

01 NCAC 05A .0101 is proposed for readoption with substantive changes as follows:

~~3 01 NCAC 05A .0101~~ — RESPONSIBILITY

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

9 ~~History Note: — Authority G.S. 143-49; 143-341;~~

10 ~~Eff. February 1, 1976;~~

11 ~~Readopted Eff. February 27, 1979;~~

12 ~~Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;~~

13 ~~Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest;~~

14 ~~Eff. July 23, 2016;~~

15 ~~Readopted December 1, 2024.~~

01 NCAC 05A .0102 is proposed for readoption with substantive changes as follows:

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~~ leases, and services for all agencies, except for ~~community colleges and local school administrative units;~~
- (3) making procurement ~~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)(4) compliance review of agency procurement 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;

Readopted Eff. March 1, 2026.

01 NCAC 05A .0104 is proposed for readoption with substantive changes as follows:

01 NCAC 05A .0104 LOCATION

The principal ~~offices~~ office of the Division of Purchase and Contract ~~are~~ is located in the ~~Administration~~ Albermarle Building, ~~116 West Jones Street, Raleigh, N.C. 27603-8002~~ 325 N. Salisbury St., Raleigh, NC 27603-1359; Mailing Address: 1305 Mail Service Center, Raleigh, NC 27699-1305.

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 .0112 is proposed for readoption with substantive changes as follows:

01 NCAC 05A .0112 DEFINITIONS

For the purpose of this Chapter:

(1) "Across the counter" means direct sale of goods to consumers.

~~(1)(2)~~ "Agency" or "agencies ~~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)(3)~~ "Best and final ~~Final offer~~ Offer" ("BAFO") is a document that memorializes the details of negotiations ~~Negotiations~~ between the State and a vendor ~~Vendor~~ and mutually modifies the vendor's ~~Vendor's offer~~ Offer.

~~(3)(4)~~ "Best value ~~Value~~ procurement ~~Procurement~~" shall have the same meaning as in G.S. 143-135.9.

~~(4)(5)~~ "Bid administrative review" is a process to determine compliance with solicitation essential requirements, related to adherence of terms, conditions, and specifications of the solicitation, confirming the completeness of all required forms, documents, certifications, and information that is required, within the appropriate time of the request.

~~(5)(6)~~ "Bid value ~~Value~~ benchmark ~~Benchmark~~" or "general delegation ~~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 ~~Agency~~ may contract to purchase goods ~~Goods~~ or services ~~Services~~ without obtaining prior approval for the purchase from the Division.

~~(7)~~ "Chief Procurement Officer" means the State Procurement Officer who is also the director of the Division and shall have the same meaning as referenced in Chapter 143, Article 3 of the North Carolina General Statutes.

~~(5)(8)~~ "Clarification" means communications between the State and a vendor ~~Vendor~~ that occur after receipt of a vendor's ~~Vendor's offer~~ Offer made for the purpose of eliminating irregularities, informalities, or apparent clerical mistakes in an offer ~~Offer~~. A clarification ~~Clarification~~ may also be used in order for the State to interpret an offer ~~Offer~~ or offers ~~Offers~~ or to facilitate the State's evaluation of all offers ~~Offers~~. A clarification ~~Clarification~~ shall not be used to cure material deficiencies in an offer ~~Offer~~, alter the scope of an offer ~~Offer~~, or to negotiate.

~~(6)(9)~~ "Consultant services ~~Services~~" means contracted work or tasks performed by a vendor ~~Vendor~~ or independent contractor possessing specialized knowledge, experience, expertise, and professional qualifications to investigate a procurement ~~Purchasing~~ agency's ~~Agency's~~ defined problems or projects and to provide counsel, review, analysis, or advice in formulating or implementing improvements in programs or services ~~Services~~. This includes improvements related to the organization, planning, directing, control, evaluation, and operation of a program, agency ~~Agency~~, or department.

~~(7)(10)~~ "Competition" in procurement ~~purchasing~~ exists when the available market for the goods ~~Goods~~ or services ~~Services~~ to be acquired consists of more than one responsible ~~Responsible~~ vendor ~~Vendor~~ that is qualified and willing to submit an offer ~~Offer~~.

~~(8)(11)~~ "Contract" means any type of agreement entered into by agencies ~~Agencies~~, regardless of what it may be titled or called, setting out the obligations of the parties concerning a procurement ~~Procurement~~ of goods ~~Goods~~ or

1 services ~~Services~~.

2 ~~(9)~~(12) "Contract term ~~Term~~" means the time period in which a contract ~~Contract~~ is active and in effect.

3 ~~(10)~~(13) "Deficiency" means either a failure to meet a stated requirement ~~Requirement~~ or a combination of
4 weaknesses in an offer ~~Offer~~ that increases the risk that a vendor ~~Vendor~~ will be unable to meet its contractual
5 obligations.

6 ~~(11)~~(14) "Division" means the Division of Purchase and Contract.

7 ~~(12)~~(15) "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

8 ~~(13)~~(16) "Electronic bid ~~Bid~~ system ~~System~~" means the Division's electronic ~~Electronic~~ system used variously to
9 advertise solicitations ~~Solicitations~~, notify vendors ~~Vendors~~, conduct reverse ~~Reverse~~ auctions ~~Auctions~~, and post
10 contract ~~Contract~~ awards.

11 ~~(14)~~(17) "Emergency situations ~~Situations~~" means unforeseen circumstances as stated in G.S. 143-57, that endanger
12 lives, property, or the continuation of a vital program such as those essential for health or safety, as determined by the
13 ~~Purchasing~~ agency procurement ~~Agency~~ director ~~Director~~, and that can be rectified only by immediate purchases or
14 rental of goods ~~Goods~~ or services ~~Services~~.

15 ~~(15)~~(18) "Extension" means an additional contract ~~Contract~~ term ~~Term~~ not provided for in the contract ~~Contract~~ that
16 is mutually agreed to by the State and all vendor ~~Vendor~~ parties in a contract ~~Contract~~ amendment.

17 ~~(16)~~(19) "Goods" means any tangible property, including all equipment, materials, supplies, and commodities.

18 Where the printing is not the predominant aspect of a service contract, acquisition of printing shall be considered the
19 procurement ~~purchase~~ of goods ~~Goods~~ under these Rules.

20 ~~(17)~~(20) "Goods contract ~~Contract~~" means any agreement involving the procurement ~~Procurement~~ of goods ~~Goods~~
21 from a vendor ~~Vendor~~, but that may also have ancillary services ~~Services~~ aspects.

22 ~~(18)~~(21) "Initial contract ~~Contract~~ term ~~Term~~" means the initial period for performance under a contract ~~Contract~~
23 after which the contract ~~Contract~~ will either terminate or be extended pursuant to a renewal ~~Renewal~~ or extension
24 Extension.

25 ~~(19)~~(22) "Negotiation" means oral or written communications in a waived or open competitive procurement
26 Procurement between the State and vendor ~~Vendor undertaken with the intent of allowing a vendor~~ ~~Vendor to revise its~~
27 offer ~~Offer~~. "Negotiations" means oral or written communications between the State and one or more vendors
28 undertaken to allow a vendor to revise its offer, in accordance with 01 NCAC 05B .0503. Revisions may apply to
29 price, schedule, technical requirements, or other terms of the proposed contract ~~Contract~~. Negotiations are specific to
30 each offer ~~Offer~~ and shall be conducted to maximize the State's ability to obtain best ~~Best~~ value ~~Value~~ based on the
31 evaluation factors set forth in the solicitation ~~Solicitation~~. ~~Negotiations shall be~~

32 ~~(20)~~(23) "Offer" means a bid, proposal, BAFO, or other proposition submitted in response to any solicitation
33 Solicitation, negotiation ~~Negotiation~~, or other approved acquisition process, as well as responses to solution-based
34 solicitations ~~Solicitations~~ and government-vendor ~~Vendor~~ partnerships.

35 ~~(21)~~(24) "Personal services ~~Services~~ contract ~~Contract~~" has the same definition as in G.S. 143-48.6(b). A personal

~~Personal services Services contract Contract~~ is a type of ~~service Service contract Contract~~.

(22)(25) "Pressing ~~need~~ ~~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 procurement-Agency director Director~~, which can be satisfied only by immediate purchase or rental of ~~goods Goods~~ or ~~services Services~~.

(23)(26) "Price" means the amount paid by the State to a ~~vendor Vendor~~ for ~~goods Goods~~ or ~~services Services~~.

(24)(27) "Procurement" means the process of acquiring ~~goods Goods~~ or ~~services Services~~.

(28) "Procurement card" is a purchase card issued to an authorized employee of a state agency for the purpose of making authorized purchases on the agency's behalf, which allows an agency to buy directly from suppliers within pre-approved authority levels and spending limits. The Agency will issue payment for charges made with the procurement card.

(25)(29) "Professional ~~services Services~~" means the contracted work or tasks performed by a ~~vendor Vendor~~ or independent contractor possessing specialized knowledge, experience, expertise, and professional qualifications, who provides ongoing ~~services Services~~. A ~~professional Professional services Services contract Contract~~ is a type of ~~service Service contract Contract~~.

(26)(30) "Progressive ~~award Award~~" means an award for portions of a definite quantity requirement to more than one ~~vendor Vendor~~. Each portion is for a definite quantity and the sum of the portions is the total quantity procured. A ~~progressive Progressive award Award~~ may be in the ~~procurement Purchasing agency's Agency's~~ best interest when awards to more than one ~~vendor Vendor~~ for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

(27)(31) "Public ~~funds 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 Goods~~ and ~~services Services~~ that are required to be purchased in accordance with Article 3 of Chapter 143 of the General Statutes.

(28)(32) "Procurement ~~agency Agency~~" or "Purchaser" means the ~~agency Agency~~ that issues a purchase order or otherwise acquires ~~goods Goods~~ or ~~services Services~~ through a purchasing process.

(29)(33) "Recalled ~~bid Bid~~" means a ~~bid Bid~~ that is rescinded by the ~~vendor Vendor~~ after the bid opening but prior to a contract being awarded.

(30)(34) "Renewal" means an optional term provided for in the ~~contract Contract~~ that can be exercised as of right by the State.

(31)(35) "Responsible ~~vendor Vendor~~" ~~means a vendor Vendor who demonstrates in its offer Offer that it has the capability to perform the requirements of the solicitation Solicitation.~~ means a vendor who meets all evaluation criteria and technical requirements set forth in the solicitation, as determined through evaluation in accordance with 01 NCAC 05B .0309.

(32)(36) "Responsive ~~offer Offer~~" means an ~~offer Offer~~ that conforms to the requirements ~~Requirements~~ of the ~~solicitation Solicitation~~.

1 ~~(33)(37)~~ "Requirement" is a ~~provision of a solicitation Solicitation and any resulting contract Contract that~~
2 ~~prescribes the nature or details of a standard, process, or procedure that must be complied with by the vendor Vendor~~
3 ~~before any further evaluation of the offer Offer is conducted by the State.~~ is a standard, process or procedure
4 referenced in a solicitation that must be met without alteration for the vendor to be deemed responsive and further
5 evaluated for award.

6 ~~(34)(38)~~ "Scaled offer Offer" means an offer Offer that remains unopened until the public opening time stated in
7 the solicitation Solicitation.

8 ~~(35)(39)~~ "Secretary" means the Secretary of the North Carolina Department of Administration.

9 ~~(36)(40)~~ "Service contract Contract" means any agreement for compensation involving services Services and
10 requiring a particular or specialized knowledge, experience, expertise, or similar capabilities in the vendor Vendor.
11 Contracts for consultant Consultant services Services, professional Professional services Services, and personal
12 Personal services Services are also examples of a service Service contract Contract. A service Service contract
13 Contract may also involve the ancillary purchase of goods Goods.

14 ~~(37)(41)~~ "Services" means the tasks and duties undertaken by a vendor Vendor in a service Service contract
15 Contract to fulfill the requirements Requirements and specifications Specifications of the contract Contract.

16 ~~(38)(42)~~ "Signature" means a manual autograph, an electronic Electronic identifier, or an electronic Electronic
17 authentication technique, that is intended by the person using it to have the same force and effect as a manual
18 signature.

19 ~~(39)(43)~~ "Small purchase Purchase" means the purchase of goods Goods and services Services not covered by a
20 term Term contract Contract where the expenditure of public Public funds Funds including extensions Extensions and
21 renewals Renewals is equal to or less than the small Small purchase Purchase benchmark Benchmark amount, pursuant
22 to 01 NCAC 05B .0301.

23 ~~(40)(44)~~ "Solicitation" means to request or invite vendor Vendor offers Offers, or to request information regarding
24 the acquisition of goods Goods and services Services, through the use of solicitation Solicitation documents
25 Documents.

26 ~~(41)(45)~~ "Solicitation documents Documents" means a written Written or electronic Electronic

27 (a) invitation Invitation for bids Bids (IFB);

28 (b) request Request for quotations Quotations (RFQ);

29 (c) request Request for proposals Proposals (RFP);

30 (d) best Best and final Final offer Offer (BAFO); or

31 (e) other documents to invite vendor Vendor offers Offers, including all mutually agreed attachments
32 and items incorporated by reference therein.

33 ~~(42)(46)~~ "Specification" means any description of the physical or functional characteristics of, or the nature of, the
34 goods Goods or services Services to be procured.

35 ~~(43)(47)~~ "Tabulation" means a list of vendors Vendors submitting offers Offers in response to a particular

solicitation ~~Solicitation~~ and, if applicable, the prices offered as allowed under G.S. 143-52(a).

(44)(48) "Technical ~~offer~~ Offer" means a proposal by a ~~vendor~~ Vendor in response to the ~~solicitation~~ Solicitation, absent the price content.

(45)(49) "~~Term Contract~~" is a ~~binding agreement between purchaser and seller to buy and sell certain goods~~ Goods or services Services at certain prices, for an agreed ~~contract~~ Contract term Term, and under specific terms and conditions. "Term contract" is a contract in which a vendor agrees to provide goods and services at set prices, for an agreed contract term, and pursuant to specific terms and conditions. No set quantity is provided, but estimates are often given based on forecasted usage. It is also referred to as a "requirements contract" or "indefinite quantity contract." There are two types of term contracts:

1. Statewide Term Contracts (STCs) are established by the division for use by state agencies and by other entities, such as municipalities. There are mandatory and convenience STCs. Agencies are required to use mandatory STCs. Convenience STCs are for agency use but are not mandatory. All STCs are competitively bid according to the rules set forth in this chapter.
2. An agency specific term contract is established for use by a specific agency when the needed goods or services are not otherwise covered by a STC. Agency specific term contracts are established by the procurement agency pursuant to the rules set forth in this chapter. They shall be reviewed and approved by P&C when the expected expenditures exceed the agency's general delegation.

(46)(50) "Total ~~cost~~ Cost of ownership Ownership" means a summation of all purchase, operating, and related costs to be expended during the projected lifetime of a ~~good~~ Good or ~~service~~ Service or both.

(47)(51) "Vendor" means a contractor, supplier, bidder, company, independent contractor, firm, corporation, partnership, individual, or other entity submitting a response to a ~~solicitation~~ Solicitation.

(48)(52) "~~Voided bid~~ Bid" ~~means an electronic Electronic bid that was submitted by a vendor Vendor in connection with an electronic Electronic solicitation Solicitation that has been cancelled, the bids voided and not opened electronically.~~ means an electronic bid submitted by a vendor in response to an electronic solicitation that has been cancelled. Bids submitted in response to a canceled solicitation shall be voided by the procurement agency and unopened bids shall not be opened.

(49)(53) "Weakness" means a flaw in the ~~offer~~ Offer that increases the risk of unsuccessful contract performance.

(50)(54) "Withdrawal" or "Withdrawn ~~bid~~ Bid" ~~means a bid Bid that is rescinded by the vendor Vendor prior to the bid opening.~~ means an offer rescinded by a vendor in writing submitted to the procurement agency prior to the contract award.

(51)(55) "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;

1 *Amended Eff. April 1, 1999;*
2 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23,*
3 *2016;*
4 *Amended Eff. March 1, 2022; November 1, 2021; October 1, 2019;*
5 *Readopted Eff. March 1, 2026.*

01 NCAC 05B .0206 is proposed for readoption with substantive changes as follows:

~~01 NCAC 05B .0206~~ SUBMISSION FOR ADOPTION

Upon completion of all necessary studies, reviews reviews, and drafts, any proposed standard specification shall be submitted to the CSO CPO 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 CPO 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;

Readopted December 1, 2024.

01 NCAC 05B .301 is proposed for readoption with substantive changes as follows:

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~~ Public ~~funds~~ Funds made by an ~~agency~~ Agency for ~~goods~~ Goods or ~~services~~ Services not covered by ~~statewide~~ Statewide ~~term~~ Term ~~contracts~~ Contracts, shall comply with the provisions of Rule .0314 of this Subchapter, and the following:

(1) Small Purchases (01 NCAC 05A .0112).

(a) ~~A small Small purchase Purchase, as defined in 01 NCAC 05A .0112, is the purchase of goods Goods and services Services, where the total contract Contract value, including the amounts of extensions Extensions and renewals Renewals, is equal to or less than the small Small purchase Purchase benchmark Benchmark as set by the CPO SPO.~~

(b)(a) The ~~small Small purchase Purchase benchmark Benchmark~~ value shall be ~~twenty five~~ twenty-nine thousand dollars (~~\$25,000~~) (\$29,000) in ~~2021-2023~~ dollars. The ~~CPO SPO~~ shall adjust the ~~small Small purchase Purchase~~ value for inflation in June of ~~odd numbered~~ 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 and rounding up to the nearest thousand.

(e)(b) ~~The executive officer of each agency Agency, or his or her designee, shall establish written internal policies for making small Small purchases 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 Goods and services Services. The procedures shall be made available to the CPO SPO upon request such as part of a compliance review, complaint, or other inquiry. The executive officer of each agency Agency, or his or her designee, shall establish written internal procurement policies and procedures for making small Small purchases 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 Goods and services Services, as required by GS 143-48(a). The procedures shall be made available to the CPO upon request such as part of a compliance review as outlined in 01 NCAC 05B.1605, complaint, protest or other inquiry.~~

(d)(c) The ~~procurement Purchasing~~ agency Agency shall award ~~all contracts~~ Contracts for ~~small Small purchases Purchases~~.

(e)(d) An agency Agency may advertise ~~small Small purchase Purchase~~ solicitations ~~Solutions~~ through the ~~electronic Electronic bid Bid system System~~ maintained by the Division and may ~~utilized-utilize~~ division Division solicitation Solicitation documents Documents as specified in Rule .0314 of this Section.

(2) Informal Bidding Purchases.

(a) Where the total contract Contract value, including the amounts of extensions Extensions and

1 ~~renewals~~ Renewals, involves an expenditure of ~~public~~ Public ~~funds~~ Funds exceeding the ~~small~~ Small ~~purchase~~
2 ~~Purchase~~ benchmark ~~Benchmark~~ in Item (1) of this Rule, and up to the ~~bid~~ Bid ~~value~~ Value ~~benchmark~~
3 ~~Benchmark~~ established for a university under the provisions of G.S. 116-31.10, or the ~~general~~ General
4 ~~delegation~~ Delegation limit for an ~~agency~~ Agency established by the ~~CPO~~ SPO under the provisions of G.S.
5 143-53(a)(2) and G.S.143-53.1, the following procedures shall be utilized:

6 (i) Competition shall be solicited by the procurement agency, but the ~~solicitation~~ Solicitation of
7 ~~sealed~~ Sealed ~~offers~~ Offers is not required. Agencies may utilize the ~~division's~~ Division's ~~electronic~~ Electronic
8 ~~bid~~ Bid ~~system~~ System to advertise solicitations Solicitations subject to this ~~subsection~~ Subsection or to solicit
9 ~~vendor~~ Vendor ~~offers~~ Offers.

10 (ii) The procurement agency shall request or invite offers by using Division solicitation Solicitation
11 ~~documents~~ Documents ~~requesting or inviting offers shall be issued~~; and

12 (iii) Division solicitation Solicitation ~~documents~~ Documents and any resulting ~~contract~~ Contract shall
13 include contract Contract language and terms and conditions as set forth in Rules .0314 and .0318 of this
14 Section, and may be found on the Division's webpage. Additional terms and conditions used shall not conflict
15 with the Division's standard terms and conditions as set forth in Rule .0314 of this Section.

16 (b) The procurement agency shall award all contracts for purchases valued less than a university's
17 bid value benchmark or an agency's general delegation. Contracts for purchases valued less than a university's
18 bid Bid value Value benchmark Benchmark or an agency's Agency's general General delegation Delegation shall

19 ~~be awarded by the purchasing~~ Purchasing agency Agency.
20 (c) Procurement Purchasing agencies shall encourage and promote the use of historically
21 underutilized businesses as defined in G.S. 143-128.4 in purchasing goods Goods and services Services as
22 required by G.S. 143-48(a), as applicable according to existing law or statute.

23 (3) Formal Bidding Procedure.

24 (a) Where the total ~~contract~~ Contract value, including the amounts of any extensions Extensions and
25 ~~renewals~~ Renewals, involve an expenditure of ~~public~~ Public ~~funds~~ Funds in excess of the ~~bid~~ Bid ~~value~~ Value
26 ~~benchmark~~ Benchmark established under G.S. 116-31.10, G.S. 115D-58.14, or the ~~general~~ General ~~delegation~~
27 Delegation established by the ~~SPO~~ CPO under G.S. 143-53(a)(2) and G.S. 143-53.1, the competitive bidding
28 procedure as defined in G.S. 143-52 shall be utilized as follows:

29 (i) ~~Competition shall be solicited~~ Competition shall be solicited by the procurement agency using Division
30 solicitation documents to request or invite sealed offers;

31 (ii) ~~Division solicitation~~ Solicitation ~~documents~~ Documents ~~requesting or inviting offers shall be~~
32 ~~issued by the Purchasing Agency~~;

33 (ii)(iii) Solicitation documents Documents and any resulting ~~contract~~ Contract shall include contract
34 language and terms and conditions as set forth in Rules .0314 and .0318 of this Section, and may be found on
35 the Division's webpage, unless prior written approval is obtained from the Division for unusual requirements,
36 such as for unique, complex, or highly technical procurements Procurements. If additional terms and conditions
37 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;

~~(iii)(iv)~~ an agency ~~Agency~~ shall provide to the Division a draft solicitation ~~Solicitation~~ document ~~Document~~ for review and approval prior to posting on the electronic ~~Electronic~~ bid ~~Bid~~ system ~~System~~. The Division shall review for compliance in accordance with G.S. 143-50.1 and Section .0300 of these Rules; and

~~(iv)(v)~~ an agency ~~Agency~~ shall solicit sealed ~~Sealed~~ offers ~~Offers~~ in accordance with this Subsection. After opening and completing the evaluation of offers ~~Offers~~ received, the agency ~~Agency~~ shall prepare and submit a written recommendation for award, along with a copy of all offers ~~Offers~~ received, to the Division for approval or other actions deemed necessary by the CPO ~~SPO~~ to ensure compliance with 01 NCAC 05B. Notice of the Division's decision shall be sent to the agency ~~Agency~~.

(b) An agency ~~Agency~~ shall advertise all solicitations ~~Solicitations~~ subject to this Subsection through the electronic ~~Electronic~~ bid ~~Bid~~ system ~~System~~ maintained by the Division.

(c) Contracts for purchases in excess of a university's bid ~~Bid~~ value ~~Value~~ benchmark ~~Benchmark~~ or an agency's ~~Agency's~~ general ~~General~~ delegation ~~Delegation~~ shall be awarded by the procurement ~~Purchasing~~ agency ~~Agency~~ upon approval from the Division in accordance with the process outlined in this paragraph.

(d) Procurement ~~Purchasing~~ agencies shall encourage and promote the use of historically underutilized businesses as defined in G.S. 143-128.4 in purchasing goods ~~Goods~~ and services ~~Services~~, as required by G.S. 143-48(a), as applicable according to existing law or statute.

(4) ~~The Procurement of Goods and Services shall be processed in the same manner.~~ Goods and services shall both be procured according to the provisions of this section.

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.
 Readopted Eff. March 1, 2026.

1 01 NCAC 05B .0304 is proposed for readoption with substantive changes as follows:

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3 **01 NCAC 05B .0304 RECALL OF OFFERS**

4 ~~Offers may be recalled at any time prior to award prior to opening upon by Written written and signed request from an~~
5 ~~authorized agent of the vendor Vendor to the procurement Purchasing agency. Agency after the bid opening but prior to a~~
6 ~~contract being awarded. A record of the recall shall be maintained in the bid file. Any time prior to contract award, offers may~~
7 ~~be recalled by a written and signed request from an authorized agent of the vendor to the procurement agency. A record shall~~
8 ~~be maintained in the procurement file.~~

9

10 *History Note: Authority G.S. 143-49; 143-52;*
11 *Eff. February 1, 1976;*
12 *Readopted Eff. February 27, 1979;*
13 *Amended Eff. February 1, 1996;*
14 *Readopted Eff. October 1, 2019;*
15 *Readopted Eff. March 1, 2026.*

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01 NCAC 05B .0309 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .0309

EVALUATION

(a) In determining the award of ~~contract~~ ~~Contract~~, ~~responsive~~ ~~Responsive~~ ~~offers~~ ~~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~~ ~~Contract~~ shall be identified in the ~~solicitation~~ ~~Solicitation~~ document.

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

(c) Evaluation of ~~offers~~ ~~Offers~~ shall be conducted by the ~~procurement~~ ~~Purchasing agency~~ ~~Agency~~. Following evaluation of the ~~offers~~ ~~Offers~~ by the ~~procurement~~ ~~Purchasing agency~~ ~~Agency~~, a recommendation shall be submitted to the ~~division~~ ~~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~~ ~~Responsive~~ ~~offers~~ ~~Offers~~ shall be retained in the ~~agency~~ ~~Agency~~ ~~procurement~~ ~~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. If during the evaluation process, the procurement agency determines that a vendor has not met the evaluation criteria in the solicitation document, written documentation shall be made by the procurement agency including the reason(s) for the determination with any supporting documentation in the procurement file.~~

~~(d)(c) The failure of a Vendor to provide requested information to the procurement Purchasing agency Agency in connection to a clarification Clarification or mandatory addendum shall be sufficient justification for a determination that the offer is non responsive. of not having met the criteria. Failure of a vendor to provide the requested information to the procurement agency within the time stated in a clarification or addendum shall be sufficient justification for a determination that the offer is non-responsive.~~

*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;
Readopted Eff. March 1, 2026.*

01 NCAC 05B .0314 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .0314 SOLICITATION DOCUMENTS

- (a) In this Rule, the Division establishes standard solicitation ~~Solicitation~~ documents ~~Documents~~ for use in contracts ~~Contracts~~ with the State. A procurement ~~Purchasing agency~~ Agency shall use Division solicitation ~~Solicitation~~ documents ~~Documents~~ for purchases over the small ~~Small~~ purchase ~~Purchase~~ benchmark ~~Benchmark~~.
- (b) Division solicitation ~~Solicitation~~ documents ~~Documents~~ shall act as templates for the procurement ~~Purchasing agency~~ Agency, including provisions for:
- (1) Procurement ~~Purchasing agency~~ Agency contract lead name, contact information, solicitation ~~Solicitation~~ identifying information, and commodity codes;
 - (2) Purpose and background information such as:
 - (A) a description of the requested goods ~~Goods~~ or services ~~Services~~;
 - (B) a description of the procurement ~~Purchasing agency's~~ Agency's needs; and
 - (C) the intent of the solicitation;
 - (3) Contract term ~~Term~~ information, including any renewal ~~Renewal~~ period;
 - (4) General information regarding the solicitation ~~Solicitation~~ and bid process including:
 - (A) date and time when the bids will be opened;
 - (B) instruction as to how and when the vendor ~~Vendor~~ is to respond to the solicitation ~~Solicitation~~;
 - (C) the intended schedule of events and responsibilities of the solicitation ~~Solicitation~~;
 - (D) instructions for submitting written questions to the procurement ~~Purchasing agency~~ Agency;
 - (E) a list of content that should be included in the vendor's ~~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 ~~Vendor's~~ performance, including:
 - (A) the terms of pricing, invoicing, and methods of delivery of the requested goods ~~Goods~~ or services ~~Services~~;
 - (B) the scope of work required by the solicitation ~~Solicitation~~;

- (C) ~~specifications~~ Specifications for the required ~~good~~ Good or ~~service~~ 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~~ 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.

The

- ~~(c) In unique, complex or highly technical procurements, the Purchasing Agency may add or remove specific terms and conditions for certain Contracts, with approval from the Division. The procurement agency may add or remove specific terms and conditions for certain contracts, with approval from the Division. In each instance, the Division will consider the particular requirements of the procurement agency, the terms or conditions proposed to be added or removed, and other factors that may apply.~~
- ~~(e) Purchasing Agency may add or remove provisions as required for certain Solicitations, such as those with unique, complex, or highly technical Specifications.~~
- ~~(e)~~

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;

Readopted Eff. March 1, 2026.

01 NCAC 05B .0316 is proposed for readoption with substantive changes as follows:

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 shall be posted through the Division's ~~electronic~~ Electronic bid Bid
system ~~System~~ for at least 10 calendar days, unless:

1. A memo requesting a waiver of competition is received by the Division and approved by the CPO in accordance with Rule .1401 of this section, or
2. A statutory exception applies, ~~or~~
3. ~~Another exception applies pursuant to paragraph (d) of this Rule.~~

~~Additionally, the purchasing agency may solicit bids via by other means, such as direct mailings, other electronic procurement boards, or any other means of advertisement other publications as long as the requirements of this paragraph are met. Additionally, the procurement agency may solicit bids by other means, including direct mailings, electronic procurement boards, publication or other means intended to invite competition, as long as the requirements of this paragraph are met. If the electronic bid system is unavailable, the advertising requirement may be met by other means as described in this section.~~

(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.~~ The advertisement posted through the Division's electronic bid system shall include the bidding system link to the 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 whether physical or virtual.

(c) Procurement agencies shall transmit an award notice to the Division's electronic bid system within three working days from the award of a contract. ~~within Within three working days from the award of a contract that has been advertised through the Division's electronic Electronic bid Bid system System,~~ ~~purchasing Purchasing agencies Agencies shall transmit an award notice to the Division's electronic Electronic bid Bid system 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 procurement Purchasing agency 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 shall place the advertisement (excluding the complete Solicitation document) via by newspaper. If advertised via newspaper, the agency shall be responsible for placing the advertisement and~~

1 ~~no award notice shall be required to be published via newspaper.~~

2 ~~(2) If a procurement Purchasing agency Agency is unable to electronically transmit an~~
3 ~~attachment to the Solicitation, the procurement Purchasing agency Agency shall include instructions~~
4 ~~to obtain the attachment in the advertisement.~~

5 ~~(3) If a Purchasing Agency is unable to electronically transmit a Solicitation, the Purchasing Agency~~
6 ~~shall electronically transmit a summary notice that provides interested Vendors with instructions to~~
7 ~~obtain a copy of the Solicitation.~~

8 ~~(4) Reasons a Purchasing Agency may be unable to electronically transmit the documents listed in~~
9 ~~this Paragraph include Computer equipment failure, networking difficulties, or other emergency~~
10 ~~situations in which the electronic bidding system is unavailable for a period of time longer than _____~~
11 ~~days (TBD) computer equipment failure or, networking difficulties, or insufficient copies of samples~~
12 ~~for a printing job.~~

13 *History Note: Authority G.S. 143-52; 143-53;*
14 *Temporary Adoption Eff. February 15, 1998;*
15 *Eff. April 1, 1999;*
16 *Readopted Eff. October 1, 2019;*
17 *Readopted Eff. March 1, 2026.*

01 NCAC 05B .0318 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .0318 TERMS AND CONDITIONS

(a) In this Rule, the Division establishes standard terms and conditions for use in contracts
~~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 ~~Goods~~;

(2) Contract terms, including:

- (A) ~~-(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;

~~(2)~~(3) Contract terms required in contracts ~~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

~~(3)~~(4) Other provisions to protect the State from legal and other risks, as necessitated by
current legal, market, and business conditions.

(c) In unique, complex or highly technical procurements, the ~~The procurement Purchasing agency~~
~~Agency~~ may add or remove specific terms and conditions for certain contracts ~~Contracts~~, such as
~~those with unique, complex or highly technical Procurements, with approval from the Division. In~~

1 each instance, the Division will consider the particular requirements of the procurement agency, the
2 terms or conditions proposed to be added or removed, and other factors that may apply.

3 *History Note: Authority G.S. 143-49; 143-50.1; 143-52; 143-53; 143-135.9;*

4 *Eff. March 1, 2022;*

5 *Readopted Eff. March 1, 2026.*

01 NCAC 05B .0319 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .0319 CONTRACT TERM

(a) ~~Except as allowed in G.S. 143-53(d), the procurement agency's~~ 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)~~(a) Except as otherwise provided by statute, no contract shall exceed three years, including the initial contract term and any renewals, without approval by the CPO prior to posting the solicitation. Requests for approval shall be made through the Electronic Bid System. A ~~contract~~ Contract with a term that exceeds three years, including the ~~initial~~ Initial contract ~~Contract term~~ Term and any ~~renewal~~ Renewal and ~~extension~~ Extension, requires approval of the ~~CPO~~ SPO prior to posting the ~~solicitation~~ Solicitation.

~~Requests for approval may be made through the Electronic Bid System.~~

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

(d) ~~CPO~~ SPO approval ~~shall only~~ ~~may~~ be granted after consideration of the factors in Rule .0321 of this Section or when the ~~CPO~~ 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;.

Readopted Eff. March 1, 2026.

01 NCAC 05B .0320 is proposed for readoption with substantive changes as follows:

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 CPO 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.~~ Except as allowed in G.S. 143-53(d), any extension beyond the term originally provided in the contract that would result in a term that exceeds three years, including any extensions or renewals, shall be by approval of the CPO 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 by the CPO.

(b) As permitted pursuant to paragraph (a) above, when an agency ~~Agency~~ determines, through consideration of the factors listed in Rule .0321 of this Section, that a contract ~~Contract~~ extension ~~Extension~~ is most advantageous to the State, as defined by G.S. 143-52, the agency ~~Agency~~ shall ~~publicly~~ post a notification of the extension ~~Extension~~ on the electronic ~~Electronic~~ bid ~~Bid~~ system ~~System~~. The notification shall state for any contract ~~Contract~~ extension ~~Extension~~:

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

(c) When an agency ~~Agency~~ determines it is most advantageous to the State, as defined by G.S. 143-52, the agency ~~Agency~~ may request the vendor ~~Vendor~~ to extend the scheduled termination dates of contracts ~~Contracts~~. Extensions shall not result in a change in the prices stated in the original contract ~~Contract~~ unless agreed to by the procurement ~~Purchasing agency ~~Agency~~ in writing. Extensions that result in a total contract value that exceeds a procurement ~~Purchasing~~ agency's ~~Agency's~~ general ~~General~~ delegation ~~Delegation~~ or bid ~~Bid~~ value ~~Value~~ benchmark ~~Benchmark~~ shall be submitted to the Division for approval as required by Rule .0301.~~

History Note: Authority G.S. 143-49; 143-52; 143-53; 143-135.9;
Eff. March 1, 2022;.
Readopted Eff. March 1, 2026.

01 NCAC 05B .0321 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .0321

FACTORS FOR CONTRACT EXTENSION OR RENEWAL

(a) Before exercising a renewal ~~Renewal~~ or seeking an extension ~~Extension~~ of a contract ~~Contract~~ as provided in this Section, the agency ~~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 ~~Contract~~;
- (2) the vendor's ~~Vendor's~~ past performance under the contract ~~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 ~~Vendor~~ on the agency's ~~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 ~~Agency's~~ decision to renew or extend a contract ~~Contract~~ term ~~Term~~ shall be approved by the agency's ~~Agency's~~ head of procurement director ~~Procurement~~.

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

(d) An agency ~~Agency~~ shall obtain CPO ~~SPO~~ approval before exercising a renewal ~~Renewal~~ or seeking an extension ~~Extension~~ of a contract ~~Contract~~ when:

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

History Note: Authority G.S. 143-49; 143-52; 143-53; 143-135.9;

Eff. March 1, 2022;.

Readopted Eff. March 1, 2026.

01 NCAC 05B .0503 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .0503 **NEGOTIATION**

(a) ~~The Purchasing Agency may first negotiate with one or more responsive Vendors or, if there are no responsive vendors, 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. If the procurement agency elects to negotiate, the procurement agency shall negotiate first with one or more of the responsive vendors or, if all offers are rejected under the provisions of Rule .0501, the procurement agency shall negotiate with vendors that responded to the solicitation and any other known 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 procurement Purchasing agency Agency if the solicitation Solicitation is under its bid Bid value Value benchmark Benchmark or general General delegation 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. The result of negotiations, including any revisions to pricing, schedule, technical requirements, or other terms of the proposed contract, shall be documented in a BAFO or the negotiated contract, and executed by the parties.

(d) ~~All Negotiation justifications and results shall be documented in writing for public record. The procurement agency shall document all negotiations in the recommendation of award.~~

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;

Readopted Eff. March 1, 2026.

1 **01 NCAC 05B .0901 is proposed for readoption with substantive changes as follows:**

2
3 **01 NCAC 05B .0901 RESPONSIBILITY**

4 ~~In general, it is the responsibility of the receiving agency to inspect all materials, supplies, and~~
5 ~~equipment upon~~
6 ~~delivery to insure ensure compliance with the contract requirements and specifications. The procurement~~
7 ~~agency shall ensure that contract requirements and specifications include any codes, statutes, ordinances or~~
8 ~~safety requirements that may apply to items purchased. The procurement agency or the agency receiving~~
9 ~~delivery, if different, shall inspect all materials, supplies and equipment upon delivery to ensure compliance~~
10 ~~with the contract requirements and specifications. However, when the contract requires an inspection by the~~
11 ~~Division of Purchase and Contract, it shall be conducted by a designee of the Division.~~

12 History Note: *Authority G.S. 143-60;*
13 *Eff. February 1, 1976;*
14 *Readopted Eff. February 27, 1979;*
15 *Amended Eff. February 1, 1996;*
16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.*
17 *July 23, 2016;*
18 *Readopted Eff. March 1, 2026.*

01 NCAC 05B .0902 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .0902 SELECTION

~~The Division may periodically inspect any items to insure that specifications are met. To ensure that specifications are met, the Division may inspect any items purchased. 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;
Readopted Eff. March 1, 2026.

01 NCAC 05B .1101 is proposed for readoption with substantive changes as follows:

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.~~

~~(a) (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 shall may purchase any goods commodities, printing, or services covered by a mandatory statewide term contract from any other sources. No agency shall purchase goods or services outside an existing mandatory statewide term contract from any other source without seeking prior written approval from the division, which shall be based on the following criteria:~~

- ~~1. whether the agency has a need for a particular product or service for which an equivalent in not available through a statewide term contract;~~
- ~~2. whether a better price for an equivalent product or service is available from another vendor outside of a statewide term contract, considering quality and quantity, rebates and discounts available from the statewide term contract, the cost and timeliness of delivery, vendor return policies, and vendor warranty; or~~
- ~~3. whether there are other considerations supporting an exception to purchasing from the statewide term contract.~~

~~(b) (e) 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. A term contract shall be based upon competition, unless a waiver of competition has been granted.~~

~~(e) (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 good 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;.

Readopted Eff. March 1, 2026.

01 NCAC 05B .1201 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .1201 **USE**

(a) The ~~procurement Purchasing agency Agency~~ may make a partial, multiple or ~~progressive 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 interest of the State to award separately by items if the procurement agency determines after evaluations that awarding separately by items achieves a better result, considering factors such as price, quantity, quality, delivery, services, or geographical areas as set forth in the solicitation;~~ or
- (4) if more than one supplier is needed to meet the ~~specifications Specifications~~ as to quantity, quality, delivery, services, or geographical areas as set forth in the ~~solicitation 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;.

Readopted Eff. December 1, 2014;.

Readopted Eff. March 1, 2026.

01 NCAC 05B .1401 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .1401 POLICY

Under conditions listed in this Rule, ~~and otherwise if deemed to be in the public interest by the CPO SPO or by the agency, (if under its agency delegation or benchmark),~~ competition may be waived.

a) In developing these purchasing provisions, the Secretary shall also consider the following criteria:

(i) cost-effectiveness, (ii) quality, (iii) the provider's general reputation and performance capabilities, (iv) substantial conformity with specifications and other conditions set forth for these purchases, (v) the suitability of the goods or services for the intended use, (vi) the personal or other related services needed, (vii) transportation charges, and (viii) any other factors the Secretary considers pertinent to the purchases in question. ~~A Waiver of Competition request may require multiple conditions to support waiver justification.~~ Conditions permitting waiver include cases where performance or price competition is not available;

1. ~~where a needed product or service is available from only one source of supply;~~

2. ~~where emergency action is indicated;~~

3. ~~2.~~ where competition has been solicited but no satisfactory offers received;

4. ~~3.~~ where standardization or compatibility is the overriding consideration;

5. ~~4.~~ where a donation predicates the source of supply;

6. ~~where personal or particular professional services are required;~~

7. ~~5.~~ where a particular medical product or service, or prosthetic appliance is needed;

8. ~~6.~~ where a product or service is needed for the blind or severely disabled and ~~there are overriding considerations for its use;~~

9. ~~7.~~ where additional products or services are needed to complete an ongoing job or task;

10. ~~8.~~ where products are bought for "across over the counter" resale;

11. ~~9.~~ where a particular product or service is desired for educational, training, experimental, developmental or research work;

12. ~~10.~~ where equipment is already installed, connected and in service, and it is determined advantageous to purchase it;

13. ~~11.~~ where items are subject to rapid price fluctuation or immediate acceptance;

14. ~~12.~~ 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;~~

15. ~~13.~~ where the requirement is for an authorized cooperative project with another governmental unit(s) or a charitable non-profit organization(s); and

16. ~~14.~~ where the requirement is for the use of an approved cooperative procurement agreement developed by another federal, State, or local government, agency, entity, or subdivision or with a non-profit organization;

~~17.~~ 15. where a used item(s) is available on short notice and subject to prior sale.

b) In considering whether to grant a request for a waiver of competition, the Secretary shall consider the following criteria in addition to the factors identified in section (a), above: (i) cost-effectiveness, (ii) quality, (iii) the provider's general reputation and performance capabilities, (iv) substantial conformity with specifications and other conditions set forth for these purchases, (v) the suitability of the goods or services for the intended use, (vi) the personal or other related services needed, (vii) transportation charges, and (viii) any other factors the Secretary considers pertinent to the purchases in question.

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.

Readopted Eff. March 1, 2026.

01 NCAC 05B .1402 is proposed for readoption with substantive changes as follows:

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~~ prevent 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.
Readopted Eff. March 1, 2026.

01 NCAC 05B .1505 is proposed for readoption with substantive changes as follows:

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 these 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.
Readopted Eff. March 1, 2026.*

01 NCAC 05B .1506 is proposed for readoption with substantive changes as follows:

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, or another specific source predicated by the grantor, the proposed transaction shall be explained in writing and shall have prior approval of the CPO SPO. Prior to approval, the SPO CPO 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 market 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 CPO or Secretary. 10~~
When a grant, donation, or special discount to the State or an agency, is contingent upon the agency making a purchase from the grantor or a specific source designated by the grantor, the following procedure shall be followed:

1. The proposed transaction shall be documented in writing by the agency.
2. Prior approval from the Chief Procurement Officer (CPO) is required.

Prior to approval, the CPO shall evaluate whether acceptance of the grant, donation or special discount is in the best economic interest of the State, based upon consideration of the following factors:

1. the conditions placed on the grant, donation or special discount and how they will affect the agency and the State;
2. the potential impact of these conditions upon both the agency and the State;
3. the cost of agreeing to such conditions; and
4. market conditions.

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.

Readopted Eff. March 1, 2026.

01 NCAC 05B .1508 is proposed for readoption with substantive changes as follows:

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.~~

Purchases of items for "across the counter" resale are not required to be reviewed and approved by the Division in accordance with the rules set forth in Title 01, Chapter 05 of the NCAC.

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 the rules set forth in Title 01, Chapter 05 of the NCAC. ~~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;

Readopted Eff. March 1, 2026.

01 NCAC 05B .1509 is proposed for readoption with substantive changes as follows:

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

Except as authorized pursuant to this rule, purchases from or through employees of any agency shall not be permitted. ~~Every reasonable effort shall be made to avoid making purchases from or through employees of any agency. Prior~~
~~written approval from the CPO~~ SPO is required in any instance which may develop of doing business with such personnel. Written approval from the CPO shall be obtained before a purchase from or through employees of any agency may be permitted. ~~In deciding whether to grant approval, No agency shall contract with an employee of the State for the purchase of goods or services without the written approval of the CPO. The agency desiring to contract with a State employee shall provide to the CPO a written justification for the approval.~~ The CPO shall consider the following factors in determining whether the contract for the purchase of goods or services shall be approved:

- a. the ~~SPO~~ CPO shall consider the type item or service needed, (b) the prevailing market conditions, (c) whether competition is available, (d) the cost involved, and (e) ~~the effects of doing business with the employee~~ whether the purchase violates any provision of State law.

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.

Readopted Eff. March 1, 2026.

01 NCAC 05B .1511 is proposed for readoption with substantive changes as follows:

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

- (a) A ~~procurement Purchasing agency~~ Agency shall act to prevent ~~the continuance of~~ anticompetitive, deceptive, or fraudulent practices ~~in State purchases. Anticompetitive practices include actions involving vendors Vendors that restrain trade or commerce or eliminate competition Competition.~~ Anticompetitive practices include actions by businesses that reduce competition or create an unfair market advantage. Deceptive practices include activities that intentionally mislead or deceive consumers or other businesses. Fraudulent practices includes intentional deceit, misrepresentation or concealment of information to gain an unfair competitive advantage or harm others.
- (b) Anticompetitive, deceptive, or fraudulent practices ~~include 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~~ 2. price fixing ~~which may include reliance upon an industry price list;~~
 4. 3. collusion;
 - ~~5. identical bidding; or~~
 - ~~6~~ 4. agreements by vendors to:
 - a. rotate which vendor will submit the most advantageous offers ~~Offers~~;
 - b. share the profits with a vendor ~~Vendor~~ who is not the low vendor ~~Vendor~~;
 - c. sublet work in advance of bidding as a means of preventing competition ~~Competition~~;
 - d. refrain from bidding;
 - e. submit prearranged offers ~~Offers~~;
 - f. submit complementary offers ~~Offers~~;
 - g. set up territories to restrict competition ~~Competition~~;
 - h. alternate bidding; or
 - i. commit any other unlawful act in restraint of trade or commerce.
- (c) Agencies shall ~~Agency actions to discourage or prevent the continuance of~~ anticompetitive, deceptive, or fraudulent practices ~~by may include the following:~~
1. rejecting the vendor's ~~Vendor's offer~~ Offer;
 2. awarding a bid to a vendor ~~Vendor~~ with a cost or technical proposal that is

- 1 evaluated lower than the offending vendor's ~~Vendor's~~ proposal; and
- 2 3. recommending that the ~~SPO CPO~~ debar a vendor ~~Vendor~~ from doing
- 3 business with the State in accordance with Rule .1520 of this Section.
- 4 (d) The procurement Purchasing agency ~~Agency~~ shall report evidence of anticompetitive,
- 5 deceptive or fraudulent practices to the Attorney General's office and any other appropriate
- 6 law enforcement authority, in writing.

7 *History Note: Authority G.S. 143-53; 143-54;*

8 *Eff. February 1, 1976;*

9 *Readopted Eff. February 27, 1979;*

10 *Amended Eff. April 1, 1999; February 1, 1996;*

11 *Readopted Eff. October 1, 2019.*

12 *Readopted Eff. March 1, 2026.*

1 **01 NCAC 05B .1513 COOPERATIVE PURCHASING PROJECTS AND COOPERATIVE**
2 **PROCUREMENT AGREEMENTS**

3
4 A) Cooperative Projects:

5 Where an agency or the State is a participant in a ~~an authorized~~ cooperative project with another governmental
6 ~~agency or activity~~, or with a charitable ~~or other~~ non-profit organization, needed goods and services ~~necessary~~
7 ~~to the project shall be acquired according to the rules of this Chapter; provided, however, that if the interest of~~
8 ~~the State would be better served by one of the following acquisition methods, the CPO SPO may authorize that~~
9 ~~acquisition method to be used: Chapter; unless the CPO authorizes acquisition, after considering available~~
10 pricing and other terms of purchase and the similarities and differences in procurement rules, regulations, and
11 procedures of the contracting entity from the procurement statutes in Chapter 143, Article 3 of the North
12 Carolina General Statutes and the Administrative Code provisions under Title 01, Chapter 05, by one of the
13 following methods:

- 14 (1) participation in cooperative procurement agreements, or
15 (2) acquisition by the charitable or other non-profit organization that is a participant in the
16 cooperative project; or
17 (3) acquisition of goods and services on the State's behalf under the provisions of G.S. 143, Article 8
18 (4) ~~by making acquisition on behalf of such governmental activity or charitable non-profit~~
19 ~~organization; or~~
20 (5) ~~by authorizing acquisition on the State's behalf under the provisions of G.S. 143, Article 8; or~~
21 (6) ~~by authorizing acquisition on the State's behalf under the provisions of another State or~~
22 ~~another governmental entity, provided due consideration is given by the SPO to the differences in~~
23 ~~purchasing rules, regulations and procedures of the contracting entity.~~

24 (1) _____

25 (A) 01 NCAC 05B .1513 _____ COOPERATIVE PURCHASING

26 B) Cooperative Procurement Agreements:

27 ~~6 _____ Where an agency wishes to is a participant participate in an authorized cooperative project~~
28 ~~procurement agreement, developed with by another federal, State, or local government,~~
29 ~~agency, entity, or subdivision or governmental activity or with a charitable non-profit~~
30 ~~organization, the purchase goods of goods and services necessary to the project shall be~~
31 ~~acquired according to the rules of this Chapter; provided, however, that if the interest of the~~
32 ~~State would be better served by one of the following acquisition methods, the CPO may~~
33 ~~authorize that acquisition method to be used:-~~

- 34 (1) When an agency wishes to participate in a cooperative procurement agreement with a federal, state
35 or local government agency, entity, or subdivision, or non-profit organization, the agency must

1 first seek authorization from the CPO. In determining whether to authorize participation in a
2 cooperative procurement agreement, the CPO shall consider the following factors: available
3 pricing and other terms of purchase; the similarities and differences in procurement rules,
4 regulations, and procedures of the contracting entity from the procurement statutes in Chapter 143,
5 Article 3 of the North Carolina General Statutes and these rules; or whether the goods or services
6 are available through an existing statewide term contract.

7 a) ~~by making acquisition on behalf of such governmental activity or charitable non-~~
8 ~~profit~~

9 b) ~~organization; or~~

10 (2) ~~by authorizing acquisition on the State's behalf under the provisions of G.S. 143,~~
11 ~~Article 8; or~~

12 (3) ~~by authorizing acquisition on the State's behalf under the provisions of another~~
13 ~~State or~~

14 ~~another governmental entity, provided due consideration is given by the CPO to the differences in~~
15 ~~purchasing rules, regulations and procedures of the contracting entity.~~

16 *History Note: Authority G.S. 143-49; 143-53; 143-60;*

17 *Eff. February 1, 1976;*

18 *Readopted Eff. February 27, 1979;*

19 *Amended Eff. April 1, 1999; February 1, 1996; July 1, 1987;*

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

22 *Readopted Eff. March 1, 2026.*

01 NCAC 05B .1519 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .1519 PROTEST PROCEDURES

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

(1) ~~The vendor~~ 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~~ Contract award. ~~The vendor shall submit a request for a protest meeting within 30 calendar days from the date of the contract award. The request for a protest meeting shall be submitted in one of the following ways: a. in writing, delivered to the agency's procurement officer; b. by electronic mail, delivered to the agency's procurement officer; or c. through the eVP system. The executive officer shall furnish a copy of this letter to the CPO~~ SPO within five calendar days of receipt. The vendor's request shall state why the contract award should be reconsidered, providing facts and documentation to support its protest. 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 shall 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 CPO 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~~ 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 CPO SPO.

(3) ~~The Purchasing Agency shall notify the CPO~~ SPO in writing of any further administrative or judicial review of the Contract award.

(3) The procurement agency shall notify the CPO in writing of any further administrative or judicial review within 5 business days of the agency receiving notice.

(b) When a vendor wants to protest a contract award valued over the amount set forth in G.S. § 143-53.1, the Division and vendor shall comply with the following: ~~When a Vendor wants to protest a Contract awarded by the Secretary valued over the amount set forth in G.S. 14353, the SPO CPO and Vendor shall comply with the following:~~

(1) The Vendor shall submit a written request for a protest meeting to the CPO SPO within 30-calendar days from the date of the ~~contract~~ Contract award. The request for a protest meeting shall be submitted in one of the following ways: a. in writing, delivered to the agency's

1 procurement officer; b. by electronic mail, delivered to the agency's procurement officer; or c.
2 through the eVP system. The Vendor's request shall contain reasons why it has a concern with
3 the award and any supporting documentation. The Vendor's request shall state why the
4 contract award should be reconsidered, providing facts and documentation to support its
5 protest. If the request does not contain this information, or if the ~~SPO-CPO~~ determines that the
6 protest is meritless so that a meeting would serve no purpose, then the ~~SPO-CPO~~ may, within
7 10 calendar days from the date of receipt of the request, respond in writing to the Vendor and
8 refuse the protest meeting request.

9 (2) If the protest meeting is granted, the ~~SPO-CPO~~ shall schedule the meeting within
10 30 calendar days after receipt of the request, unless mutually agreed. The CPO shall
11 determine the protest based on the factors set forth in G.S. § 150B-23(a) and issue a written
12 decision to the protesting Vendor. The written decision shall include a notice of Vendor's
13 appeal rights as set forth in Article 3 of G.S. 150B. Within 10 calendar days from the date
14 of the protest meeting, the ~~SPO-CPO~~ shall respond to the Vendor in writing with the
15 ~~SPO's~~CPO's decision and appeal rights under Article 3 of G.S. 150B.

16 (3) ~~The SPO-CPO shall notify the Secretary of any further administrative or~~
17 ~~judicial review of the Contract award.~~

18 (3)(4) The CPO shall notify the Secretary of any further administrative or judicial
19 review within 5 business days of receiving notice of any further review.

20 (e)

21 *History Note: Authority G.S. 143-53; Eff. February 1, 1996;*
22 *Temporary Amendment Eff. February 15, 1998;*
23 *Amended Eff. April 1, 1999;*
24 *Readopted Eff. October 1, 2019.*
25 *Readopted Eff. March 1, 2026.*

01 NCAC 05B .1520 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .1520 DEBARMENT

(a) For the purpose of this Rule, "debarred" or "debarment" means a vendor ~~Vendor~~ shall not be entitled to enter into a contract ~~Contract~~ for goods ~~Goods~~ or services ~~Services~~ and shall be removed from any distribution lists which may be utilized by the Division.

(b) A vendor ~~Vendor~~ shall be debarred pursuant to G.S. 143-59.2 if the vendor ~~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 ~~Vendor~~ may be debarred by the SPO-CPO upon a finding of fraud, misrepresentation, or other deceptive acts or practices while doing business with a state ~~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-CPO's determination to debar a vendor ~~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) any recommended actions by the State Auditor or internal auditor; and

(3)(2) a vendor's ~~Vendor's~~ documented history of performance on one or more contracts.

(d) Within ten calendar days of the decision to debar, the ~~The~~ SPO-CPO shall notify a vendor ~~Vendor~~ of any debarment and appeal rights under Article 3 of G.S. 150B, in writing, which may include electronic ~~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.

Readopted Eff. March 1, 2026.

01 NCAC 05B .1523 is proposed for readoption with substantive changes as follows:

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. Procurement cards are for authorized agency purchases only and shall be used in accordance with this Section and with the statewide procurement card contract established and maintained by the division. Use of procurement cards by any agency is contingent on satisfactory compliance review, as determined by the Division of Purchase and Contract, pursuant to 01 NCAC 05B .1603. 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 eprocurement if permitted by fiscal policies of the agency. Procurement cards may be used as a payment mechanism within the electronic bid system if permitted by 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.~~

(e)(b) ~~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). The per-transaction limit for procurement card purchases shall be less than or equal to the small purchase benchmark as established by the CPO pursuant to 01 NCAC 05B .0301(1). An agency shall not divide purchases into multiple procurement card transactions to avoid the per-transaction limit for procurement card purchases under this Rule. 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. In an emergency as defined by 01 NCAC 05B .1602, or a Governor's declaration pursuant to the Emergency Management Act, the agency's card program administrator may seek a waiver of the per-transaction limit by seeking verbal approval from the division if time permits. The agency must document the per-transaction limit increase in writing whether prior approval was obtained or not. The waiver of the per-transaction limit shall be in effect no longer than the duration of the emergency. For any emergency purchases executed using procurement card transactions, the emergency purchase provisions of 01 NCAC 05B .1602 shall apply.~~

(2) ~~The SPO-CPO 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.~~

1 (3) _____

2 (d) ~~Each participating agency shall designate a procurement card program administrator, who shall be the~~
3 ~~chief purchasing officer or chief fiscal officer (or person specifically designated by either of these).~~ The CPO
4 may adjust the per-transaction limit for an agency for a single transaction upon prior written request submitted to
5 the division. The decision to increase an agency's per-transaction limit shall be based upon consideration of the
6 agency's compliance reviews, and whether the agency's stated need for a higher transaction limit is for a one-time
7 purchase for which the procurement procedures identified in 01 NCAC 05B .0301 do not apply or are
8 unnecessary.

9 (e) The CPO may adjust the per-transaction limit for an agency for a single transaction upon prior written
10 request submitted to the division. The decision to increase an agency's per-transaction limit shall be based
11 upon consideration of the agency's compliance reviews, and whether the agency's stated need for a higher
12 transaction limit is for a one-time purchase for which the procurement procedures identified in 01 NCAC 05B
13 .0301 do not apply or are unnecessary.

14 (1) ~~_____ All cards requested on behalf of the agency shall be sent to the program administrator (not to~~
15 ~~individual cardholders) by a traceable delivery method.~~

16 (2) ~~_____ Cards shall show the agency name, cardholder, the state seal or agency logo, and indicate~~
17 ~~they are for official use only.~~

18 (f) Each participating agency shall designate a procurement card program administrator, who shall be the
19 chief procurement officer or chief fiscal officer (or designee). The card program administrator, in consultation
20 with the agency's chief executive or fiscal officer, shall determine appropriate limits by per-transaction
21 amount (not to exceed the statewide per-transaction limits set in Paragraphs (b) or (c) of this Rule), total per
22 billing cycle, merchant categories, and similar factors. Agencies shall submit a copy of their procurement
23 card policies and procedures to the Division of Purchase and Contract within 90 days after program
24 implementation and thereafter whenever such policies or procedures are updated. All cards requested on behalf
25 of the agency shall be sent to the program administrator (not to individual cardholders) by a traceable delivery
26 method. Cards shall show the agency name, cardholder, the state seal or agency logo, and indicate they are for
27 official use only.

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

30 Prior to issuance of cards, the card program administrator shall determine compliance with agency policy and
31 procedures, account reconciliation and security. The card program shall require a cardholder acknowledgment
32 prior to issuance of a card to an agency cardholder.

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

36 (h) ~~No other charge cards that obligate payment by the agency or the State shall be used unless an~~

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

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

8 *Temporary Adoption Eff. July 1, 2002;*

9 *Eff. April 1, 2003;*

10 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff.*

11 *July 23, 2016;*

12 *Readopted Eff. March 1, 2026.*

01 NCAC 05B .1601 is proposed for readoption with substantive changes as follows:

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;~~ perishable items such as fresh vegetables, fresh fish, fresh meat, eggs, bakery, and dairy products;
- (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;~~
- (10) 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--function; and
- (11) Procurement of architectural, engineering, surveying, construction management at risk services, design-build services, and public-private partnership construction services procured in accordance with the Mini-Brooks Act (143-64.31)

(b) In addition to products and services exempted by statute, the ~~SPO-CPO~~ may exempt other products and services from purchase through the Division provided that the CPO ~~SPO determines~~ 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;
Readopted Eff. March 1, 2026.

01 NCAC 05B .1603 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .1603 SPECIAL DELEGATIONS

- (a) The ~~CPO SPO~~ may authorize, by special delegation, any agency to purchase specific commodities, printing or services without limitation as to expenditure. Special delegations may be authorized for procurements for which review and approval by the division would not serve the best interest of the State. Examples of circumstances under which such delegations may be authorized include, but are not limited to: perishable goods; frequent, recurring purchases for which division review and approval would result in unnecessary delay; purchases within the unique scope of knowledge or expertise of the agency; or other factors. 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 CPO may require that offers received under such delegations be sent to the Division for determination of the successful vendor.~~ For purposes of ensuring compliance with State procurement and contracting requirements, and with the terms of the special delegation agreement, the CPO may require that agencies submit to the division details of purchases made pursuant to their special delegation for review.
- (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. The division shall review its special delegations at least once every gubernatorial election cycle to determine the continued suitability for delegation. The special delegation agreement between an agency and the division may include provisions related to periodic review on a more frequent basis.~~
- (d) Any special delegation authorized by the CPO does not exempt an agency from the requirements of G.S. 143-50.1.

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.
Readopted Eff. March 1, 2026.

01 NCAC 05B .1605 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .1605 COMPLIANCE REVIEWS

(a) The Division of Purchase and Contract shall conduct compliance reviews on procurement ~~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,~~ The purpose of the compliance review shall be for determining whether an agency is complying with the requirements of Article 3 of Chapter 143 and Title 01, Chapter 5 of the North Carolina Administrative Code, 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 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. In order to obtain an agency's procurement records, the division may request to enter the premises of an agency for the purpose of conducting a compliance review, or the records may be provided electronically. In any cases, agencies shall cooperate with division staff and provide all requested records for conducting compliance review. The division shall not unnecessarily require of an agency any more than is needed to complete compliance review.~~

(c) The ~~SPO-CPO~~ 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 ~~SPOCPO~~. The ~~SPO-CPO~~ may lower the delegation to any level, including the complete removal of the delegation, depending on the nature of any violations found. The SPO CPO 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 CPO's recommendation, based on those results, on what that university's benchmark should be.

~~(d)(c) The SPO CPO 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. Upon request, the division shall provide assistance in educational training for agency staff, to better acquaint them with procurement 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;

Readopted Eff. March 1, 2026;

01 NCAC 05B .1903 is proposed for readoption with substantive changes as follows:

01 NCAC 05B .1903 FILES

(a) ~~Each contract file shall be identified individually so it can be readily located and referenced. As required by Chapter 132, each agency shall maintain all documents related to the transaction of public business, including all records related to public procurement. Each procurement file shall include, as applicable, the following:~~

~~(b) All purchase transactions shall be documented. As applicable, each file shall include:~~

~~(1) Written justification for waiver requested pursuant to 01 NCAC 05B .1401;~~

~~(2) Posted/Issued solicitation and addenda;~~

~~(3) Bid administrative review;~~

~~(4) Original offers if in writing, or written documentation of verbal offers received Vendor responses;~~

~~(5) Documentation of lack of competition as required pursuant to 01 NCAC 05B .0312;~~

~~(6) Bid tabulation(s);~~

~~(7) Bid evaluations/worksheets and other documentation as required by 01 NCAC 05B .0309;~~

~~(8) Reasons for award Award recommendation or reasons for cancellation;~~

~~(9) Justification documentation for negotiations pursuant to 01 NCAC 05B .0503;~~

~~(10) Worksheets/evaluations;~~

~~(11) Mailing list, if used;~~

~~(12) Written justification for waiver or emergency purchase;~~

~~(13) Tabulation of offers received;~~

~~(14) Copy of purchase order(s);~~

~~(15) Related correspondence;~~

~~(16) Reason(s) for receiving only one offer in response to a solicitation;~~

~~(10) Negotiated contracts; and~~

~~(17) Reasons for not accepting technical proposals.~~

~~(11) All records related to bid protests.~~

~~(e)-(b) 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. After award of contract, all material in the procurement file, except confidential information, shall be public record, and shall be furnished in accordance with the Public Records Act upon request.~~

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;

Readopted Eff. March 1, 2026;

01 NCAC 05D .0101 is proposed for readoption with substantive changes as follows:

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.~~ The Rules set forth in this Section and Section .0200 do not apply to contracts for consultant services entered into by the agencies specified in GS 143-64.24.

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;
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