

## **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.*

## 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 .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 .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.*

**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.*