedule the meeting within 30 calendar days after receipt of the request, unless mutually agreed. Within 10 calendar days from the date of the protest meeting, the SPO shall respond to the Vendor in writing with the SPO's decision and appeal rights under Article 3 of G.S. 150B.
- (3) The SPO shall notify the Secretary of any further administrative or judicial review of the Contract award.

History Note: Authority G.S. 143-53;
Eff. February 1, 1996;

*Temporary Amendment Eff. February 15, 1998;
Amended Eff. April 1, 1999;
Readopted Eff. October 1, 2019.*

01 NCAC 05B .1520 DEBARMENT

- (a) For the purpose of this Rule, "debarred" or "debarment" means a Vendor shall not be entitled to enter into a Contract for Goods or Services and shall be removed from any distribution lists which may be utilized by the Division.
- (b) A Vendor shall be debarred pursuant to G.S. 143-59.2 if the Vendor or any officer, director or owner is convicted of any violation under G.S. 78A, the Securities Act of 1933 or the Securities Exchange Act of 1934.
- (c) A Vendor may be debarred by the SPO upon a finding of fraud, misrepresentation, or other deceptive acts or practices while doing business with a State agency during an audit by the State Auditor in accordance with G.S. 147-64.6(c)(21) or after an internal audit by an internal auditor in accordance with G.S. 143-746(f). After a finding by the State Auditor or internal auditor, the SPO's determination to debar a Vendor shall be based on the following factors:
- (1) the severity of the conduct identified in the findings and any recommended actions by the State Auditor or internal auditor; and
 - (2) a Vendor's history of performance on one or more contracts.
- (d) The SPO shall notify a Vendor of any debarment and appeal rights under Article 3 of G.S. 150B, in writing, which may include Electronic form.

*History Note: Authority G.S. 143-49; 143-52; 143-53; 143-59.2; 143-60; 147-64.6(c)(21); 143-746;
Eff. February 1, 1996;
Amended Eff. April 1, 1999;
Readopted Eff. December 1, 2019.*

01 NCAC 05B .1521 FAITHFUL PERFORMANCE

A Solicitation and Contract may include terms ensuring a Vendor's performance such as:

- (1) a bond, or similar assurance;
- (2) liquidated damages;
- (3) a percentage of the Contract value held as a retainage;
- (4) withholding final payment contingent on acceptance of the final deliverable; and
- (5) any other provision that assures performance of the Vendor.

*History Note: Authority G.S. 143-52; 143-53;
Eff. February 1, 1996;
Amended Eff. April 1, 1999;
Readopted Eff. October 1, 2019.*

01 NCAC 05B .1522 RECIPROCAL PREFERENCE

- (a) Each Solicitation used to obtain contracts for Goods and Services that exceed thresholds mandated in G.S. 143-59(b) shall include space for a bidder to give their principal place of business address if it is different than the address given in the execution section of the Solicitation. This shall not prevent the Purchasing Agency that issued the Solicitation from investigating this information and concluding that the principal place of business is different, as defined by G.S. 143-59(c).
- (b) A reciprocal preference shall not be used when Procurements are exempted under G.S. 143-59(d).

*History Note: Authority G.S. 143-59;
Temporary Adoption Eff. January 14, 2002;
Eff. April 1, 2003;
Readopted Eff. October 1, 2019.*

01 NCAC 05B .1523 PROCUREMENT CARDS

- (a) Procurement cards (organizational charge cards) are for official use only and shall be used in accordance with this Section and with the statewide contract established and maintained by the Division of Purchase and Contract. Use of procurement cards by any agency is contingent on satisfactory compliance review, as determined by the Division of

Purchase and Contract. As the State's electronic procurement system is implemented, it shall be used to the fullest extent possible, including issuance of purchase orders. Procurement cards may be used as a payment mechanism within e-procurement if permitted by fiscal policies of the agency.

(b) Procurement card transactions processed through the State's electronic procurement system, utilizing the card as a payment mechanism within electronic workflow and approval processes, may be in any amount consistent with agency fiscal policies.

(c) For procurement card transactions processed outside the State's electronic procurement system, the per-transaction limit shall be two thousand five hundred dollars (\$2,500.00). This limit may be changed only under the following circumstances:

- (1) In an emergency (as defined by 01 NCAC 05B .1602 or Governor's declaration), the agency card program administrator may request higher limits on cards in critical areas. Such increases shall be in effect no longer than the duration of the emergency. Requests for increased limits are to be made through the Division of Purchase and Contract if time permits and must be reported to Purchase and Contract in any case.
- (2) Agencies may apply to the SPO for higher limits on specific types of transactions, with justification required.
- (3) The SPO may adjust limits based on analysis of the procurement card program's results, on a statewide or agency basis, after taking into consideration current market trends, the economy, and recommendations received from the State Controller and the State Auditor.

(d) Each participating agency shall designate a procurement card program administrator, who shall be the chief purchasing officer or chief fiscal officer (or person specifically designated by either of these).

- (1) All cards requested on behalf of the agency shall be sent to the program administrator (not to individual cardholders) by a traceable delivery method.
- (2) Cards shall show the agency name, cardholder, the state seal or agency logo, and indicate they are for official use only.

(e) The card program administrator, in consultation with the agency's chief executive or fiscal officer, shall determine appropriate limits by per-transaction amount (not to exceed the statewide per-transaction limits set in Paragraphs (b) or (c) of this Rule) total per billing cycle, merchant categories, and similar factors. Agencies shall submit a copy of their procurement card policies and procedures to the Division of Purchase and Contract within 90 days after program implementation and thereafter whenever such policies or procedures are updated.

(f) The card program administrator shall determine compliance with agency policy and procedures, including cardholders' acknowledgement prior to issuance of cards, account reconciliation, and security.

(g) Agencies shall comply with procurement card policies prepared and disseminated by oversight fiscal offices (e.g., Office of the State Controller for state departments) governing those agencies under their responsibility.

(h) No other charge cards that obligate payment by the agency or the State shall be used unless an existing contract obligation requires its use, but that obligation shall be discontinued no later than June 30, 2003. Requests for exceptions to this rule shall be submitted in writing to the State Purchasing Officer. Consideration of requests will be based on need, compliance reviews and contract obligations.

History Note: Authority G.S. 143-49(8);

Temporary Adoption Eff. July 1, 2002;

Eff. April 1, 2003;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

SECTION .1600 - EXEMPTIONS, EMERGENCIES AND SPECIAL DELEGATIONS

01 NCAC 05B .1601 EXEMPTIONS

(a) Except as provided in Paragraph (c) of this Rule, it is not mandatory for the items and services listed in this Rule to be purchased through the Division of Purchase and Contract.

- (1) purchase of liquor;
- (2) perishable articles such as fresh meats;
- (3) published books, manuscripts, subscriptions to printed material, packaged copyrighted software products, and like material;
- (4) services provided by individuals by direct employment contracts with the State;
- (5) public utility services (gas, water and electricity);

- (6) telephone, telegraph and cable services furnished by those companies;
 - (7) services provided which are subject to published tariff rates as established by the North Carolina Utilities Commission;
 - (8) services which are merely incidental to the purchase of supplies, materials or equipment such as installation services;
 - (9) contracts for construction of and structural changes to public buildings;
 - (10) personal services provided by a professional individual (person) on a temporary or occasional basis, including (by way of illustration, not limitation) those provided by a doctor, dentist, attorney, architect, professional engineer, scientist or performer of the fine arts and similar professions; the exemption applies only if the individual is using his/her professional skills to perform a professional task; a personal service may also be a consulting service;
 - (11) services provided directly by an agency of the State, federal or local government, or their employees when performing the service as a part of their normal governmental function.
- (b) In addition to products and services exempted by statute, the SPO may exempt other products and services from purchase through the Division provided that the SPO makes findings:
- (1) that competition will not enhance the price that the State would receive for the product or service; and
 - (2) that competition will not enhance the quality of the product or service that the State would receive.
- (c) Contracts for bakery products and dairy products shall be awarded through the Division of Purchase and Contract, if over the agency's expenditure benchmark.

History Note: Authority G.S. 7A-6(b); 143-53; 143-56; 143-62;
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. April 1, 1999; February 1, 1996; May 1, 1988; July 1, 1987;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1602 EMERGENCIES

- (a) An agency may make purchases of commodities, printing or services in the open market in cases of emergency or pressing need. For this purpose, a pressing need is one arising from unforeseen causes including, but not limited to, delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work while emergencies are defined as situations which endanger lives, property or the continuation of a vital program and which can be rectified only by immediate, on-the-spot purchases or rental of commodities, printing or services.
- (b) Agencies may negotiate with a potential vendor(s) in an effort to acquire the quality of commodity, service or printing needed at the best possible price, delivery, terms and conditions. A solicitation document requesting or inviting an offer(s) shall be issued, including standard language, terms and conditions issued by the Division of Purchase and Contract, unless circumstances prohibit their use.
- (c) When emergency or pressing need action is necessary, and the expenditure is over the agency's benchmark or delegation, prior verbal approval shall be obtained from the Division if time permits. Subsequently, whether or not such prior approval was possible, if the expenditure is over the agency's benchmark or delegation, an explanation of the emergency or pressing need purchase shall be reported in writing to the Division. The Division shall report such purchases of commodities and printing to the Board as a matter of record.

History Note: Authority G.S. 143-53; 143-57; 143-60;
 Eff. February 1, 1976;
 Readopted Eff. February 27, 1979;
 Amended Eff. April 1, 1999; February 1, 1996;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1603 SPECIAL DELEGATIONS

- (a) The SPO may authorize, by special delegation, any agency to purchase specific commodities, printing or services without limitation as to expenditure. Such delegation is normally confined, but not limited to, commodities, printing or services which by their nature or circumstance, such as perishableness, transportation costs, local conditions or local availability, would result in handling by the Division of Purchase and Contract serving no practical purpose. Every such delegation shall be in writing and made a matter of record.

(b) The SPO may require that offers received under such delegations be sent to the Division for determination of the successful vendor.

(c) The Division shall periodically review its special delegations of purchase to ascertain the availability of these commodities, printing or services and their continued suitability for delegation.

History Note: Authority G.S. 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1604 GENERAL DELEGATIONS

History Note: Authority G.S. 143-53;
Temporary Adoption Eff. February 15, 1998;
Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Repealed Eff. March 1, 2022.

01 NCAC 05B .1605 COMPLIANCE REVIEWS

(a) The Division of Purchase and Contract shall conduct compliance reviews on purchasing practices at all agencies. The purpose of the compliance review shall be for determining if an agency is complying with North Carolina's purchasing statutes and rules adopted thereunder, and whether it should continue having the same level of delegation, have it reduced, or if it qualifies for an increase. A copy of the compliance report shall be provided to the agency's executive officer, the State Auditor, the State Budget Officer, the local school administrative unit's Board, any of which are applicable.

(b) The Division's staff may enter the premises and obtain an agency's purchasing records for the purpose of the compliance review. The agency shall cooperate with the Division's staff, providing them with requested records, adequate office space for conducting the review, and agency purchasing staff for discussion of purchase transactions. The Division shall not unnecessarily require of the agency any more than is needed to complete the review.

(c) The SPO may lower, or raise if requested, an agency's (excluding the universities) general delegation, if the results of a compliance review by the compliance staff of the Division merit such action as determined by the SPO. The SPO may lower the delegation to any level, including the complete removal of the delegation, depending on the nature of any violations found. The SPO shall report to the University's Board of Governors the results of any compliance review conducted at any of the universities, and shall provide to them the SPO's recommendation, based on those results, on what that university's benchmark should be.

(d) The SPO shall provide to each agency, upon request, the Division's assistance in educational training for the agency's staff, to better acquaint them with the purchasing statutes and rules.

History Note: Authority G.S. 143-53;
Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

SECTION .1700 - PURCHASES FROM NORTH CAROLINA DEPARTMENT OF CORRECTION

01 NCAC 05B .1701 AUTHORIZATION

01 NCAC 05B .1702 NO COMPETITIVE BIDDING

01 NCAC 05B .1703 PURCHASES IN CONFLICT WITH STATE CONTRACTS

History Note: Authority G.S. 148-70; 143-53(11);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

SECTION .1800 - INVENTORIES AND STORES

01 NCAC 05B .1801 SUPERVISION

History Note: Authority G.S. 143-49(4); 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1987.

01 NCAC 05B .1802 PERSONAL PROPERTY INVENTORY PLAN

History Note: Authority G.S. 143-49(4); 143-60;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1987.

01 NCAC 05B .1803 SUPERVISION

The Division of Purchase and Contract has responsibility for general supervision of storerooms and stores operated by state government, for supervision of inventories of tangible personal property belonging to state government and for reports by them of stocks on hand.

History Note: Authority G.S. 143-49(4); 143-60;
Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1804 PERSONAL PROPERTY INVENTORY PLAN

State agencies with centralized warehouse facilities, shall have inventory control procedures in place which insure at a minimum, written inventory count of contents, written records of receipts and issues, economical ordering and efficient level of inventories, safe storage of hazardous materials, and security.

History Note: Authority G.S. 143-49(4); 143-60;
Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

SECTION .1900 - RECORDS OF THE DIVISION OF PURCHASE AND CONTRACT

01 NCAC 05B .1901 RECORD MAINTENANCE

Except where State law provides to the contrary, after the award of a contract, the purchasing records of an agency are public documents, and these documents shall be maintained for a period of five years after the expiration date of the contract.

History Note: Authority G.S. 143-53; 143B-10(f);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1902 REQUISITIONS

History Note: Authority G.S. 143B-10(f);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1987.

01 NCAC 05B .1903 FILES

(a) Each contract file shall be identified individually so it can be readily located and referenced.

- (b) All purchase transactions shall be documented. As applicable, each file shall include:
- (1) Original offers if in writing, or written documentation of verbal offers received;
 - (2) Reasons for award or cancellation;
 - (3) Worksheets/evaluations;
 - (4) Mailing list, if used;
 - (5) Written justification for waiver or emergency purchase;
 - (6) Tabulation of offers received;
 - (7) Copy of purchase order(s);
 - (8) Related correspondence;
 - (9) Reason(s) for receiving only one offer in response to a solicitation;
 - (10) Negotiated contracts; and
 - (11) Reasons for not accepting technical proposals.

(c) After award of contract all material in the file, except confidential information, shall be open to interested persons during normal office hours, may be hand copied, or copies shall be furnished in accordance with the Public Records Act.

History Note: Authority G.S. 143-53; 143B-10(f);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05B .1904 REQUESTS FOR QUOTATIONS
01 NCAC 05B .1905 GENERAL CORRESPONDENCE

History Note: Authority G.S. 143B-10(f);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1987.

01 NCAC 05B .1906 APPLICATIONS FOR ADDITION TO MAILING LIST
01 NCAC 05B .1907 TERM CONTRACTS

History Note: Authority G.S. 143B-10(f);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Temporary Repeal Eff. February 15, 1998 (1 NCAC 5B .1906);
Repealed Eff. April 1, 1999.

01 NCAC 05B .1908 PURCHASE ORDERS

History Note: Authority G.S. 143B-10(f);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1987.

01 NCAC 05B .1909 CANVASSING BID FILES

History Note: Authority G.S. 143B-10(f);
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Repealed Eff. April 1, 1999.

SECTION .2000 - FORMS USED BY THE DIVISION OF PURCHASE AND CONTRACT

01 NCAC 05B .2001	APPLICATION FOR BIDDER'S MAILING LIST: FORM PC-43
01 NCAC 05B .2002	APPLICATION FOR BIDDER'S MAILING LIST ACTION: FORM PC-44
01 NCAC 05B .2003	REQUISITION FORM: PC-29
01 NCAC 05B .2004	INVITATION FOR BIDS FORM: PC-3
01 NCAC 05B .2005	INVITATION FOR BIDS: COAL DELIVERED IN BINS: FORM PC-14
01 NCAC 05B .2006	REQUEST FOR QUOTATION: FORM PC-9
01 NCAC 05B .2007	PURCHASE ORDER: FORM PC-10
01 NCAC 05B .2008	PURCHASE ORDER FOR COAL: FORM PC-124
01 NCAC 05B .2009	GENERAL CONTRACT TERMS AND CONDITIONS TC-1: FORM PC-16
01 NCAC 05B .2010	GENERAL CONTRACT TERMS AND CONDITIONS R-1: FORM PC-17
01 NCAC 05B .2011	CONTRACT CERTIFICATION: FORM PC-31
01 NCAC 05B .2012	TERM CONTRACT CERTIFICATION: FORM DA-PC-15
01 NCAC 05B .2013	COMPLAINT TO VENDOR: FORM PC-104

History Note: Authority G.S. 150B-11;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1986.

01 NCAC 05B .2014 CHANGE ORDER: FORM PC-36

History Note: Authority G.S. 150B-11;
Eff. February 27, 1979;
Repealed Eff. June 1, 1986.

SUBCHAPTER 05C - SURPLUS PROPERTY

Note from Codifier: The rules in 01 NCAC 05C were transferred to 01 NCAC 43B by request of the agency effective November 26, 2012.

SUBCHAPTER 05D - CONSULTANT CONTRACTS

SECTION .0100 - CONSULTANTS

01 NCAC 05D .0101 APPLICABILITY

The Rules in this Section and Section .0200 are applicable to all agencies except local school administrative units and Community Colleges.

The Rules in this Section and Section .0200 do not apply to contracts for attorneys employed by the North Carolina Department of Justice or by other agencies of state government pursuant to the provisions of G.S.147-17, to contracts for physicians or doctors providing direct medical care for the clientele of any state agency, to contracts entered into by the General Assembly or its special study commissions, to contracts entered into by the Institute of Government to provide or obtain consulting or advisory services, to contracts to provide services without compensation to the provider of the services or to his employing agency or to contracts entered into by a state agency pursuant to specific statutory authority which provides, in the opinion of the Governor or designee, a specific alternative procedure for the selection and award of such contracts.

History Note: Authority G.S. 143-64.24; 147-17;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05D .0102 DEFINITION

Consultant services shall mean work or task(s) performed by State employees or independent contractors possessing specialized knowledge, experience, expertise and professional qualifications to investigate assigned problems or projects and to provide counsel, review, analysis or advice in formulating or implementing improvements in programs or services.

This includes but is not limited to the organization, planning, directing, control, evaluation and operation of a program, agency or department.

*History Note: Authority G.S. 143-64.21;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

SECTION .0200 - CONTRACTING PROCEDURE FOR CONSULTANTS

01 NCAC 05D .0201 GENERAL STATEMENT OF POLICY

State agencies shall acquire consultive services only when the contract is in the best interests of the State. In acquiring such services, competition shall be sought whenever practicable as determined by the Division of Purchase and Contract. No agency which is subject to the provisions of this Subchapter may contract for services of a consultant nature except in accordance with the provisions of this Subchapter.

*History Note: Authority G.S. 143-64.21;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05D .0202 CONSULTING CONTRACTS WITH OTHER AGENCIES

Whenever possible consultant services shall be obtained from other agencies when the services available from other agencies substantially meet the reasonable specifications of the requesting agency.

*History Note: Authority G.S. 143-64.22;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05D .0203 REQUESTS FOR AUTHORITY TO CONTRACT WITH CONSULTANTS

Before receiving authorization to seek consultant services, an agency shall submit to the Division of Purchase and Contract written justification for its request for consultant services. This written justification shall at a minimum explain what services the agency desires to secure, why the work to be performed by the consultant cannot be reasonably accomplished by employees of the requesting agency, how the work to be performed relates to the proper functions of the agency, what benefits the agency expects to receive from the consultant's services, what the agency estimates to be the cost of the services sought, and what potential sources of consultant services if any the agency has identified. If the agency is requesting authority to contract for consulting services outside of State government, it shall also detail what potential sources of those services exist within State government and explain why the desired services were not available from those sources. The written justification shall be accompanied by a letter of endorsement for the proposed contract(s) from the agency head or his designee.

*History Note: Authority G.S. 143-64.21; 143-64.22;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05D .0204 REVIEW OF AGENCY REQUESTS

The documents submitted by agencies requesting authority to retain consultants will be reviewed by the Division of Purchase and Contract. Upon completion of this review the requesting agency will be advised, subject to such conditions as may be prescribed by the Governor or designee, to:

- (1) canvass additional sources within state government; or
- (2) solicit proposals from private contractors; or
- (3) execute a negotiated contract(s) without competitive proposals if the Division of Purchase and Contract and the Governor have determined that performance or price competition is not available or that the requirement is for an authorized cooperative project with another governmental unit(s) or a public or private nonprofit organization(s) or that the contract price is too small to justify soliciting competitive proposals; or
- (4) abandon the project for being outside the scope of the agency's responsibilities or for having insufficient benefit to the State relative to the potential expenditure of funds.

*History Note: Authority G.S. 143-64.20 to 64.22;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996; July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05D .0205 COMPETITIVE PROPOSALS

(a) An agency which receives approval to solicit proposals for consultant services shall:

- (1) Prepare a request for proposals in accordance with these Rules and disseminate among prospective service providers;
- (2) Circulate the request for proposals to such sources of consultant services as may be identified by the Division of Purchase and Contract as well as all sources identified by the requesting agency;
- (3) Publicly open all proposals received at a date and time set in the request for proposals; however, in a two-step evaluation process, only the technical proposal shall be opened on the opening date. The cost proposal is opened only if the technical proposal is determined by the State to be acceptable;
- (4) Upon receipt of proposals submit a copy of each proposal received to the Division of Purchase and Contract;
- (5) Review all proposals received on the basis of evaluation criteria significantly related to the function to be performed and equally applied to all proposals received;
- (6) Submit a memorandum to the Division of Purchase and Contract citing criteria for selection and recommending contract award.

(b) The Division of Purchase and Contract shall evaluate all proposals received in accordance with the requirements of the request for proposals and shall consider the recommendations of the requesting agency. Upon completion of the Division's analysis, the Division shall forward a recommendation to the Governor. The requesting agency shall be notified in writing by the Governor or designee that all proposals have been rejected or that the agency head is authorized to execute a contract(s) with an approved service provider(s).

*History Note: Authority G.S. 143-64.20 through 64.23;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.*

01 NCAC 05D .0206 NEGOTIATED CONSULTANT CONTRACTS

An agency which receives authorization to enter into a negotiated contract(s) for consultant services without soliciting competitive proposals shall submit the proposed contract(s) to the Division of Purchase and Contract for review and approval prior to execution. Upon completion of this review the requesting agency shall be notified in writing by the Governor or his designee that an approved contract(s) may be executed by the agency head.

History Note: Authority G.S. 143-64.20 through 64.23;

Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05D .0207 CONSULTANT CONTRACT MODIFICATION

Any modification to an approved contract(s) shall be subject to the same approval requirements as the original contract(s). The Governor or his designee may at his option, during the process of reviewing requests for contract modifications, waive any of the provisions of .0203 of this Section.

History Note: Authority G.S. 143, Article 3C;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05D .0208 FORMAT

All contracts for consultant services shall be in writing and in a format approved by the Division of Purchase and Contract. Contracts must be executed by the department head in the case of the executive departments of state government, by the chief executive officer of independent boards and agencies, by the President of the University of North Carolina for contracts to which the university or any of its constituent institutions is to be a party, or by agents of above named officials who have been specifically designated by those officials and whose names and positions have been filed with the Division of Purchase and Contract and whose designation has been approved by the Division of Purchase and Contract and the Governor or his designee.

History Note: Authority G.S. 143, Article 3C;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

01 NCAC 05D .0209 RELATIONSHIP OF CONSULTANT TO STATE

History Note: Authority G.S. 143-64.21;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. February 1, 1996;
Repealed Eff. October 1, 2019.

01 NCAC 05D .0210 CONSULTANT CONTRACTS CONTRARY TO THIS SECTION

History Note: Authority G.S. 143-64.23; 143-1; 143-32;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

SECTION .0300 - SERVICE CONTRACTS

01 NCAC 05D .0301 APPLICABILITY

01 NCAC 05D .0302 EXEMPTIONS

01 NCAC 05D .0303 DEFINITIONS

History Note: Authority G.S. 143-49; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1996.

SECTION .0400 - CONTRACTING PROCEDURE

01 NCAC 05D .0401	GENERAL POLICY STATEMENT
01 NCAC 05D .0402	JUSTIFICATION
01 NCAC 05D .0403	TASK DESCRIPTION

History Note: Authority G.S. 143-49; 143-53; 143-58;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. July 1, 1987;
Repealed Eff. February 1, 1996.

SECTION .0500 - COMPETITIVE PROCEDURES

01 NCAC 05D .0501	GENERAL REQUIREMENTS
01 NCAC 05D .0502	SERVICES COSTING UP TO \$500.00
01 NCAC 05D .0503	SERVICES COSTING OVER \$500.00, BUT UNDER \$5,000
01 NCAC 05D .0504	SERVICES COSTING OVER \$5,000
01 NCAC 05D .0505	SINGLE SOURCE SERVICES
01 NCAC 05D .0506	RENTAL AGREEMENTS
01 NCAC 05D .0507	GROUPING OF SERVICE PURCHASES
01 NCAC 05D .0508	GENERAL CONTRACTING REQUIREMENTS
01 NCAC 05D .0509	REQUEST FOR PROPOSALS

History Note: Authority G.S. 143-49; 143-53;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. August 1, 1988; July 1, 1987; January 1, 1985;
Repealed Eff. February 1, 1996.

SECTION .0600 - CONTRACTUAL AND CONSULTANT SERVICE FORMS

01 NCAC 05D .0601	FORM PC-288: CONSULTANT SERVICES REFERRAL SHEET
01 NCAC 05D .0602	FORM PC-289: CONSULTANT SERVICES APPROVAL FORM
01 NCAC 05D .0603	FORM PC-290: APPLICATION FOR BIDDER'S MAILING LIST

History Note: Authority G.S. 150B-11;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. June 1, 1986.